

Apr 29, 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) **(Second Amended)**
BY COVID-19)

ORDER

On March 16, 2020, Administrative Order No. 209 was entered addressing court operations in the Middle District of Tennessee and imposing restrictions through March 30, 2020, due to the exigent circumstances created by the spread of COVID-19. On March 23, 2020, First Amended Administrative Order No. 209 was entered extending the restrictions through April 30, 2020, and including further findings regarding the serious circumstances presented by the pandemic.

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 almost 10,000. The Vanderbilt School of Medicine researchers suggests that, at the current rate, Tennessee will not reach its peak until mid-June. Regarding Nashville, Davidson County, the number of confirmed COVID-19 cases is currently at 2,338 and several hundred more cases in the counties surrounding Davidson County, all of which are in the Middle District of Tennessee. The Mayor of Nashville has revealed a four-phase plan to gradually reopen Nashville’s economy, but no formal start date has been set because there must be an acceptably stable or sustained declining trend in new cases for at least 14 days. A public health emergency continues to exist across the nation and Tennessee that requires restrictive measures to manage the spread of the virus and limit the potential for illness and death. The State of Tennessee is taking steps to reopen, with restrictive guidelines, by May 1, 2020, but the reopening plan does not apply to Tennessee’s largest cities, including Nashville,

Davidson County, leaving the decision to local authorities. At this time, public health mandates remain in effect that direct residents in the Middle District of Tennessee to avoid public interactions by staying at home unless absolutely necessary, and they must maintain social distancing with no gatherings over 10 people.

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 continuances, operations, and procedures established in prior orders shall remain in effect through May 31, 2020.

Specifically, it is hereby **ORDERED** as follows:

1. Civil and criminal jury selections and jury trials scheduled to begin now through May 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) Having polled the jurors summoned for jury service in May 2020, the Court confirms that a substantial number of jurors are not available or not willing to serve due to concerns related to COVID-19.
 - (c) Given the reported disparate effects of COVID-19 on different categories of persons, any jurors who do appear for service may present a jury pool skewed in terms of age and life experiences, which may jeopardize the Court's ability to summon a jury comprised of a fair cross-section of the community.
 - (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 jury trial limiting participants to no more than 10 and maintaining social 6-foot distancing. 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 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) the period of exclusion shall be from March 17, 2020 to May 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. 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.
4. 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 should be conducted by video conferencing, or by telephone conferencing if video conferencing is not reasonably available, pursuant to Administrative Order No. 209-1 and the CARES Act.
5. 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.
6. 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.
7. All grand jury proceedings scheduled through May 31, 2020, are continued. Having polled the grand jurors, the Court confirms there is an insufficient number of jurors available or willing to serve and meet a quorum due to issues related to COVID-19.

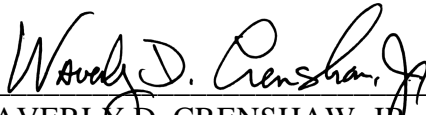
Accordingly, all related deadlines are suspended and tolled for all purposes, including the statute of limitations, through May 31, 2020.

8. All attorney admissions ceremonies are continued through May 31, 2020. Attorneys that must be admitted on an emergency basis may contact the Clerk's office for assistance.
9. As set forth in Administrative Order 150-1 entered on April 28, 2020, the Court will not conduct public naturalization ceremonies between now and May 31, 2020.
10. All petty offense dockets scheduled through May 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.
11. 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>.
12. The United States Probation and Pretrial Services Office remains open, subject to intervening orders of the Court.
13. Announcements regarding restrictions to Court services are posted on the District Court's website at <https://www.tnmd.uscourts.gov>.
14. 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. Regarding any criminal jury trial set before Judge Trauger, a motion for a change of plea hearing or motion to continue must be filed and acted upon before the trial will be removed from the court's calendar.

The Court 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 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 May 31, 2020.

FOR THE COURT



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