

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

FILED

NOV 05 2020

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST 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

FIFTH AMENDED ADMINISTRATIVE ORDER

This fifth amended omnibus Administrative Order amends and supersedes Administrative Order No. 266 dated October 1, 2020,¹ 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 fifth amendment of Administrative Order No. 266 details new 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 while implementing necessary safeguards.

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. There is

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.

currently no vaccine to prevent COVID-19. 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 rate of contamination in the 38 counties comprising this district is fluctuating, but has recently increased. The Center for Disease Control (“CDC”) has stressed the need to continue practicing measures such as teleworking, wearing masks, and social distancing.

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 proximity with one another (within 6 feet), in closed spaces for prolonged periods, and through contact with contaminated surfaces. The Court finds, for the reasons stated, that under The Federal Judiciary COVID-19 Recovery Guidelines, Gating Criteria, and Recovery Resources issued by the Administrative Office of the United States Courts, it can continue a phased plan for operations, but the rising rate of infection within the district warrant additional precautionary measures to protect the health of litigants, counsel, witnesses, the public, and court personnel. Restrictions will be adjusted as local conditions dictate.

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—activates and implements the district’s COOP/COVID-19 Plan, effective through **January 24, 2021**. In accordance with the Plan,

and pursuant to 41 C.F.R. § 102-74.375(b), access to the federal courthouses in East St. Louis and Benton will be limited, and the operations of the District Court, Bankruptcy Court, and the Probation and Pretrial Services Office will be altered accordingly.

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 are directed to telework whenever possible, except when directed by their supervisor to report to the courthouse. All District Court employees who, after consultation with their supervisor, are deemed unable to telework or perform alternate duties, will be placed on administrative leave.

II. Courthouse Restrictions

It is **ORDERED** that through **January 24, 2021**:

- The federal courthouses in East St. Louis and Benton will be **OPEN, but public access will be** subject to restrictions. In-person settings will be kept to a minimum, and teleconferencing and videoconferencing will be utilized to ensure the work of the Court continues.
- All civil and criminal jury trials are **CANCELLED** and will be reset by the presiding judge.
- Each judge shall have discretion to adjust their 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 will continue operations, but will be closed to the public, subject to reopening as local conditions allow. Updates will be published on the Court's public web page (<https://www.ilsd.uscourts.gov>) and transmitted to the local bar via the Case Management/Electronic Case Filing ("CM/ECF") system. Procedures regarding filings and other court business are set forth elsewhere in this order.

Until further order of the Court the following restrictions and protocols shall apply:

- All persons seeking entry to, or occupying the courthouse, must wear a face mask (no scarfs, neck gaiters, or masks with air vents) in the public areas of the courthouses; this includes the lobby, elevator banks, restrooms, public corridors, and, unless excused by the presiding judge, courtrooms. **The face mask must always completely conceal the wearer's nose and mouth.** Personnel working in a private office or workspace that permits at least six feet of physical distance from other persons may temporarily remove their mask, but should don a mask when anyone comes within six feet of them. The only persons excepted from this requirement are those who provide documentation that they are unable, for medical reasons, to wear a face covering, in which case a shield and social distancing will suffice.

- 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 14 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 diagnosed with or have had contact with anyone who has been diagnosed with COVID-19 within the last 14 days. "Close contact" is defined as being within six feet of someone (with or without masks being worn) for a cumulative total of 15 minutes or more during a 24-hour period, or were exposed to respiratory secretions by being directly coughed or sneezed on.

 - Persons who have been asked to self-quarantine by any doctor, hospital, or health agency within the last 14 days, or who are awaiting the results of a COVID-19 viral test.

- 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 will also 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 are expected to perform hand hygiene at the point of entry, and practice social distancing while in the courthouse. Hand sanitizer will be available throughout the building.
- Visitors will be asked to leave if they do not follow these standards or maintain social distancing as directed, 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: 314-496-3883 or 618-792-4047**
- Additional information will be posted on each Court or agency’s public webpage.
- All public events and ceremonies, such as school tours and civic events, are canceled, subject to being reset.

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, 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.

The Court finds, for the reasons stated above relative to the Implementation of the COOP/COVID-19 Plan, that it cannot apply the recommended social distancing measures in all situations 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, and a stable, secure video teleconferencing system is available in some, but not all, circumstances. In-court, videoconferencing, and teleconferencing will all be utilized to maximize the Court's ability to carry out its constitutional mission.

The Court **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.

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 teleconference, or by telephone conference if video conference is not reasonably available. However, 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.

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 web page 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 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 this Order, provided social distancing can be maintained. 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. 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 on social distancing. Courtroom spectators are reminded 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 videoconferencing and/or teleconferencing may implicate that right. Nonetheless, for the reasons set forth herein, 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

- Any time a courthouse or Clerk's Office is closed to the public, filings will continue to be processed in civil and criminal cases via the CM/ECF system. For those without access to CM/ECF, documents may be submitted by mail, or in the event of emergency, 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. Filings submitted by mail will be processed upon receipt, albeit at a delayed pace. (The impact of this delay is addressed below.) Payments by attorneys utilizing the CM/ECF system will be processed via credit card utilizing Pay.gov. Non-attorneys 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. (Depending on the office's operational status, callers may be directed to call the Help Desk where they can leave a message and have their call returned.) Payments by check or money order will be accepted by mail and will be processed upon receipt. **Cash payments will not be accepted during this period of exigent circumstances.**

Any *pro se* litigant filing a case via mail who cannot secure a check or money order should submit his or her filing by mail, and the Clerk's Office will send a notice directing payment be submitted after the courthouses reopen. 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, 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.** The Court invites parties to file an extension of time to appeal under Appellate Rule 4(a)(5)(A) no later than 30 days after the time prescribed by Rule 4(a). If a timely extension motion is filed, then the Court deems that good cause exists for the extension in light of current public health concerns. If a filing is mailed by a prisoner, the traditional "mailbox" rule shall govern its filing date. If a filing is mailed by a non-prisoner, the filing date shall be deemed to be the postmark date, subject to any party's right to move that a different date be used.
- The public health crisis does not affect the Court's consideration of civil or criminal motions that can be resolved without in-court proceedings.
- 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.
- Until further Order of the Court, 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 can 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 (USMS), 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 may also be utilized as practicable, and participants in a hearing may be separated as directed by the presiding judge in the interest of public health.
- Change of plea and sentencing hearings may be delayed or have to be reset as local contamination rates dictate. A defendant and/or counsel may file a motion requesting an emergency hearing stating (1) the reason(s) why an emergency setting is necessary; and (2) whether the defendant, after consultation with counsel, consents to hold the hearing by video teleconference or telephone. Counsel also shall notify the courtroom deputy clerk by phone that an emergency motion has been filed.
- 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 nationally recognized public health dangers 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.
- Grand juries shall continue to meet, with reasonable limits on grand jury sessions imposed by the Court in consultation with the U.S. Attorney’s Office.
- Attorney admissions in-person ceremonies will not be performed until further notice. 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 are **cancelled until January 2021**. Notices will be sent to parties regarding those dockets. Payments continue to be processed electronically (instructions appear on each citation).
- Naturalization ceremonies will be conducted by the United States Customs and Immigration Service between now and . If an individual meets the criteria set forth in 8 U.S.C. § 1448(c) as qualifying for the expedited administration of the judicial oath, and if that individual is seeking a name change pursuant to 8 U.S.C. § 1448(e), the Court, in coordination with the United States Customs and Immigration Service, will arrange for naturalization of that individual by a judicial officer. *See* Administrative Order No. 268.
- Announcements regarding any further 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 telephonically, unless specially set by the presiding judge for an in-person hearing. The Court will provide call in information to the parties prior to the hearing. For those without access to CM/ECF, documents may be submitted by mail, or in the event of emergency, may be submitted by email to: ilsbwebmaster@ilsb.uscourts.gov. All emergency filings must include an email address and phone number where the filer may be reached.

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 January 24, 2021.

IT IS SO ORDERED.

Dated this 5th day of November 2020.



NANCY J. ROSENSTENGEL
Chief U.S. District Judge