

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

In re: Administrative Orders of the U. S. District Court

Case No. 3:40-mc-0012

SPECIAL ORDER No. 18

Since the beginning of the Coronavirus pandemic, this Court has entered 17 special orders, nine of which curtailed in-court proceedings. Each order was based on the then-existing conditions within the Southern District of Mississippi and the recommendations from the Centers for Disease Control and Prevention (CDC). The most recent order, Special Order No. 17, was adopted to address the spiking numbers of cases and deaths caused by the Omicron variant. Under that order, the Court stayed non-essential civil and criminal jury trials while mandating masks in the courthouses. Fortunately, conditions have improved enough to lift those restrictions and adopt a new approach.

On February 26, 2022, the CDC adopted a county-by-county strategy, under which it recommends indoor masking for only the counties it designates as high-risk. Currently, only one courthouse with the Southern District is in a high-risk county (the Natchez courthouse). The three remaining courthouses are in moderate-risk counties for which indoor masking is recommended only for individuals with other risk factors.

Effective immediately, the Court will link its masking requirements to the CDC's county-by-county risk assessment. Accordingly, indoor masks will be required at any courthouses in high-risk counties; masks will not be required in other courthouses. This means masks are presently still required in the Natchez courthouse, but that restriction will automatically lift when the CDC lowers the risk assessment for Adams County.

As for jury trials, the Court finds that while the pandemic is not over, jury trials should resume with appropriate mitigation steps as adopted in the Court's jury-resumption plan. *See*

<http://156.124.188.239/sites/default/files/Coronavirus/Covid-19%20Jury%20Action%20Plan%20REV%20%28August%202020%29.pdf>. Nevertheless, the situation remains fluid, so individual judges retain the right to stay civil or criminal cases for pandemic-related reasons (e.g., an unexpected spike; an infection affecting litigants, attorneys, or court personnel; a trial participant who is at high risk of illness).

The current stay of non-essential civil and criminal jury trials will be lifted effective March 20, 2022. This slight delay is necessary to give parties and counsel ample notice of trial settings and an opportunity to prepare. The delay is also necessary for the Court to transition into an active trial docket, coordinating trial dates and managing the limited mitigation resources it employs to safely conduct jury trials. All time will be excluded from the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A).

Finally, the Court continues to encourage the use of video conferencing in civil and criminal proceedings where appropriate. While the situation has improved, moving detainees in and out of detention centers for court appearances creates additional risks. Accordingly, the use of video conferencing is approved based on the same findings, and under the same parameters, initially adopted in Special Order No. 2.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. This Order supersedes all previous Special Orders.
2. Until March 20, 2021, all non-essential criminal and civil jury trials remain stayed due to the need to provide a safe environment for those trials. Until then, the period of the continuances for jury trials implemented by this Order are excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A).

3. All other in-court hearings and proceedings may go forward at the presiding judge's discretion, including proceedings that involve the attendance of detainees. As noted above, judges in some divisions may conclude that detainees should not appear in person, and for that reason, certain findings, as required by the CARES Act, and as set forth in paragraph 5 below, are being made.

4. For all matters set for in-court proceedings, and all bankruptcy proceedings, the following conditions apply:

A. Counsel must notify the presiding judge (or bankruptcy trustee) and opposing counsel if that attorney or any individuals the attorney intends to bring to the courthouse have any of the following risk factors:

- Persons who a doctor, hospital, or health agency has asked to self-quarantine;
- Persons who would be required to quarantine under current CDC guidelines, due to a COVID-19 diagnosis or close contact (as the CDC defines it) with anyone diagnosed with COVID-19;
- Persons with fever, cough, headaches, unexpected fatigue, shortness of breath, or loss of smell or taste; and
- Any other persons who would raise a reasonable concern of exposure.

Counsel must contact persons they wish to bring to the courthouse and ask whether they have these risk factors. If so, counsel must give notice as soon as possible, but no later than 24 hours before the proceeding. The presiding judge or trustee will have sole discretion to determine whether the proceeding should be delayed or can go forward, perhaps by alternative means.

B. Anyone entering the courthouse will be screened as provided below.

C. Each courtroom will be cleaned after each court session (which could

include more than one proceeding). Presiding judges will determine how cleaning should occur during individual proceedings (e.g., cleaning counsel table, the lectern, or the witness box).

D. Participants in hearings, as well as spectators, must observe social distancing.

5. As to hearings conducted by VTC, the Court makes the following additional findings with respect to criminal proceedings addressed in the CARES Act:

A. The Court has reviewed the conditions in this district daily since the pandemic began. Acting under Section 15002(b)(1) of the Act, I hereby again re-authorize the use of video conferencing, or teleconferencing if video conferencing is not reasonably available, for all events listed in Section 15002 of the CARES Act.

B. Under Section 15002(b)(2), I further specifically find that felony pleas under Federal Rule of Criminal Procedure 11 and felony sentencings under Rule 32 cannot be conducted in person in every circumstance without seriously jeopardizing public health and safety. As a result, if judges in individual cases find, for specific reasons stated in the record, that felony pleas or sentencings in those cases cannot be further delayed without serious harm to the interests of justice, the judges may use video conferencing for felony pleas and sentencings in those cases and may use teleconferencing if video conferencing is not reasonably available.

C. Video conferencing (or alternatively teleconferencing) as described in paragraphs A and B may not occur unless the defendant consents after consultation with counsel. Consent must be in writing.

D. All counsel wishing to conduct proceedings by VTC must comply with the Court's Video-Conferencing Plan as posted on the Court's website.

6. Grand juries have been operating during the pandemic with approval of the Chief Judge. Grand juries may continue under the following limitations:

A. Grand jurors must appear voluntarily and so indicate on the record.

B. The United States Attorney shall implement protocols to protect the health of the grand jurors and others who may come into contact with them.

Any deviation from these conditions will require notice and approval by the Chief Judge.

7. All pre-trial detainees must be taken to the appropriate holding facility as determined by the United States Marshals Service (USMS), or its agents or designees, for medical screening before appearing in court for any proceeding. The presiding judge must be notified before transport to the courthouse if a detainee exhibits risk factors.

8. The USMS, in conjunction with the Court Security Officers (CSOs), shall have the authority to screen any visitor to a federal courthouse within the district and prevent them from entering if they present a risk of infecting others. The USMS is directed to continue utilizing the screening procedures it previously implemented. If an individual is stopped, the USMS or CSO must immediately notify the presiding officer by telephone. This could include the presiding federal judge, the Clerk of Court, the presiding bankruptcy trustee, the Chief Probation Officer, the United States Attorney, or the head of any other building tenant. The presiding officer will then have the authority to decide how the matter should be handled, including entry with appropriate precautions.

9. Anyone entering a courthouse located in a county the CDC has designated as high risk must wear a mask while in any common area of the courthouse and in the courtroom, unless

otherwise instructed by the presiding judge. Counsel must bring their own masks and advise those attending to bring masks. Additional masks will be available if necessary.

The Court recognizes that it is impossible to cover all contingencies and that the situation remains fluid. This Order is therefore designed to give the presiding officers flexibility to address issues as they arise while implementing necessary safeguards. This Order remains in place until further order of this Court.

SO ORDERED AND ADJUDGED this the 1st day of March, 2022.

s/ Daniel P. Jordan III
CHIEF UNITED STATES DISTRICT JUDGE