

FEB 28 2022

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

TAMMY H. DOWNS, CLERK

By: _____

DEP CLERK

IN RE: COURT OPERATIONS DURING COVID-19 PANDEMIC

ADMINISTRATIVE ORDER TWENTY-ONE

There are encouraging signs in the Eastern District of Arkansas. As the effects of the omicron variant subside, infections and hospitalizations are trending down, while vaccinations continue.¹ The weekly percentage of potential jurors who have expressed some virus-related concern about jury service has returned to the range that the Court experienced before the omicron surge. The Court has completed three civil jury trials in February without any known virus-related complications. The number of deaths related to COVID-19 is still rising, though, which indicates the continuing seriousness of our virus-related circumstances. According to the CDC's 25 February 2022 guidance, the "COVID-19 Community Level" is "high" in approximately two-thirds of the counties in the Eastern District, which results in a recommendation for masks in public places.² A new subvariant of omicron has also arrived in Arkansas. After considering the

¹ www.healthy.arkansas.gov/programs-services/topics/novel-coronavirus

² www.cdc.gov/coronavirus/2019-ncov/your-health/covid-by-county.html

circumstances, the Court concludes that these are the best steps now: a return to pre-omicron operating protocols and continued vigilance. The Court also expects that some mitigation measures can be relaxed sooner rather than later. Another Administrative Order will be entered in due course.

On 1 March 2022, the Court will resume the effective drill followed this past fall as specified in Administrative Order Sixteen and modified in this Administrative Order. We will hold remote proceedings when practicable. In advance of any in-person hearing, counsel must inform the presiding Judge and opposing counsel if any hearing participant has COVID-19 symptoms, has been exposed to COVID-19 within the last fourteen days, or is awaiting the result of a COVID-19 test. The usual protocols—masking, rearranged courtrooms, simulcasting, and distancing—will be followed in all Eastern District courthouses. Enhanced screening of potential jurors and increased ventilation will continue. The Court will also continue to stagger start dates for jury trials and use multiple spaces for selecting jurors. Each presiding Judge will continue to make scheduling decisions based on the material circumstances in each case. And each presiding Judge will continue to make decisions about masking in the courtroom depending on the circumstances presented in each proceeding before that Judge.

Remote proceedings, especially in criminal cases, remain an essential part of reducing the virus risk while continuing full operations during the coming months. The Eastern District has more than five hundred and fifty individuals in custody at fourteen facilities in Arkansas and 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 Eighteen until 18 March 2022. 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, Fifteen, Seventeen, and Eighteen for video teleconferencing (or teleconferencing if video teleconferencing is not reasonably available)

in all previously listed kinds of proceedings for another ninety days until 16 June 2022. 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 16 June 2022.

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 believes it is now time to end the masking requirement that covers public areas of the courthouses.

So Ordered.

D.P. Marshall Jr.

D.P. Marshall Jr.
Chief Judge

28 February 2022
