

JUN 03 2022

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

By: TAMMY H. DOWNS, CLERK

DEP CLERK

IN RE: COURT OPERATIONS DURING COVID-19 PANDEMIC

ADMINISTRATIVE ORDER TWENTY-THREE

We've welcomed summer, but the virus remains our companion. The number of infections in the Eastern District of Arkansas is slowly increasing. Hospitalizations are increasing, too, but the total remains low.¹ These circumstances translate into a low Community Risk Level in all of the counties in the Eastern District.² The latest omicron subvariants, including BA.2.12.1, are nimble and present uncertainties.³ The Court has held sixteen civil and criminal jury trials so far in 2022. None has been derailed by the virus. The percentage of potential jurors unable or reluctant to serve for some virus-related reason has remained relatively low and stable since March. But, COVID-19 remains with us as demonstrated by the fact that lawyers, parties, witnesses, and Court staff continue to deal with periodic infections. We must therefore

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

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

³ www.arkansasonline.com/news/2022/may/27/number-of-arkansans-on-ventilators-with-covid

maintain precautions, remain vigilant, and, as hard as it is after more than two years of all this, press on.

The Court concludes that our current drill is working well and should continue. Masks are encouraged but not required in all public areas of our courthouses. All other mitigation measures – distancing, extra ventilation, virus-related screening of potential jurors, summoning larger pools of potential jurors, staggered starts for jury trials, and remote hearings when necessary – will continue. Each presiding Judge will decide the protocol that best fits each proceeding. The Court will keep evaluating its procedures and adjust as needed.

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 six hundred individuals in custody at thirteen 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 Twenty-One until 16 June 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, Eighteen, and Twenty-One for video teleconferencing (or teleconferencing if video teleconferencing is not reasonably available) in all previously listed kinds of proceedings for another ninety days until 14 September 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 14 September 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.

So Ordered.

D.P. Marshall Jr.

D.P. Marshall Jr.
Chief Judge

3 June 2022