



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-0012

SPECIAL ORDER # 17

Since the beginning of the Coronavirus pandemic, this Court has entered 16 special orders, eight of which [52,53,57,60, 61, 63, 81, and 85] curtailed in-court proceedings. When the infection waned in November 2021, the Court entered Special Order No. 16 [98], which returned to a more normal trial schedule. Unfortunately, the Omicron variant has changed that.

The district now faces the highest seven-day average of new cases since the pandemic began, nearly doubling the previous high. And while the rate of deaths and hospitalizations have not seen a corresponding increase, the sheer number of cases has seriously impacted Court operations. In the last two weeks, a significant number of judges, prosecutors, public defenders, civil attorneys, and Court staff have tested positive for COVID-19, others have been quarantined due to close contact with other infected people. The Court also notes that a significant percentage of pretrial detainees have been quarantined in the last several weeks.

The spike has also impacted cases that were set or tried. For example, one civil case lost all three alternate jurors due to Coronavirus exposure; several cases have been cancelled because counsel or witnesses were quarantined; and, in a recent jury trial, 27% present of the *reporting* venire had to be excused before jury selection (others were excused before they reported).

The Court understands its responsibilities to jurors and witnesses who appear for trials under legal compulsion. *See* 28 U.S.C. § 1866(g). The Court likewise has an obligation to protect attorneys and litigants while still providing a fair trial. The current spike in cases has unfortunately disrupted the Court's ability to conduct jury trials and seat a jury reflecting a fair cross-section of the community.

At this time, the Southern District of Mississippi meets none of the benchmarks that the Administrative Offices for United States Courts set for moving into a more open phase of court proceedings. Accordingly, this Court will again curtail its courtroom proceedings. Effective immediately, all non-essential civil and criminal jury trials are hereby stayed until further order. This does not affect any other deadlines in those cases unless the presiding judge determines otherwise. The presiding judge shall have the sole discretion to determine whether a case is essential. Any such finding shall have no impact on any other case before that or any other judge. For example, a finding that a case is essential and must be tried shall not impact the speedy-trial rights of any other defendant and does not diminish the Court's finding that it cannot safely conduct jury trials at this time.

Finally, judges are encouraged to conduct criminal proceedings involving detained defendants by video conferencing (VTC). Hearings conducted by VTC must comply with the Court's Video-Conferencing Plan, and the presiding judge shall determine the number of individuals allowed into the courtroom.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. This Order supersedes all previous Special Orders.
2. Effective immediately, all non-essential civil and criminal jury trials are stayed. 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 and witnesses, 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. 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 would be required to quarantine under current CDC guidelines, due to a COVID-19 diagnosis or close contact (as the CDC defines it) with anyone diagnosed with COVID-19;
- Persons with fever, cough, headaches, unexpected fatigue, shortness of breath, or loss of smell or taste; and
- 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.

4. As to hearings conducted by VTC, 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, I hereby again re-authorize 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), 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 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 VTC must comply with the Court's Video-Conferencing Plan as posted on the Court's website.

5. 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 into contact with them.

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

6. 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.

7. 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, the United States Attorney, or the head of any other building tenant. The presiding officer will then have the 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 AND ADJUDGED this the 22nd day of January, 2022.

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