

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

ARTHUR JOHNSTON, CLERK

In re: Administrative Orders of the U. S. District Court Case No. 3:40-mc-0011 By: K. Shearer, Deputy Clerk

SPECIAL ORDER # 16

On March 13, 2020, the United States District Court for the Southern District of Mississippi entered a Special Order [52] addressing the Coronavirus pandemic. After that, the pandemic grew exponentially in the United States and this district. In response, then President Donald Trump declared a national emergency and later signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020. Among other things, the CARES Act authorizes the use of video and telephonic conferencing, under certain circumstances, for various criminal proceedings during the COVID-19 emergency. The Judicial Conference of the United States found that the pandemic has affected and will continue to materially affect the functioning of the federal courts generally. By statute, the declaration of emergency and relevant CARES Act provisions were set to expire on the one-year anniversary of the initial declaration unless the President renewed it under 50 U.S.C. § 1622(d). President Joe Biden did so on February 24, 2021; accordingly, the Judicial Conference's finding of emergency conditions remains in effect.

To protect the public, attorneys, litigants, and those that work in or for the Southern District of Mississippi, the Court has entered fifteen special orders, eight of which [52, 53, 57, 60, 61, 63, 81, and 85] curtailed in-court proceedings. Each time, the Court considered, among other factors, the number of reported cases of COVID-19 and the rate at which the virus was spreading. The Court is currently operating under Special Order #13 [87], which it entered on March 16, 2021.

In August 2021, the Delta variant pushed the seven-day average of new COVID-19 cases to its apex, topping out at around 4,000. Since then, the averages have dropped sharply and now

rest below 400. In addition, vaccination rates have increased, and booster shots are being administered.

That said, the pandemic is not over. Serious cases and deaths still occur, the CDC continues to recommend steps to mitigate transmission, some courthouses remain subject to local restrictions, and the Court has an obligation to protect the health of those participating in trials, including jurors. Thus, the Court will continue to follow the jury-resumption plan it previously adopted, unless amended. See <http://156.124.188.239/sites/default/files/Coronavirus/Covid-19%20Jury%20Action%20Plan%20REV%20%28August%202020%29.pdf>.

With these precautions and the lower infection rates, the Court concludes that it is now advisable to return to a more normal trial schedule. Under Special Order #13, the Court coordinated the dates upon which jury selection began to avoid calling more than one panel on any given day. In practice, most of the set cases settled, so there were few conflicts.

Accordingly, the Court will no longer follow that approach and will instead review the docket each Thursday to determine whether there are more cases set to start than the Court can safely handle. If so, the presiding judges for those trials will coordinate, and all set trials are subject to a potential one- to two-day delay so the Court can stagger jury selections, if appropriate.

In addition, effective December 1, 2021, the Court will no longer impose a global stay of civil and criminal trials due to the pandemic. As in prior orders, the Court notes that the situation remains fluid, as does the guidance on safe practices. It therefore makes sense to allow the presiding judges to assess the circumstances of their cases and their division in real time to determine whether it would be appropriate to conduct jury trials and other in-person hearings. The fact that some judges decide to proceed with trials or in-person hearings in some contexts does not mean that such proceedings would be advisable in all divisions or in all contexts. The

presiding judges will make those determinations and remain free to stay any case—civil or criminal—in their best judgment.

Finally, the Court continues to encourage the use of video conferencing in civil and criminal proceedings where appropriate. While the situation has improved, moving detainees in and out of detention centers for court appearances creates additional risks. Accordingly, the use of video conferencing is approved based on the same findings, and under the same parameters, initially adopted in Special Order #2.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. This Order supersedes all previous Special Orders.
2. Until December 1, 2021, all criminal trials remain stayed due to the need to provide a safe environment for those trials. Until then, the period of the continuances for jury trials implemented by this Order are excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A).
3. All other in-court hearings and proceedings may go forward at the presiding judge's discretion, including proceedings that involve the attendance of detainees. As noted above, judges in some divisions may conclude that detainees should not appear in person, and for that reason, certain findings, as required by the CARES Act, and as set forth in paragraph 5 below, are being made.
4. For all matters set for in-court proceedings and all bankruptcy proceedings, the following conditions apply:
 - A. Counsel must notify the presiding judge (or bankruptcy trustee) and opposing counsel if that attorney or any individuals the attorney intends to bring to the courthouse have any of the following risk factors:
 - persons who a doctor, hospital, or health agency has asked to self-quarantine;

- persons who have been diagnosed with, or have had direct contact with anyone who has been diagnosed with, COVID-19;
- persons with fever, cough, shortness of breath, or loss of smell or taste; or
- any other persons who would raise a reasonable concern of exposure.

Counsel must contact persons they wish to bring to the courthouse and ask whether they have these risk factors. If so, counsel must give notice as soon as possible, but no later than 24 hours before the proceeding. The presiding judge or trustee will have sole discretion to determine whether the proceeding should be delayed or can go forward, perhaps by alternative means.

B. Anyone entering the courthouse will be screened as provided below.

C. Anyone entering the courthouse must wear a mask while in any common area of the courthouse and in the courtroom, unless otherwise instructed by the presiding judge. Counsel must bring their own masks and advise those attending to bring masks.

Additional masks will be available if necessary.

D. Each courtroom will be cleaned after each court session (which could include more than one proceeding). Presiding judges will determine how cleaning should occur during individual proceedings (e.g., cleaning counsel table, the lectern, or the witness box).

E. Participants in hearings, as well as spectators, must observe social distancing.

5. Although in-person proceedings are allowed, judges and counsel are still encouraged to utilize video conferencing and teleconferencing to the extent possible to avoid unnecessary disruption in cases and exposure to the virus. To that end, the Court makes the following additional findings with respect to criminal proceedings addressed in the CARES Act:

A. The Court has reviewed the conditions in this district daily since the pandemic began. Acting under Section 15002(b)(1) of the Act, the Chief Judge has—at least every 90-days—reviewed and renewed the finding that video conferencing and teleconferencing remain necessary. The Court hereby again re-authorizes the use of video conferencing, or teleconferencing if video conferencing is not reasonably available, for all events listed in Section 15002 of the CARES Act.

B. Under Section 15002(b)(2), the Court further specifically finds that felony pleas under Federal Rule of Criminal Procedure 11 and felony sentencings under Rule 32 cannot be conducted in person in every circumstance without seriously jeopardizing public health and safety. As a result, if judges in individual cases find, for specific reasons stated in the record, that felony pleas or sentencings in those cases cannot be further delayed without serious harm to the interests of justice, the judges may use video conferencing for felony pleas and sentencings in those cases and may use teleconferencing if video conferencing is not reasonably available.

C. Video conferencing (or alternatively teleconferencing) as described in paragraphs A and B may not occur unless the defendant consents after consultation with counsel. Consent must be in writing.

D. All counsel wishing to conduct proceedings by video conference must comply with the Court's Video-Conferencing Plan as posted on the Court's website.

6. Grand juries have been operating during the pandemic with approval of the Chief Judge. Grand juries may continue under the following limitations.

A. Grand jurors must appear voluntarily and so indicate on the record.

B. The United States Attorney shall implement protocols to protect the health of the grand jurors and others who may come in contact with them.

Any deviation from these conditions will require notice and approval by the Chief Judge.

7. All pre-trial detainees must be taken to the appropriate holding facility, as determined by the United States Marshals Service (USMS) or its agents or designees, for medical screening before appearing in court for any proceeding. The presiding judge must be notified before transport to the courthouse if a detainee exhibits risk factors.

8. The USMS, in conjunction with the Court Security Officers (CSOs), shall have the authority to screen any visitor to a federal courthouse within the district and prevent them from entering if they present a risk of infecting others. The USMS is directed to continue utilizing the screening procedures it previously implemented. If an individual is stopped, the USMS or CSO must immediately notify the presiding officer by telephone. This could include the presiding federal judge, the Clerk of Court, the presiding bankruptcy trustee, the Chief Probation Officer, United States Attorney, or the head of any other building tenant. The presiding officer will then have authority to decide how the matter should be handled, including entry with appropriate precautions.

The Court recognizes that it is impossible to cover all contingencies and that the situation remains fluid. This Order is therefore designed to give the presiding officers flexibility to address issues as they arise while implementing necessary safeguards. This Order remains in place until further order of this Court.

SO ORDERED, this the 12th day of November, 2021.

s/ Daniel P. Jordan III
CHIEF UNITED STATES DISTRICT JUDGE