

Aug 19, 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** ) **(Sixth Amended)**  
**BY COVID-19** )

**ORDER**

On July 8, 2020, Fifth Amended Administrative Order No. 209 was entered addressing court operations in the Middle District of Tennessee and imposing restrictions through August 31, 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 134,744, with a recent decrease in daily new cases but a spike in the number of new hospitalizations. Regarding Nashville, Davidson County, the number of confirmed COVID-19 cases is currently at 24,514 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 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. Over the last two weeks, the metrics again have improved with the transmission rate having slowed and the 14-day new case trend continuing to decrease. As a result, on August 17, 2020, Nashville began to gradually change its modified version of phase two and adjusted some public health restrictions with rigorous protocols remaining in place.

While the COVID-19 numbers remain serious, but stable, 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, makes adjustments to public health restrictions, protocols for the wearing of face masks to slow the spread of COVID-19 remain in place, as well as other public health mandates 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). As Nashville, Davidson County, is gradually adjusting its public health restrictions, the Court has cautiously determined that a modified version of phase one of its Plan is suitable, in limited circumstances, at this time.

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 October 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, except as provided in paragraph 2.
2. Upon motion by the parties, if the presiding judge determines the facts and circumstances of a case are so unusual and extraordinary that the trial cannot be further delayed without serious harm to the interests of justice, the presiding judge, in conjunction with the Chief Judge, will determine whether the trial will proceed as scheduled. However, as set forth in paragraph 3, the Court notes concerns regarding its ability to safely conduct a criminal jury trial under the current public health circumstances and its ability to provide an adequate jury pool. Accordingly, the Court remains of the opinion that in this district at this time, continuances of criminal jury trials are generally in the best interest of the proper administration of justice.

3. Regarding criminal jury trials that are continued during the period identified in paragraph 1, the following facts make the typical criminal jury trial impractical at this time:
- (a) Based on the current public health and safety circumstances caused by COVID-19 and under the present directives of relevant federal, state, and local health and governmental authorities, it is highly unlikely that a jury can be empaneled in any criminal cases without COVID-19 issues repeatedly arising during the trial that would complicate and delay the proceeding.
  - (b) Although the Court polled the jurors summoned for jury service in September 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 a reluctance to serve due to safety, child care and virtual school issues, 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 while limiting participants to no more than 25 and maintaining social 6-foot distancing. The Court conducted a mock criminal jury trial, 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), and Fifth Amended Administrative Order of July 8, 2020 (which excluded time from March 17, 2020 to August 31, 2020), the period of exclusion shall be from March 17, 2020 to October 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.

4. Civil jury selections and jury trials scheduled to begin now through October 31, 2020, 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, 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. All grand jury proceedings are continued through October 31, 2020, with one exception. Grand Jury Panel No. 1 will report for limited purposes as ordered by the Chief Judge. Having previously polled grand jurors as to their willingness and

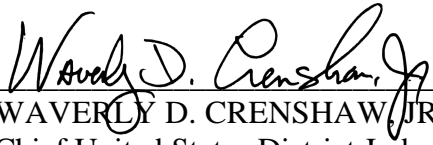
availability to serve and meet a quorum due to issues related to COVID-19, the Court remains concerned that jurors are still more focused on health and safety concerns and a return to some form of normalcy in their lives, which would create a major distraction on their work as grand jurors. Accordingly, all related deadlines are suspended and tolled for all purposes, including the statute of limitations, through October 31, 2020.

10. All attorney admissions ceremonies are continued through October 31, 2020, 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.
11. The Court will not conduct public naturalization ceremonies between now and October 31, 2020.
12. All petty offense dockets scheduled through October 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.
13. 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>.
14. The United States Probation and Pretrial Services Office remains open, subject to intervening orders of the Court.
15. Announcements regarding restrictions to Court services are posted on the District Court's website at <https://www.tnmd.uscourts.gov>.
16. 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, as necessary.

FOR THE COURT

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