

Nov 30, 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** ) **(Eighth Amended)**  
**BY COVID-19** )

**ORDER**

On October 29, 2020, Seventh Amended Administrative Order No. 209 was entered addressing court operations in the Middle District of Tennessee and imposing restrictions through November 30, 2020, due to the exigent circumstances created by the spread of COVID-19.

The Court continues to monitor the massive recent 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 355,518, with a recent unprecedented increase in daily new cases and a tremendous spike in the number of new hospitalizations. Regarding Nashville, Davidson County, the number of confirmed COVID-19 cases is currently at 45,438 with several thousand 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 1 and Phase 2 of the plan and began Phase 3 on June 22, 2020. On July 3, 2020, Nashville moved back to a modified version of Phase 2 with the 14-day case trend on the rise and the transmission rate being a public health cause of concern. On October 1, 2020, after sustained improvement in the transmission rate and 14-day new case trend metrics, Nashville moved to Phase 3 with adjusted public health restrictions and rigorous protocols remaining in place. Despite the significant, unprecedented, and rapid increase in COVID-19 cases in November, with the most hospitalized COVID-19 patients in Davidson County hospitals since

the pandemic began, Nashville oddly remains in Phase 3, with some modifications, of its Roadmap for Reopening Nashville.

More than at any other time during the pandemic, COVID-19 numbers remain serious and 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. Nashville, Davidson County, continues to monitor key COVID-19 metrics and to implement public health restrictions and protocols to slow the spread of COVID-19. These public health restrictions include, but are not limited to the wearing of face masks or coverings in public and capacity restrictions on restaurants, retail stores, commercial businesses, and public gatherings. The Phase 3 modified conditions also urge all residents age 65 or older and those at high risk to stay home; other residents are asked to work from home if possible; and all residents are urged to wear masks and maintain social distancing with no gatherings over 8 people.

The Court has adopted a Plan for Phased Approach to Resume Court Operations During COVID-19 Pandemic (Administrative Order No. 209-2). Even though Nashville, Davidson County, remains at Phase 3 and has adjusted its public health restrictions, the Court remains at a modified version of Phase Two of its Plan at this time, and the Court has renewed concerns about public safety in the courthouse.

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, and, therefore, the Court must proceed cautiously in order to protect the public safety and prevent the spread of COVID-19. As such, the Court **ORDERS** as follows:

1. At the discretion of the presiding judge, criminal jury selections and jury trials scheduled to begin between now and January 15, 2021, will proceed as scheduled and will not be automatically continued due to COVID-19. Absent an order from the presiding judge, the parties should prepare for criminal jury trials as scheduled. However, based upon the ongoing fluctuation of data, it is possible that criminal jury trials will be continued during this time at the discretion of the presiding judge if the metrics continue to consistently fall below the target goal.

2. When continuing a criminal jury trial as contemplated by paragraph 1, the presiding judge may determine the following facts make the typical criminal jury trial impractical at the scheduled time:
  - (a) Based on the current public health and safety circumstances caused by COVID-19 and under the present directives of federal, state, and local health and governmental authorities, it is unlikely that a jury can be empaneled in a criminal case without COVID-19 issues repeatedly arising during the trial that would complicate and delay the proceeding.
  - (b) The Court polled the jurors summoned for jury service in December 2020, and the responses as to availability and willingness to serve due to concerns related to COVID-19 have fluctuated in that some jurors who have indicated a willingness to serve later report back stating an inability to serve because they have COVID-19 or expressing a reluctance to serve due to safety, child care and virtual school issues, which indicate 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 possible to conduct a criminal jury trial while following local health directives limiting participants to no more than 8 and maintaining social 6-foot distancing. As such, depending on COVID-19 metrics at the time of the scheduled trial, it may not be safe 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 presiding judge may find that the time period of any continuance pursuant to this Administrative Order shall be excluded under the Speedy Trial Act, as the presiding judge may specifically find that the ends of justice served by ordering the continuance outweighs 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 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), and Fifth Amended Administrative Order of July 8, 2020 (which excluded time from March 17, 2020 to August 31, 2020), Sixth Amended Administrative Order of August 19, 2020 (which

excluded the time from March 17, 2020 to October 31, 2020), and Seventh Amended Administrative Order of October 29, 2020 (which excluded time from March 17, 2020 to November 30), the period of exclusion shall be from March 17, 2020 to the date the presiding judge reschedules the trial.

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 presiding judge assigned to the matter.

3. Civil jury selections and jury trials scheduled to begin now through January 15, 2021, will proceed as scheduled and will not be automatically continued due to COVID-19. Civil jury trials require fewer jurors, less security, and the ability to easily maintain social distancing. However, based upon the ongoing fluctuation of data, it is possible that civil jury trials will be suspended if the metrics 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 First Amended 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, 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 and 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 are continued through January 15, 2021. Based on the current unprecedented and rapidly increasing levels of COVID-19, it is not in the best interest of public health and safety to conduct grand jury proceedings at this time. Further, 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 grand jurors are still more focused on health and safety concerns and a return to some form of normalcy in their lives, which creates a distraction on their work as grand jurors. Accordingly, all related deadlines are suspended and tolled for all purposes, including the statute of limitations, through January 15, 2021.
9. All attorney admissions ceremonies are continued through January 15, 2021, absent further instruction from Judge William L. Campbell, Jr. 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 January 15, 2021.
11. Petty offense dockets will be scheduled at the discretion of the presiding magistrate judge.
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 conduct judicial business in the normal course while implementing necessary safeguards and may be extended or modified, as necessary.

FOR THE COURT

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