

May 22, 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) **(Third 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, followed by Second Amended Administrative Order No. 209 entered on April 29, 2020, extending restrictions through May 31, 2020.

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 19,000. Regarding Nashville, Davidson County, the number of confirmed COVID-19 cases is currently at 4,530 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 has moved through phase one of the plan with all public health metrics showing satisfactory results for progression to phase two beginning on May 25, 2020. Although the metrics in the area are encouraging, 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. The State of Tennessee has allowed the reopening of businesses, with restrictive guidelines, but the reopening plan does not apply to Tennessee's largest cities, including Nashville, Davidson County, leaving the decision to local authorities. As Nashville, Davidson County, moves to phase two, concerns remain regarding a resurgence of infections, and, as a result, public health mandates remain in effect that urge all residents age 65 and over or at high risk to stay home, and other residents are asked to work from home if possible, wear masks in public, and maintain social distancing with no gatherings over 25 people. Likewise, the Court has adopted a phased approach during a pandemic to resume operations that imposes restrictions with some limited exceptions.

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:

1. Criminal jury selections and jury trials scheduled to begin now through June 30, 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 June 2020, the response as to availability and willingness to serve due to concerns related to COVID-19 have been minimal to none, which indicates that jurors are still more 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. 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) and Second Amended Administrative Order of April 29, 2020 (which excluded the time from March 17, 2020 to May 31, 2020), the period of exclusion shall be from March 17, 2020 to June 30, 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 June 30, 2020, it is anticipated some 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. Therefore, 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 and the CARES Act.

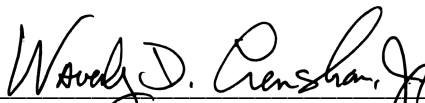
6. Individual judges may continue to hold hearings, conferences, and bench trials in the exercise of their discretion, subject to intervening orders of the judge assigned to the matter. Such court proceedings may be conducted by telephone or video conference where practicable and consistent with the law. However, in limited circumstances, the presiding judge has discretion to conduct pleas, sentencing 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 June 30, 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 June 30, 2020.
9. All attorney admissions ceremonies are continued through June 30, 2020. Attorneys that must be admitted on an emergency basis may contact the Clerk's office for assistance.
10. As set forth in Administrative Order 150-1 entered on May 23, 2020, the Court will not conduct public naturalization ceremonies between now and June 30, 2020.
11. All petty offense dockets scheduled through June 30, 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 enters its 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 phased approach 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 June 30, 2020.

FOR THE COURT



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