

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

SEP 13 2022

TAMMY H. DOWNS, CLERK
By:  DEP CLERK

IN RE: COURT OPERATIONS DURING COVID-19 PANDEMIC

ADMINISTRATIVE ORDER TWENTY-FIVE

The virus remains with us, but life seems mostly normal again, though with an added layer of risk in group activities. The CDC's Community Risk Level for the counties in the Eastern District of Arkansas is a mixture: As of last week, the risk in fourteen of the thirty-nine counties was high; in sixteen it was medium; and in nine it was low.¹ Pulaski county and Craighead county had the highest number of new cases in our State. Two of our courthouses are in those counties. But, the trends for all the key numbers – hospitalizations, intensive care patients, and deaths – have been heading (with the usual ups and downs) in the right direction for some weeks.² Vaccinations continue. And a booster aimed at the recent omicron subvariants is becoming available. At the Court, those summoned for jury duty continue to be asked some pointed questions before they must appear at the courthouse. The percentage of citizens concerned about serving for

¹ www.cdc.gov/coronavirus/2019-ncov/your-health/covid-by-county.html

² www.healthy.arkansas.gov/programs-services/topics/novel-coronavirus

some virus-related reason has remained relatively stable since early July. The Court continues to summon more potential jurors than usual to help ensure that our juries are drawn from a fair cross-section of citizens in the Eastern District.

All material things considered, the Court concludes that we can relax masking, while maintaining all other mitigation measures, as we continue full operations in the coming months. We will continue screening potential jurors, staggering start days for jury trials when practicable, having increased ventilation, holding various hearings by video or telephone, encouraging distancing, and using several large spaces for trial-related gatherings. In general, each person should decide whether to wear a mask, and, if so, when, based on that person's individual assessment of risk to others and self. Each presiding Judge will decide the masking protocol within the courtroom for each hearing based on the circumstances presented. Given the incidence of exposure at schools, during travel, and at large gatherings, the pre-hearing notice requirement remains in place: In advance of any in-person proceeding, counsel must inform the presiding Judge and opposing counsel if any planned participant has COVID-19 symptoms, has been exposed to COVID-19 within the last five days, or is awaiting the result of a COVID-19 test. Each presiding Judge will continue to make scheduling decisions based on the material circumstances in each case.

Notwithstanding the general improvement in our virus-related circumstances, remote proceedings, especially in criminal cases, remain an essential part of reducing the virus risk while continuing full operations this fall. The Eastern District has more than five hundred and fifty 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-Three until 14 September 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, Twenty-One, and Twenty-Three for video

teleconferencing (or teleconferencing if video teleconferencing is not reasonably available) in all previously listed kinds of proceedings for another ninety days until 13 December 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 13 December 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

13 September 2022