

FEB 26 2021

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS**

JAMES W. McCORMACK, CLERK
By: 
DEP CLERK

IN RE: COURT OPERATIONS DURING COVID-19 PANDEMIC

ADMINISTRATIVE ORDER ELEVEN

The pandemic continues to present serious and significant public health concerns. We must remain vigilant and cautious. There are, however, positive signs in the COVID-19 numbers for the Eastern District of Arkansas. Infections and hospitalizations are trending down, albeit with periodic upticks. Vaccinations are up, though the supply remains limited and the recent winter weather has hampered those efforts. The variant strains, as yet undetected in Arkansas, add some uncertainty. Having done its best to consider all the circumstances, the Court concludes that the prudent path forward includes these steps: extending the general suspension of jury trials for two more months; during that suspension, holding a few civil and criminal jury trials where the parties and the presiding Judge want to proceed, a jury can be seated, and risks can be minimized; and continuing the strong preference for video and telephone hearings of all kinds. Here are the particulars.

First, all civil and criminal jury trials scheduled between 23 March 2021 and 21 May 2021 are continued to a later date to be set by the presiding Judge. Citizens' willingness to serve on juries in the

current circumstances is uncertain. The Court must ensure that our jury pools reflect a fair cross section of the Eastern District. Notwithstanding the good recent trends in the virus-related numbers, and various mitigation measures, holding a jury trial will involve some health risks. Postponing most trials, while proceeding with a few pioneer trials in the coming months, is the best way to measure whether citizens are willing to serve, to ensure that a representative pool of potential jurors can be summoned, and to improve the effectiveness of mitigation measures. This protocol will also keep the number of people in our courthouses at any one time from becoming too large. The Court concludes that the ends of justice outweigh the public's interest, and the affected defendants' interests, in a speedy trial in every criminal case. 18 U.S.C. § 3161(h)(7)(A) & (B). Any period of delay resulting from this Administrative Order is therefore excludable time under the Speedy Trial Act.

For good cause, and after consultation with the parties, the presiding Judge may reinstate to the docket any civil or criminal jury trial setting between March 23rd and May 21st. Among other material circumstances, the presiding Judge will consider these things: the Court's ability to summon a jury pool that represents a fair cross section of the community; the parties' preferences for holding the trial now or later; whether the case involves a criminal defendant in custody; any necessary travel by lawyers and witnesses; the mitigation measures

available to reduce COVID-19 risk; other proceedings scheduled in the courthouse; and the likely duration of the trial. The Court expects that almost all of these pioneer trials will be short, taking two or three days and involving few witnesses. In civil cases, eight-person juries will be seated. This step will reduce the number of citizens called as potential jurors, as well as the number of people in the courtroom for the trial. The Court has also enhanced its screening of potential jurors. Those at greater health risk, or with family obligations that would make jury service particularly burdensome, can defer serving until a later time. Any bench trial can be restored to the docket on these same terms, minus the jury-related considerations.

Second, only one grand jury will meet in April, and the months thereafter, unless the Court orders otherwise for good cause. The ends of justice likewise outweigh any defendant's interest, and the public's interest, in a speedy indictment.

Third, on behalf of our Court, I have reviewed the authorizations made in March 2020 by Administrative Order Three, extended in June by Administrative Order Six, extended in September by Administrative Order Seven, and last extended on 18 December 2020 by Administrative Order Nine. CARES Act, Pub. L. No. 116-136 § 15002(b)(3)(B). It remains necessary – when the interests of justice so require – to conduct many criminal proceedings remotely. In particular, moving in-custody defendants to, from, and around the

courthouses creates health-related challenges for the United States Marshal, lawyers, Court personnel, and others. Based on the current risk presented by COVID-19 in the Eastern District, many felony pleas and many felony sentencings cannot be conducted in person without seriously jeopardizing public health and safety. Pub. L. No. 116-136 § 15002(b)(2)(A). I therefore extend the authorizations in Administrative Orders Three, Six, Seven, and Nine for video teleconferencing, or teleconferencing if video teleconferencing is not reasonably available, in all previously listed kinds of proceedings for another ninety days until 21 June 2021. Pub. L. No. 116-136 § 15002(b)(1). If the defendant consents after consulting with counsel, and the presiding Judge concludes that a felony plea or a felony sentencing cannot be further delayed without doing serious harm to the interests of justice, then the proceeding may be held by video teleconference or teleconference, if video teleconferencing is not reasonably available. Pub. L. No. 116-136 § 15002(b)(2)(A) & (b)(3)(B). I will review these authorizations again before June 21st.

Fourth, absent the presiding Judge's determination of necessity, all other civil proceedings—miscellaneous hearings, settlement conferences, and the like—will be held by video teleconference or teleconference. Maintaining this drill will reduce the virus risk by reducing the number of people in our courthouses.

All the active and senior United States District Judges and United States Magistrate Judges for the Eastern District of Arkansas concur in this Administrative Order.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
Chief Judge
26 February 2021