

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

By: _____, Clerk

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

Case No. 3:40-mc-0011

SPECIAL ORDER # 8

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 continue to 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 seven special orders, five of which [52, 53, 57, 60, 61] curtailed in-court proceedings. Each time, the Court considered, among other factors, the reported cases of COVID-19 and the rate at which the virus was spreading.

The numbers still paint a bleak picture. Based on data from the Center for Disease Control, Mississippi remains in the red zone for COVID-19 cases, indicating more than 100 new cases per 100,000 people last week with a positivity rating over 10%. The CDC also reports that in the last week, Mississippi witnessed a 48.6% increase in new cases, and a 20.2% increase in deaths over the preceding week. Testing was up just 5.4%. Seven of the 12 hardest hit counties are in the Southern District, topped by Hinds County in the Northern Division of the Southern

District. All four divisions include counties with high infection rates, and the Court notes that three of its four courthouses are in counties subject to Governor Tate Reeves's executive order imposing restrictions. Those same three courthouses have experienced multiple positive cases of COVID-19.

As in prior orders, the Court notes that the situation remains fluid, and the guidance on safe practices has been inconsistent. It therefore makes sense to allow the presiding judges to assess the circumstances within their divisions in real time to determine whether it would be appropriate to conduct in-person hearings. The fact that some judges may proceed with in-person hearings in some contexts does not mean that they would be advisable in all divisions in all contexts. The judges will make those determinations. In addition, conducting hearings in whole or in part by video conferencing will be allowed based on the same findings and under the same parameters initially adopted in Special Order #2.

Finally, jury trials present the most difficult challenges because they involve members of the public and require far more people in the courtroom for longer periods. While the Court has diligently prepared for the day when jury trials resume, at this point the numbers do not justify the potential exposure. Accordingly, all jury trials (civil and criminal) set for trial between now and September 13, 2020, are hereby continued.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. This Order supersedes all previous Special Orders.
2. Effective immediately and ending September 13, 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, shortness of breath, or loss of smell or taste;
- 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 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 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. Having conducted a 90-day review in June 2020, and as Chief Judge acting under Section 15002(b)(1) of the Act, I hereby re-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 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 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 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 September 13, 2020.

SO ORDERED, this the 31st day of July 2020.

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