



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

In re: Administrative Orders of the U. S. District Court

Case No. 3:40-mc-0011

SPECIAL ORDER # 6

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 to the pandemic, the President of the United States first declared a national emergency and then, on March 27, 2020, signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Among other things, the CARES Act authorizes the use of video and telephone conferencing, under certain circumstances, for various criminal proceedings during the COVID-19 emergency. The Judicial Conference of the United States also found that conditions due to the national emergency have affected and will materially affect the functioning of the federal courts generally.

To protect the public, attorneys, litigants, and those that work in or for the Southern District of Mississippi, the Court has entered three special orders [52, 53, 57] curtailing in-court proceedings. Each time, the Court considered, among other factors, the reported cases of COVID-19, and the rate at which it was spreading. It now appears that the number of reported cases has stabilized, although there have been days where the numbers have spiked. Other factors—like the number of patients in ICU and on ventilators—have not appreciably changed over the last month but are relatively low. The Court also notes that state and local governments are easing the restrictions they imposed on the populous.

Based on those findings, the Court has concluded that it should begin moving toward re-opening, starting with in-court hearings. The Court notes, however, that not every division

within the district is similarly situated. For example, six of the nine counties with the largest number of cases in Mississippi are in the Northern Division of the Southern District. Indeed, the Northern Division has approximately 48% of all reported COVID-19 cases in Mississippi. And the Court's holding facility for the Northern Division is the only facility with confirmed COVID-19 cases (two guards employed by the facility tested positive). The Western Division, by contrast, has had relatively few reported cases. Accordingly, this Order will give the individual judges more autonomy when determining how to conduct proceedings in their courtrooms.

This Order will also extend the prior orders continuing jury trials. Unlike hearings, jury trials involve far more people in the courtroom. Moreover, the jury selection process creates substantial risks because it summons large numbers of citizens from across the division and places them in confined spaces. The Court must provide adequate safety precautions for those potential jurors and everyone who will be exposed to them. To that end, the Court has developed a plan for resuming jury trials when the circumstances call for it. That plan includes the use of physical barriers that have been ordered but will not be available until mid to late June. Proceeding without those items under current circumstances would create unacceptable risks and make it even more difficult to find jurors willing to serve.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. The Court's May 1, 2020 Special Order is superseded by this Order.
2. Effective immediately and through June 30, 2020, all civil and criminal jury trials and related deadlines are continued. Due to the Court's ongoing efforts to provide a safe courtroom, the reduced ability to obtain an adequate spectrum of jurors, the reduced availability of attorneys, and a desire to protect those called as jurors, 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).

The Court finds that the ends of justice served by ordering these continuances outweigh the best interests of the public and each defendant's right to a speedy trial. In fact, the best interests of the public are served by these continuances.

3. All other in-court hearings and proceedings may go forward at the presiding judge's discretion, including proceedings that involve the attendance of a detainee. 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 contact with anyone who has been diagnosed with, COVID-19;
- Persons with fever, cough, or shortness of breath;
- 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 for judicial proceedings must wear masks while in any common area of the courthouse and in the courtroom unless speaking during the proceeding. Counsel are instructed to bring their own masks and advise those attending to bring masks. Additional masks will be made 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 witness box).
 - E. Participants in hearings, as well as spectators, must observe social distancing.
5. Although in-person proceedings are now allowed, judges and counsel are still encouraged to utilize video conferencing and teleconferencing to the extent possible to avoid unnecessary disruption in the cases. To that end, the Court makes the following additional findings with respect to criminal proceedings addressed in the CARES Act.
- A. As Chief Judge, and under Section 15002(b)(1) of the legislation, I hereby authorize the use of video conferencing, or teleconferencing if video conferencing is not reasonably available, for all events listed in Sections 15002 of the CARES Act.
 - B. Under Section 15002(b)(2), I further specifically find that felony pleas under Federal Rule of Criminal Procedure 11 and felony sentencings under Rule 32 cannot be conducted in person in every division of this district 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.

C. Each grand jury session will be limited to one half day.

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 the detainee exhibits risk factors.

8. The USMS, in conjunction with the Court Security Officers (CSOs), shall have the authority to screen any visitors to a federal courthouse within the district and prevent them from entering if they present a risk of contamination. 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 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 possible 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 may be extended or modified on or before June 30, 2020.

SO ORDERED, this the 29th day of May 2020.

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