

FILED

MAR 30 2020

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**IN RE:)
AUTHORIZING VIDEO AND)
TELECONFERENCING PURSUANT)
TO THE CARES ACT AND)
LIMITATIONS TO PUBLIC AND PRESS)
ACCESS TO THE COURTHOUSES)
DURING THE COVID-19 EMERGENCY.)**

Administrative Order No. 263

ADMINISTRATIVE ORDER

To the extent this Order differs from Amended Administrative 261 dated March 21, 2020, and Administrative Order No. 262 dated March 23, 2020, regarding court operations and procedures during the worldwide outbreak of coronavirus 2019 disease ("COVID-19"), this Order supersedes and replaces those Orders.

I. The CARES Act and Criminal Proceedings

On March 27, 2020, the President of the United States signed into law the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), H.R. 748 (2020). Section 15002(b) of the CARES Act provides for video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, for certain criminal proceedings, if the Judicial Conference of the United States finds that emergency conditions caused by the COVID-19 outbreak will materially affect the functioning of either the federal courts generally or a particular district court, and the chief judge of a court covered by that finding authorizes video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available. Additional case-by-case findings are required of the presiding judge relative to felony pleas and sentencings.

In any event, video teleconferencing and telephone conferencing can only occur with the consent of the defendant.

On March 29, 2020, the Judicial Conference of the United States declared that emergency conditions caused by the COVID-19 outbreak are materially affecting, and will continue to materially affect, the functioning of the federal courts generally.

The current COVID-19 outbreak has impacted the Southern District of Illinois, all 50 states, and countries around the world. Although for many this disease appears to cause only flu-like symptoms, for others it can pose a serious risk, even death. There is currently no vaccine to prevent COVID-19. On March 29, 2020, the head of the Centers for Disease Control and Prevention (“CDC”) predicted millions of infections and between 100,000 and 200,000 deaths. The Governor of Illinois declared a disaster and entered a “stay-at-home” Executive Order on March 20, 2020. Illinois Executive Order 2020-13, entered March 26, 2020, places prisons on administrative quarantine and suspends new admissions to Illinois Department of Corrections facilities from county jails. The National Commission on Correctional Health Care recommends the suspension of all transfers to and from facilities unless absolutely necessary. The CDC and local public health officials have advised that the best way to prevent illness is to avoid opportunities for exposure. The virus is thought to spread mainly from person-to-person, particularly between people who are in close contact with one another (within about 6 feet) and through contact with contaminated surfaces.

As Chief Judge, the undersigned finds, for the reasons stated, that the Court cannot apply the recommended social distancing measures and simultaneously continue its

operations in the usual way without endangering the health of defendants, counsel, the public, and court personnel, thereby necessitating the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available. As of the date of this Order, telephone conferencing has been tested and is operational. The Court continues to work toward a stable, secure video teleconferencing system, which will be utilized to the fullest extent practicable as it is available.

Effective immediately, as Chief Judge and pursuant to the CARES Act, the undersigned **AUTHORIZES** the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, for the following criminal proceedings, as specified in the CARES Act:

- 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 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 under Federal Rule of Criminal Procedure 43(b)(2);
- Proceedings under 18 U.S.C. § 403 (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings

The video teleconferencing or telephone conferencing authorized above may only take place with the consent of the defendant, or the juvenile, after consulting with counsel.

Further, as Chief Judge, the undersigned specifically finds 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 without seriously jeopardizing public health and safety. In accordance with the CARES Act, these proceedings are authorized to be conducted by video teleconference, or by telephone conference if video conference is not reasonably available, if the district judge in a particular case finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice. The video teleconferencing or telephone conferencing of felony pleas under Rule 11 and felony sentencings under Rule 32 may only take place with the consent of the defendant, or the juvenile, after consulting with counsel.

Information detailing how to access any audio and/or video feed of court proceedings will be posted in the notice of setting on a case-by-case basis, and general information will be published on the district court's public web page, www.ilsd.uscourts.gov. The minutes of the proceeding will reflect when video teleconferencing and/or telephone conferencing is utilized.

II. **The Press and Public**

In any traditional in-court proceeding that is conducted via video teleconference or telephone conference due to the exigent circumstances stemming from the COVID-19 outbreak, audio and video feeds will be available to the public and press to the extent practicable. Information detailing how to access any audio and/or video feed of court proceedings will be posted in the notice of setting on a case-by-case basis, and general information will be published on the district court's public web page. Members of the

public and press are expected to mute their end of the line and to not disrupt proceedings in any way. All rules and prohibitions on the recording of proceedings remain in effect. See ILSD Local Rule 83.5.

In the event a defendant in a criminal case does not consent to the use of video teleconferencing or telephone conferencing under Sections 15002(b)(1-2) of the CARES Act, credentialed members of the press and public may attend such hearings in person in accordance with Amended Administrative Order No. 261, § II. At the discretion of the presiding judge, principal participants and the public and press may be physically segregated from each other, including utilizing multiple rooms, and video teleconferencing and/or telephone conferencing. Social distancing protocols will be required in all proceedings, and the number of in-person participants may be limited based on the capacity of the room, and in consideration of CDC guidance that gatherings be limited to 10 or less. Courtroom spectators are reminded that a shelter-in-place order has been ordered throughout the State of Illinois and that there are health and safety risks associated with attending an in-person court hearing.

The Court recognizes that the public and the press have a qualified First Amendment right of access to certain court proceedings and that the use of video teleconferencing and/or telephone conferencing may implicate that right. Nonetheless, for the reasons set forth herein, the Court finds that these revised procedures are necessitated by the emergency conditions caused by COVID-19 and must be implemented to prevent the spread of the COVID-19 virus. See *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 9 (1986); *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510


(1984); *Walton v. Briley*, 361 F.3d 431, 433 (7th Cir. 2004).

III. Review

This Court, in accordance with Sections 15002(b)(3)(A) and (B) of the CARES Act, will review the findings and authorizations made in this Order no later than ninety (90) days after its initial Order or any subsequent renewal.

IT IS SO ORDERED.

Dated this 30th day of March, 2020.

A handwritten signature in black ink, reading "Nancy J. Rosenstengel". The signature is written in a cursive style with a horizontal line underneath the name.

NANCY J. ROSENSTENGEL
Chief U.S. District Judge