

Jul 8, 2020

Vicki Kinkade
Chief Deputy Clerk

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE**

IN RE:)
)
COURT OPERATIONS UNDER THE) **ADMINISTRATIVE ORDER NO. 209**
EXIGENT CIRCUMSTANCES CREATED) **(Fifth Amended)**
BY COVID-19)

ORDER

On June 22, 2020, Fourth Amended Administrative Order No. 209 was entered addressing court operations in the Middle District of Tennessee and imposing restrictions through July 17, 2020, due to the exigent circumstances created by the spread of COVID-19.

The Court continues to monitor the spread of the COVID-19 outbreak, including updated guidance from the Centers for Disease Control and Prevention (“CDC”), as well as federal, state, and local public health authorities. The number of confirmed COVID-19 cases in Tennessee to date is 53,116, and there are now 21,022 active cases in the state, the most since the pandemic began. In fact, the largest single-day increase for Tennessee since the pandemic began was reported on June 26, 2020. The Governor of Tennessee has extended the state of emergency related to the ongoing COVID-19 pandemic to August 29, 2020. Regarding Nashville, Davidson County, the number of confirmed COVID-19 cases is currently at 11,599 with several hundred more cases in the counties surrounding Davidson County, all of which are in the Middle District of Tennessee. In April 2020, the Mayor of Nashville revealed a four-phase plan to gradually reopen Nashville’s economy, which requires an acceptably stable or sustained declining trend in new cases for at least 14 days before progressing to the next phase of the plan. Nashville moved through phase one and phase two of the plan and began phase three on June 22, 2020. However, on July 3, 2020, Nashville moved back to a modified version of phase two with the 14-day case trend on the rise and the transmission rate being a public health cause of concern. Although the metrics in the area had been encouraging in May when active infections of coronavirus flattened and even decreased, the number has steadily risen in June and into July. The 14-day new case trend average, the transmission rate, and available hospital beds were below the target

goal on multiple days in June continuing into July. A public health emergency continues to exist in Nashville, Davidson County, as well as in Tennessee and across the nation that requires restrictive measures to manage the spread of the virus and limit the potential for illness and death. As Nashville, Davidson County, moved back to phase two, the Metro Board of Health voted unanimously to mandate the wearing of face masks to slow the COVID-19 spike. Further, other public health mandates remain in effect that urge all residents age 65 and over and those at high risk to stay home; other residents are asked to work from home if possible; and all residents are urged to maintain social distancing with no gatherings over 25 people.

The Court has adopted a Plan for Phased Approach to Resume Court Operations During COVID-19 Pandemic (Administrative Order No. 209-2). Because the number of active cases in the state is at its highest since the pandemic began and because Nashville, Davidson County, moved back to phase two based on a steady rise in the 14-day case trend, which bodes poorly for the availability of beds and the transmission rate in the area, the Court has determined that it must remain at phase one of its Plan at least until August 31, 2020.

Accordingly, for the reasons set forth herein, as well as the findings contained in the prior orders, the Court finds that exigent circumstances related to the COVID-19 pandemic still exist. Therefore, in order to protect the public safety and prevent the spread of COVID-19, the Court **ORDERS** as follows regarding criminal jury trials:

1. Criminal jury selections and jury trials scheduled to begin now through August 31, 2020, before any district or magistrate judge in the Middle District of Tennessee are **CONTINUED** pending further order by the presiding judge in the matter.
2. Regarding criminal jury trials set during the period identified in paragraph 1, the following facts make a criminal jury trial impractical at this time:
 - (a) The health and safety circumstances caused by COVID-19 make it necessarily and highly unlikely that a jury can be empaneled in any criminal cases under the current public health circumstances and under the present directives of relevant federal, state, and local health and governmental authorities.

- (b) Although the Court polled the jurors summoned for jury service in July 2020, the response as to availability and willingness to serve due to concerns related to COVID-19 have been minimal. The responses that have been received fluctuate in that some jurors who have indicated a willingness to serve later report back expressing concerns about the recent COVID-19 spike and a reluctance to serve, which indicates that jurors are focused on health and safety concerns and a return to some form of normalcy in their lives.
- (c) Given the reported disparate effects of COVID-19 on different categories of persons, jurors who do appear for service may present a jury pool skewed in terms of age and life experiences. As such, the Court continues to be concerned that its ability to offer a jury comprised of a fair cross-section of the community may be jeopardized.
- (d) In light of the pandemic and the guidance issued by federal, state, and local public health authorities, it is not feasible to conduct a criminal jury trial limiting participants to no more than 25 and maintaining social 6-foot distancing. The Court conducted a mock criminal jury trial on June 16, 2020, which underscored the need for careful planning in conducting a criminal jury trial under these circumstances. As such, it is not safe, at this time, for counsel, witnesses, jurors, court staff, or members of the public to be present in the courtroom for a criminal jury trial.

Due to the foregoing, the Court finds that the time period of the continuances implemented by this Administrative Order shall be excluded under the Speedy Trial Act, as the Court specifically finds that the ends of justice served by ordering the continuances outweigh the best interests of the public and each defendant's right to a more speedy trial, pursuant to 18 U.S.C. § 3161(h)(7)(A). Therefore, in continuation of the Court's Administrative Order of March 16, 2020 (which excluded the time from March 17, 2020 to March 30, 2020) and First Amended Administrative Order of March 23, 2020 (which excluded the time from March 17, 2020 to April 30, 2020) and Second Amended Administrative Order of April 29, 2020 (which excluded the time from March 17, 2020 to May 31, 2020) and Third Amended Administrative Order of May 22, 2020 (which excluded the time from March 17, 2020 to June 30, 2020) and Fourth Amended Administrative Order of June 22, 2020 (which excluded the time from March 17, 2020 to July 17, 2020), the period of exclusion shall be from March 17, 2020 to August 31, 2020. The district judge assigned to the matter may extend this period if circumstances warrant.

The Court recognizes the right of criminal defendants to a speedy and public trial under the Sixth Amendment to the United States Constitution and the particular application of that right in cases involving defendants who are detained pending trial. Therefore, in the event any affected party disagrees with the Court's analysis regarding the time excluded under the Speedy Trial Act, he or she may move for reconsideration in the individual cases. Likewise, the government may seek reconsideration. Any motion for reconsideration shall be directed to the district judge assigned to the matter.

3. Regarding civil jury selections and jury trials scheduled to begin now through August 31, 2020, civil jury trials will proceed as scheduled and will not be automatically

continued due to COVID-19, because civil jury trials require fewer jurors, less security, and the ability to easily maintain social distancing. However, based upon the ongoing fluctuation of data and the recent COVID-19 resurgence in the area, it is possible that civil jury trials could be suspended if the data continue to consistently fall below the target goal. Absent an order from the presiding judge, the parties should prepare for civil jury trials as scheduled.

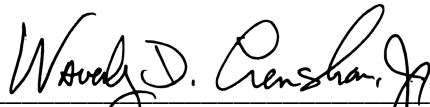
4. Criminal matters scheduled before magistrate judges, such as initial appearances, arraignments, detention hearings, and the issuance of warrants, shall continue to take place in the ordinary course of business. At the discretion of the Magistrate Judge, such proceedings may be conducted remotely or by video conference where practicable. Administrative Order 209-1 and the CARES Act authorize conduct of certain hearings in criminal case proceedings by video conferencing, or by telephone if video conferencing is not reasonably available.
5. Critical pleas and sentencings scheduled before a district judge that cannot be further delayed without serious harm to the interests of justice may continue to take place. Such proceedings may be conducted by video conferencing, or by telephone conferencing if video conferencing is not reasonably available, pursuant to Administrative Order No. 209-1, which has been extended for another ninety (90) days, and the CARES Act.
6. Individual judges may continue to hold hearings, conferences, and bench trials in the exercise of their discretion, subject to intervening orders of the judge assigned to the matter. Such court proceedings may be conducted by telephone or video conference where practicable and consistent with the law. However, in limited circumstances, the presiding judge has discretion to conduct pleas, sentencings or other proceedings in the normal fashion in person. The Court has implemented safety precautions for the public, members of the bar and parties, such that in-person hearings are available.
7. Any matter involving an attorney or party who is ill or in a high-risk category may be rescheduled by the presiding judge. However, counsel shall be responsible for advising the presiding judge of such illness or high-risk by filing an appropriate notice or motion containing sufficient information to allow the presiding judge to make an informed decision regarding any cancellation or continuance. The Court will not permit indefinite extensions, and if such is needed, substitute counsel should be considered.
8. All grand jury proceedings scheduled through August 31, 2020, are continued. Having previously polled grand jurors as to their willingness and availability to serve and meet a quorum due to issues related to COVID-19, the Court remains concerned that jurors are still more focused on health and safety concerns and a return to some form of normalcy in their lives, which would create a major distraction on their work as grand jurors. Accordingly, all related deadlines are suspended and tolled for all purposes, including the statute of limitations, through August 31, 2020.
9. All attorney admissions ceremonies are continued through August 31, 2020, absent further instruction from Judge William L. Campbell. Attorneys who must be admitted on an emergency basis may contact the Clerk's office for assistance.

10. The Court will not conduct public naturalization ceremonies between now and August 31, 2020.
11. All petty offense dockets scheduled through August 31, 2020, are continued. New dates for the cases scheduled on such dockets shall be reset without the need to file any motions with the Court. Payments will continue to be processed electronically.
12. The Office of the Clerk of Court remains open for business, subject to intervening orders of the Court. However, the Clerk's Office intake window is not available to accept manual filings and criminal debt payments. All manual filings must be either mailed to the court or deposited in the Clerk's Office drop box located on the first floor at the Ninth Avenue entrance. All such filings will be stamped filed as of the day they are placed in the drop box. A public notice with specific instructions is posted at the Clerk's Office intake window, at the drop box at the Ninth Avenue entrance, and on the Court's website at <https://www.tnmd.uscourts.gov>.
13. The United States Probation and Pretrial Services Office remains open, subject to intervening orders of the Court.
14. Announcements regarding restrictions to Court services are posted on the District Court's website at <https://www.tnmd.uscourts.gov>.
15. Except as set forth herein, court business will proceed as usual to the extent possible consistent with public health guidelines. The Court emphasizes that all deadlines previously established in both civil and criminal cases remain in full force and effect, absent further order by the presiding judge in the matter. The Judges unanimously expect that counsel for all parties will continue to diligently work on cases to comply with established deadlines. If the parties cannot comply with an established deadline, normal procedures must be followed, and a motion must be filed.

As the Court considers its planned phased approach of operating during COVID-19, it will continue to closely monitor the COVID-19 outbreak and any changes to the guidance offered by the CDC, as well as guidance from local public health officials, and make necessary adjustments consistent with its plan in the interest of public health and the administration of justice.

This Order gives the presiding judicial officers flexibility to address issues as they arise while implementing necessary safeguards and may be extended or modified on or before August 31, 2020.

FOR THE COURT



WAVERLY D. CRENSHAW, JR.
Chief United States District Judge