

FILED

FEB 18 2022

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

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

IN RE:)
COURT OPERATIONS AND)
THE USE OF VIDEO AND)
TELECONFERENCING DURING THE)
EXIGENT CIRCUMSTANCES)
CREATED BY THE COVID-19 VIRUS.)

Administrative Order No. 266

TWELFTH AMENDED ADMINISTRATIVE ORDER

This twelfth amended omnibus Administrative Order amends and supersedes Administrative Order No. 266 dated November 24, 2021,¹ relative to cases and proceedings before the District Court, the use of video and teleconferencing, and the operation of the federal courthouses in East St. Louis and Benton, Illinois, during the continuing exigent circumstances created by the COVID-19 pandemic. Bankruptcy Court proceedings also are addressed below. This twelfth amendment of Administrative Order No. 266 details adjustments to restrictions, as well as a flexible plan for operations during this fluctuating public health crisis. The Court recognizes that it is impossible to cover all contingencies during this fluid situation. This Order is therefore designed to give the presiding judicial officers flexibility to address issues as they arise.

I. Implementation of the COOP/COVID-19 Plan

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. On March

¹ Administrative Order No. 266 and subsequent amendments supplant Second Amended Administrative Order No. 261 dated April 1, 2020, Amended Administrative Order No. 262 dated April 1, 2020, and Administrative Order No. 263 dated March 30, 2020.

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. That emergency declaration remains in effect.

More than 75% of Illinoisans have received two vaccine doses or the Johnson & Johnson single-dose vaccine (see <https://coronavirus.illinois.gov/>). The current statewide 7-day rolling test positivity average rate is 3.6%, which is characterized as “high.” The same holds true for all 38 counties in this judicial district. This level is dramatically lower than the recent peak in January 2022 (a pandemic era high), but still as high as was experienced in late 2020 and late 2021. Fortunately, however, there has been a precipitous weekly drop in new cases—43.8% nationally as of February 16, 2022. At the current, sustained rate of decline, and given the high percentage of vaccinated individuals, as well as the variety of effective treatments available to the vaccinated and unvaccinated, more flexibility is appropriate at this juncture.

Masking remains a convenient, effective protective measure available to all. The CDC’s most recent data on mask usage indicates that wearing a mask, whether a cloth mask, surgical mask, or respirator (N95/K95), dramatically reduces the odds of contracting the virus by 56%, 66%, and 83%, respectively (see www.cdc.gov/mmwr/volumes/71/wr/mm7106e1.htm). Mask usage, therefore, is not required for entry into the East St. Louis and Benton courthouses, but it is highly encouraged. Surgical masks and respirators will remain available. With that said, in

order to account for the variety of situations and spectrum of risk levels that can occur within a courthouse, each judge, supervisor, and tenant agency shall have discretion to mandate masking, social distancing, and other protocols in their work areas.

IT IS THEREFORE ORDERED that the undersigned Chief Judge and chair of the district's Security Committee—after consultation with the judges of this district, the United States Marshals Service, the Federal Protective Service, and the General Services Administration building managers—continues the activation and implementation of the district's COOP/COVID-19 Plan until further order of the Court. Nevertheless, the federal courthouses in East St. Louis and Benton are fully open and accessible, and the District Court, Bankruptcy Court, and the Probation and Pretrial Services Office are fully operational. Adjustments may be made at each judge's discretion and as circumstances dictate. Minimizing the spread of COVID-19 remains the Court's priority.

IT IS FURTHER ORDERED that, consistent with the COOP/COVID-19 Plan, and after consultation with the Human Resources Division of the Administrative Office of the United States Courts, all employees of the District Court shall report to the courthouse as directed by their supervisor, but may telework when possible. Special situations will be addressed on a case-by-case basis.

II. Courthouse Restrictions

It is **ORDERED** that:

- The federal courthouses in East St. Louis and Benton are **OPEN** to the public, subject to restrictions related to maintaining the public health. In-person

settings may be set at the discretion of the presiding judge. Courtroom safety protocols are left to the discretion of the presiding judge. Teleconferencing and videoconferencing will continue to be utilized to ensure the work of the Court continues in a safe and efficient manner.

- Civil and criminal bench and jury trials will be conducted at a pace and in a manner consistent with CDC guidance.
- Each judge shall have discretion to adjust his or her docket in the interest of safety and efficiency, and appropriate notices will be sent to counsel.
- The Clerk's Offices in East St. Louis and Benton are **OPEN** to the public, subject to restrictions as local conditions dictate. Updates will be published on the Court's public webpage (<https://www.ilsd.uscourts.gov>) and transmitted to the local bar via the Case Management/Electronic Case Filing ("CM/ECF") system. Additional detailed procedures regarding filings and other court business are set forth later in this order.

Until further order of the Court, the following restrictions and protocols shall apply regardless of a person's vaccination status:

- Any person falling into one of the following categories **SHALL NOT ENTER** either courthouse:
 - People with these symptoms or combinations of symptoms within the last 10 days:
 - Fever (100.4 F or above) or chills
 - Cough
 - Shortness of breath or difficulty breathing
 - Fatigue
 - Muscle or body aches
 - Headache
 - New loss of taste or smell
 - Sore throat
 - Congestion or runny nose
 - Nausea or vomiting
 - Diarrhea

- Persons who have been asked to self-quarantine by any doctor, hospital, or health agency, or who are awaiting the results of a COVID-19 viral test.
 - Persons who have had recent contact (<10 days) with someone suspected or confirmed to have COVID-19.
 - Persons who have tested positive for COVID-19 within last 10 days.
- The Federal Protective Service and Court Security Officers will enforce the posted building restrictions. Visitors must review signage regarding the criteria for exclusion from the courthouse and answer whether they meet the criteria for restriction. Those answering “yes” to the criteria for restriction will be denied access to the courthouse. Visitors who register a fever via the temperature kiosk or who visibly appear to have the symptoms listed above also will be denied entry to the building. All other security requirements for entrance, such as showing proper identification and passing through a magnetometer, remain in effect.
 - Visitors will be asked to leave if they do not follow these standards and the directives of the Court, and may be found in contempt of Court.
 - Members of the public not permitted access to the courthouse may call for assistance:
 - **East St. Louis District Court Help Desk: 866-867-3169**
 - **Benton District Court Help Desk: 866-222-2104**
 - **East St. Louis Bankruptcy Court: 618-482-9400**
 - **Benton Bankruptcy Court: 618-435-2200**
 - **East St. Louis United States Marshals Service: 618-482-9336**
 - **Benton United States Marshals Service: 618-439-7701**
 - **Federal Public Defender’s Office: 618-482-9050 or 618-435-2552**
 - Additional information will be posted on each Court or agency’s public webpage.
 - Public events and ceremonies, such as school tours and civic events may resume, subject to the Court’s COVID-19 safety protocols for the public.

III. The CARES Act and Criminal Proceedings

Section 15002(b) of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), H.R. 748 (2020), provides for video teleconferencing (“videoconferencing”), or telephone conferencing (“teleconferencing”) if videoconferencing 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 videoconferencing, or teleconferencing if videoconferencing is not reasonably available. Additional case-by-case findings are required of the presiding judge relative to felony pleas and sentencings. In any event, videoconferencing and teleconferencing can only occur with the consent of the defendant.

The Court finds that, because new COVID-19 cases continue at pandemic pace, and not all those entering the courthouse will be vaccinated, and because the CDC guidance still requires that jails and prisons maintain strict safety protocols, protecting the health of defendants, counsel, the public, and court personnel, continues to necessitate the use of videoconferencing, or teleconferencing if videoconferencing is not reasonably available. As of the date of this Order, teleconferencing has been tested and is operational, and a stable, secure videoconferencing system is available in most, but not all, circumstances. In-court proceedings, videoconferencing, and teleconferencing will all be utilized to maximize the Court’s ability to carry out its constitutional mission while maintaining the public health.

The Court **AUTHORIZES** the use of videoconferencing, or teleconferencing if videoconferencing 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

Again, the videoconferencing or teleconferencing authorized above may only take place with the consent of the defendant, or the juvenile, after consulting with counsel.

In accordance with the CARES Act, if the district judge in a particular case finds for specific reasons that the plea or sentencing in a case cannot be further delayed without serious harm to the interests of justice, a felony plea under Federal Rule of Criminal Procedure 11 and felony sentencing under Federal Rule of Criminal Procedure 32 may be conducted by video conference, or by teleconference if videoconference is not reasonably available. However, videoconferencing or teleconferencing 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. **Although the courthouses are open to the public, the Court will continue to conduct remote settings if a defendant**

knowingly and voluntarily consents to a videoconference hearing in order to reduce any risk to him/herself that may be occasioned by appearing in person. Defense counsel shall alert the appropriate courtroom deputy clerk whether the defendant wishes to attend in-person or by videoconference so that appropriate accommodations can be made. If a hearing is set by videoconference and the defendant wishes to have an in-person hearing, counsel shall immediately notify the appropriate courtroom deputy clerk. Similarly, if an in-person hearing is set and the defendant wishes to appear remotely and knowingly and voluntarily consents to do so, counsel shall notify the courtroom deputy clerk.

IV. Videoconferencing and Teleconferencing Protocols

In any traditional in-court proceeding—civil or criminal—that is conducted via videoconference or teleconference due to the exigent circumstances stemming from the COVID-19 outbreak, audio or 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 webpage at <http://www.ilsd.uscourts.gov>.

All attorneys are responsible for monitoring notices of settings and must relay those notices to any other attorney who might be handling a case in the attorney’s stead. If directed to participate via teleconference or videoconference, participants may not participate in person without the permission of the Court.

Counsel and other participants, and those monitoring remotely, are responsible

for their own computers and audio-video equipment. **The Court does not provide technical assistance.**

Participants in a teleconference or videoconference, and those monitoring remotely, must mute all electronic devices and audible notifications, and should conduct themselves as if physically in the courtroom. **Audio and video of any court proceeding may not be recorded or rebroadcast in any manner. See ILSD Local Rule 83.5. Violators may be held in contempt of court and face other penalties.**

In the event a defendant in a criminal case does not consent to the use of videoconferencing or teleconferencing 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 this Order. 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 videoconferencing and/or teleconferencing. The number of in-person participants may be limited based on the capacity of the room.

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 videoconferencing and/or teleconferencing may implicate that right. Nonetheless, for the reasons set forth in this Order, the Court finds that these 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).

V. District Court Filings and Proceedings

- The Clerk's Offices in East St. Louis and Benton are open to the public. Pro se litigants must either mail their documents or bring them to the Clerk's Office for filing. Drop boxes for filings are accessible at both courthouses any time a courthouse or Clerk's Office is closed to the public. A variety of filing and payment methods are available: Attorneys should continue to utilize the CM/ECF system.
- For pro se parties without access to CM/ECF, documents may be submitted by mail to:

**U.S. District Court Clerk's Office
750 Missouri Ave., East St. Louis, IL 62201**

or

**U.S. District Court Clerk's Office
301 W. Main St., Benton, IL 62812**

Filings submitted by mail will be processed upon receipt.

- Emergency filings may be submitted by email to: **EmergencyFiling@ilsd.uscourts.gov**. All emergency filings must include an email address and phone number where the filer may be reached. A filing deadline in and of itself is not considered an emergency, and any document improperly sent via email will be returned unfiled.
- Payments by attorneys utilizing the CM/ECF system will be processed via credit card utilizing Pay.gov. Non-attorneys and those filing via mail may make payments via credit card by calling the Clerk's Offices in East St. Louis or Benton between 9:00 a.m. and 4:00 p.m. Payments by check or money order will be accepted by mail and will be processed upon receipt. Cash payments are accepted at the East St. Louis and Benton Clerk's Offices between 9:00 a.m. and 4:00 p.m. (exact change only). Filing fees are expected to be transmitted along with the pleadings unless a motion for leave to proceed *in forma pauperis* is submitted.
- Any questions may be directed to:
 - **East St. Louis District Court Help Desk: 866-867-3169**
 - **Benton District Court Help Desk: 866-222-2104**

Messages will be returned during business hours (9:00 a.m. and 4:30 p.m.).

- In all civil cases, non-trial proceedings remain set, absent a specific order of the Court. In order to expeditiously and safely conduct the business of the Court, judges have discretion to utilize in-person settings, as well as teleconferencing and videoconferencing.
- In all civil cases, all deadlines, whether set by the Court, the Federal Rules of Civil Procedure, or Local Rules, remain as set as of the date of this Order. More specifically, deadlines previously extended by Administrative Orders Nos. 261, 262, and 263 (and any subsequent amendments) are not extended further by this omnibus Order. **Administrative Orders Nos. 261, 262, and 263 (and any subsequent amendments) and this omnibus Order do not grant an extension of any deadlines imposed by Civil Rules 50(b) or (d), 52(b), 59(b), (d), or (e), or 60(b). See Fed. R. Civ. P. 6(b)(2).** If the COVID-19 public emergency results in the Clerk's Office being inaccessible, deadlines will be extended as set forth in Federal Rule of Civil Procedure 6(a)(3). **Litigants are cautioned that Administrative Orders Nos. 261, 262, and 263 (and any subsequent amendments) and this omnibus Order do not affect the rights to, or deadlines concerning, any appeal from any decision of this Court. The deadlines for filing a notice of appeal remain in place and must be followed to preserve appellate rights.** Parties in need of an extension must comply with Appellate Rule 4.
- With regard to criminal matters before the Court, the Court shall have discretion to quash any previously issued arrest warrant and instead issue a summons.
- New arrestees will be scheduled for proceedings as expeditiously as possible. The Court **FINDS** that any delay incurred in arrestees being brought before a magistrate judge pursuant to Federal Rule of Criminal Procedure 5(a) during this period of time, by its nature, to be a necessary delay to protect all parties, counsel, and the public, as well as jail and court staff. Provisions of the Speedy Trial Act are not triggered until "the filing date (and making public) of the information or indictment" or "from the date the defendant has appeared before a judicial officer of the court in which [the] charge is pending" – whichever date last occurs. 18 U.S.C. § 3161(c)(1).
- Magistrate judges shall provisionally appoint the Office of the Federal Public Defender on any new or recent arrests in cases where counsel has not appeared, subject to being vacated if the individual is later determined to not be indigent. Any such appointment will, of course, be vacated if private counsel enters an appearance on behalf of a defendant.

- The United States Marshals Service will transport any individuals subject to a writ of habeas corpus to the district, as the Marshals Service transportation system permits.
- Both in-person and remote hearings will continue to be utilized in criminal cases. Relative to remote settings, or any setting delayed due to local conditions, if any defendant and his or her counsel or the United States Attorney seeks an immediate in-person hearing before a magistrate judge—as is a defendant’s right—counsel shall file a motion making the request and stating the reason an immediate hearing is needed. When possible, the motion shall be designated as a joint motion. If a joint request is not feasible, the magistrate judge will impose a short deadline for a response. Any motions requesting a hearing shall be brought to the immediate attention of the appropriate magistrate judge’s chambers. Magistrate judges will decide on a case-by-case basis whether the circumstances call for an emergency hearing and, if deemed appropriate, a hearing will be set by the magistrate judge.
- Any required emergency hearing may be held remotely by video conferencing if the defendant consents pursuant to Federal Rule of Criminal Procedure 5(f) and the terms of this Order. **The Court will accept verbal consents on the record when the hearing is held, but encourages counsel to secure a written waiver when possible.** Such requests should be made, for instance, when there is an argument for immediate release of the defendant or there is any other compelling reason that a hearing is absolutely necessary. A transfer to a facility with established videoconferencing may be necessary if a remote hearing is required and cannot be accomplished according to the current placement designated by the United States Marshals Service. In-person settings may be limited due to health and safety protocols. Should it become necessary to again close either courthouse to the public, only essential proceedings will occur. Initial appearances, arraignments, detention hearings, and proceedings where in-person attendance is constitutionally required are deemed essential and will be conducted in person, absent any waiver permitted under the law and the terms of this Order. As to all other criminal matters during any period of closure, judges shall have sole discretion to determine what proceedings should go forward, or whether videoconferencing or telephone conferencing can be utilized. Each judge will so notify the affected parties and reset the matters as appropriate. In all circumstances, delays will be kept to a minimum, particularly with respect to pretrial detention. Any continuances will not affect any other deadlines unless the presiding judge so indicates.
- Until further order of the Court, in all matters set for an in-person hearing, counsel must make the necessary inquiries and notify the presiding judge and opposing counsel if that attorney or any individuals the attorney intends to

bring to the courthouse meet any of the criteria for restriction from the courthouse. The presiding judge will have sole discretion to determine whether the proceeding should be delayed or go forward, perhaps by alternative means.

- All detainees, upon arrival at the East St. Louis or Benton courthouses and before appearance in court, shall undergo screening for fever and other outward signs of COVID-19 contamination; such screening shall be administered by and/or at the direction of the United States Marshals Service or its agents or designees. The presiding judge must be notified if the detainee exhibits risk factors. The judge shall have the discretion to order the detainee returned to the facility from which he or she came. Videoconferencing and teleconferencing and other technologies also may be utilized as practicable, and participants in a hearing may be separated as directed by the presiding judge in the interest of public health.
- Any time period of the continuances implemented by this Administrative Order or other Orders of the Court due to the COVID-19 crisis will be excluded under the Speedy Trial Act, as the Court specifically finds that the ends of justice—in terms of the continuing, but waning, nationally recognized public health crisis and constitutional aspects of summoning a jury—served by the continuances outweigh the best interests of the public and any defendant’s right to a speedy trial pursuant to 18 U.S.C. §3161(h)(7)(A). All necessary Orders will be entered in each case.
- Deadlines in criminal cases, including motions, briefing, and discovery deadlines, whether set by the Court, by the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or Local Rules, are not impacted by this omnibus Order, except to the extent they are triggered by a setting or deadline that has been continued or canceled. Motions for extension of time, and all other motions in criminal cases, will be entertained by the Court as usual.
- All probation and supervised release revocation hearings are subject to being rescheduled by the presiding judge. The defendant, defense counsel, the United States Probation Office, or the United States Attorney’s Office may request an earlier hearing.
- Grand juries shall continue to meet as long as conditions permit, with reasonable limits on grand jury sessions imposed by the Court in consultation

with the U.S. Attorney's Office. In the interest of health and safety, the Court may exercise its authority to convene or discharge a grand jury. *See generally Korman v. United States*, 486 F.2d 926, 933 (7th Cir. 1973). In the event grand jury sessions must be suspended, a separate order will issue. During any period of delay, the respective Grand Juries will not be in session as the term is used in 18 U.S.C. § 3161(b).

- Attorney admission in-person ceremonies will be performed upon request. Oath cards need not be notarized but must be signed. Instructions can be found at <https://www.ilsd.uscourts.gov/AttyAdmission.aspx>.
- Court Assistance Program ("CAP") meetings are canceled until further notice.
- The Central Violations Bureau dockets in East St. Louis and Benton **have resumed**. Payments continue to be processed electronically (instructions appear on each citation).
- Naturalization ceremonies conducted by the Court resumed effective September 1, 2021 (*see* Administrative Order No. 299).
- Announcements regarding any further imposition or relaxation of restrictions to Court services will be posted on the District Court's public webpage <https://www.ilsd.uscourts.gov>, and attorneys will receive updates and notices via the CM/ECF system.

VI. Bankruptcy Court Filings and Proceedings

All scheduled bankruptcy hearings, including emergency matters, will be held as set by the presiding judge. The Court will provide call in information to the parties prior to any telephonic hearing. For those without access to CM/ECF, documents may be submitted by mail.

VII. Probation and Pretrial Services

The United States Probation and Pretrial Services Office will continue to investigate and supervise individuals as ordered by the Court.

VIII. Expiration of this Order

The Court will closely monitor the COVID-19 outbreak and any changes to the guidance offered by the CDC and local public health officials and make necessary adjustments in the interest of public health and administration of justice. The Court will vacate or amend this Administrative Order no later than **May 16, 2022**.

IT IS SO ORDERED.

Dated this 18th day of February, 2022.

A handwritten signature in black ink that reads "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