

FILED

MAR 31 2020

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

IN OPEN COURT
JAMES W. McCORMACK, CLERK
BY: *[Signature]*
DEPUTY CLERK

IN RE: COURT OPERATIONS DURING THE COVID-19 PANDEMIC

ADMINISTRATIVE ORDER THREE

The United States District Court for the Eastern District of Arkansas remains open. Last week, Congress passed the Coronavirus Aid, Relief, and Economic Security Act. H.R. 748. The CARES Act authorizes the use of video and telephone conferencing—under certain circumstances and with the consent of the defendant—for various criminal proceedings during the ongoing COVID-19 emergency. On 29 March 2020, the Judicial Conference of the United States found, pursuant to the CARES Act, that emergency conditions due to COVID-19 have affected and will materially affect the functioning of the federal courts generally.

There are now more than 500 presumptively positive cases of COVID-19 in Arkansas—many of those in counties in the Eastern District. That number continues to rise: according to Governor Hutchinson, the models predict thousands of cases in the days and weeks ahead. To help slow the spread of the virus, the CDC continues to recommend against gatherings of more than fifty people. Further, Governor Hutchinson has prohibited gatherings of ten or more people in any confined indoor or outdoor space. That State directive does not bind this federal Court; but it is a relevant data point. Finally, public health officials recommend limiting person-to-person contact and maintaining a distance of at least six feet from others.

In recent days, United States District Judges and United States Magistrate Judges in the Eastern District of Arkansas have continued to hold hearings in criminal cases. They have taken steps to maintain appropriate social distance—using video teleconferencing when possible, putting more physical space between participants during in-person hearings, and having observers watch hearings through a live video feed in a separate courtroom. Extra cleaning efforts are now routine at the courthouse. Nonetheless, in-person hearings like these still involve some risk: folks gather together; counsel confer with clients, each other, and court staff; papers change hands; probation officers come into close contact with defendants to perform pre-hearing drug screens; and the United States Marshals Service can't maintain six feet of distance when transporting an in-custody defendant to and around the courthouse. The Court must therefore take further steps.

First, given the continued emergency conditions, the Court confirms its continuance of all civil and criminal jury trials and grand jury proceedings scheduled before 30 April 2020. Further trial continuances will be handled by each presiding judge.

Second, in light of the Judicial Conference's finding and the evolving conditions in the Eastern District of Arkansas, on behalf of the Court I authorize the use of video teleconferencing—or telephone conferencing if video teleconferencing is not reasonably available—for the following types of criminal proceedings:

- Detention hearings under 18 U.S.C. § 3142;

- Initial appearances under Federal Rule of Criminal Procedure 5;
- Preliminary hearings under Federal Rule of Criminal Procedure 5.1;
- Waivers of indictment under Federal Rule of Criminal Procedure 7(b);
- Arraignments under Federal Rule of Criminal Procedure 10;
- Probation and supervised release revocation proceedings under Federal Rule of Criminal Procedure 32.1;
- Pretrial release revocation proceedings under 18 U.S.C. § 3148;
- Appearances under Federal Rule of Criminal Procedure 40;
- Misdemeanor pleas and sentencings as described in Federal Rule of Criminal Procedure 43(b)(2); and
- Proceedings under chapter 403 of title 18—the Federal Juvenile Delinquency Act—except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

CARES Act § 15002(b)(1). Further, the Court's authority, under Federal Rule of Criminal Procedure 43(b)(2)'s longstanding provision about conducting pleas and sentencings in misdemeanor cases without the defendant being present, remains unchanged.

Third, pursuant to § 15002(b)(2), and on behalf of the Court, I find that felony pleas under Federal Rule of Criminal Procedure 11 and felony sentencings under Federal Rule of Criminal Procedure 32 cannot be conducted in person in the Eastern District of Arkansas without seriously

jeopardizing public health and safety. All currently scheduled felony pleas and sentencings remain on the docket. Many of these proceedings will be continued on a party's motion for good cause or by the presiding District Judge on his or her own motion. But, if the presiding District Judge finds for specific reasons that the felony plea or sentencing in a particular case cannot be further delayed without serious harm to the interests of justice, then the plea or sentencing in that case may be conducted by video teleconferencing, or by telephone conference if video teleconferencing is not reasonably available. CARES Act § 15002(b)(2)(A). Any motion to continue or to proceed by video teleconference, or by telephone conference, must be filed as soon as practicable. For hearings scheduled after 10 April 2020, any such motion must be filed no later than seven calendar days before the hearing. Any response is due by the close of business on the next business day after the motion is filed.

Fourth, the Court emphasizes a critical, threshold point: the video teleconferencing or telephone conferencing authorized by this Order may take place only with the defendant's consent after consultation with counsel. CARES Act § 15002(b)(4).

Fifth, before holding a hearing by telephone conference pursuant to this Order in any criminal case, the presiding judge must specifically find that video teleconferencing is not reasonably available.

Sixth, if the emergency conditions in this District do not abate in the next ninety days, then the Court and I will review the authorizations in this

Order and determine whether to extend them. CARES Act § 15002(b)(3)(A).
That review will occur no later than 29 June 2020.

Seventh, all active and senior United States District Judges and all United States Magistrate Judges for the Eastern District of Arkansas have concurred in Administrative Orders One, Two, and Three.

SO ORDERED.

D.P. Marshall Jr.

D.P. MARSHALL JR.
CHIEF JUDGE

31 March 2020
