

SEP - 3 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
TAMMY H. DOWNS, CLERK
DEP CLERK

IN RE: COURT OPERATIONS DURING COVID-19 PANDEMIC

ADMINISTRATIVE ORDER SEVENTEEN

The combination of the Delta variant, low vaccination rates, and pent-up demand for jury trials has presented some challenges in recent months for the Eastern District. But, with the cooperation of litigants, potential jurors, lawyers, and jurors, plus hard work by our extraordinary staff, the Court has pressed on this summer. Nineteen civil and criminal jury trials, and almost seven hundred hearings of one kind or another, have been held since late May. Approximately ninety percent of those who work in our courthouses regularly have been fully vaccinated, which has helped reduce the COVID-19-related risk. And while the number of citizens asking to be excused from jury service for virus-related reasons has increased in August, the Court has continued to meet its fair-cross-section obligations by increasing the number of people summoned. We will keep a weather eye on this issue.

As the Delta variant harries our State, the Court is mindful that circumstances in the Eastern District are in motion. With periodic ups and downs, active cases, hospitalizations, ICU patients, and deaths

seem to have stabilized at high levels.* This is not encouraging. The pace of vaccinations has slowed. Some breakthrough infections among the vaccinated are occurring. Reopened schools, Labor Day celebrations, football games, and other fall gatherings will all present occasions for the virus to do what viruses do.

The Court concludes that, at this point, the best response in these fluid circumstances is to continue the drill specified in late July in Administrative Order Sixteen. Each presiding Judge will make case-sensitive scheduling decisions week by week, month by month. COVID-19-based continuances will be freely given, especially in jury trials. Remote proceedings by video or telephone will be the default choice whenever possible. All the protocols listed in Administrative Order Sixteen—masking, rearranged courtrooms, simulcasting, and distancing—will be scrupulously followed. The Court will also continue to stagger start dates for jury trials and use multiple spaces for selecting juries.

Remote proceedings, especially in criminal cases, are an essential part of reducing the virus risk while continuing full operations given the Delta variant, breakthrough infections, reopening of educational institutions, and fall activities. The Eastern District has almost six hundred individuals in custody at fourteen facilities in Arkansas and

* www.healthy.arkansas.gov/programs-services/topics/novel-coronavirus

three surrounding states. On behalf of our Court, I have therefore reviewed the CARES Act authorizations made first in March 2020 by Administrative Order Three, extended periodically since then by various Administrative Orders, and last extended by Administrative Order Fifteen until 19 September 2021. 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, plus mixing people from various locations, creates health-related challenges for the defendants, 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, Nine, Eleven, and Fifteen for video teleconferencing (or teleconferencing if video teleconferencing is not reasonably available) in all previously listed kinds of proceedings for another ninety days until 18 December 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 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 18 December 2021.

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, except that Judge Rudofsky would strongly encourage (but not require) vaccinated individuals to wear masks in public areas.

So Ordered.

D.P. Marshall Jr.

D.P. Marshall Jr.
Chief Judge

3 September 2021
