

Feb 28, 2022

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) (Sixteenth Amended)
BY COVID-19)

ORDER

On December 30, 2021, Fifteenth Amended Administrative Order No. 209 was entered addressing court operations in the Middle District of Tennessee and imposing restrictions through February 28, 2022, due to the exigent circumstances created by the spread of COVID-19.

The Court continues to monitor the COVID-19 pandemic, including updated guidance from the Centers for Disease Control and Prevention (“CDC”), as well as federal, state, and local public health authorities. Following a drop in infection rates both nationally and locally in the months of September and October, there was an uptick in cases in November, followed by a significant increase in cases in December and January. Of particular concern in recent months has been the emergence of the Omicron variant, which has increased transmissibility and the ability to evade immunity. The surge of infections in January resulted in daily numbers of new infections that exceeded previous peaks. According to the CDC, the rate of community transmission remains “high” in all counties in the Middle District of Tennessee, even though the number of new cases in Tennessee has dropped significantly as the spread of the virus continues to slow across the state.

Currently, 52.5% of Tennesseans are fully vaccinated, including 20.4% who have received the booster. The national average of those fully vaccinated is 64.6%, including 43.1% boosted. In Nashville and Davidson County, 64.56% have been fully vaccinated. The percentage of people fully vaccinated who live in the counties comprising each of the three divisions in the Middle District of Tennessee is lower than the national average, as follows: Nashville Division - 49.11%; Columbia Division - 45.98%; and Northeastern Division - 41.88%.

After two months of skyrocketing case counts driven by the highly infectious Omicron variant, the number of new COVID-19 cases per day is now dropping, both nationally and locally. However, the transmission rate remains high in the Middle District of Tennessee while the vaccination rate remains low. A huge number of people still will be infected on the downward slope and deaths will occur. Now is not the time to cease enforcement of the Court's established COVID-19 precautions and protocols, but easing restrictions regarding the number of trials conducted each week and other court operations is in order. For these reasons, the Court finds that a public health emergency continues to exist in Tennessee and in the district. As such, the Court will continue to operate with COVID-19 as the new "normal" for the foreseeable future, and, in doing so, the established COVID-19 safety protocols will remain in place regardless of vaccination status, including medical screening of attorneys, jurors, and members of the public entering court space, the wearing of face masks, social distancing, hand hygiene, and cleaning and disinfecting surfaces.

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, to protect the public safety in the courthouse and prevent the spread of COVID-19, the Court **ORDERS** as follows:

1. Criminal jury selections and jury trials scheduled to begin now through May 31, 2022, will proceed as scheduled and will not be continued due to COVID-19. Absent an order from the presiding judge, the parties should prepare for criminal jury trials as scheduled. Additionally, related proceedings will proceed in person, subject to the discretion of the presiding judge.
2. Civil jury selections and jury trials will proceed as scheduled, absent an order from the presiding judge. Additionally, related proceedings will proceed in person, subject to the discretion of the presiding judge.
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. The presumption is that such proceedings will be conducted in person. However, on a limited basis, an exception may be allowed when the presiding magistrate judge determines a criminal matter should be conducted remotely by video conference where practicable, or telephonically if video conferencing is not reasonably available, due to the limited space in magistrate judge courtrooms, which

prevents social distancing and increases the risk for participants to contract COVID-19. 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. Pleas and sentencings scheduled before a district judge will proceed as scheduled. The presumption is that pleas, sentencings, and other related proceedings will be held in person. However, on a limited basis, such proceedings may be conducted by video conferencing, or by telephone conferencing if video conferencing is not reasonably available, when the presiding district judge determines such is appropriate to ensure the safety of counsel, witnesses, court staff, and members of the public. Conducting pleas and sentencings remotely is authorized pursuant to Administrative Order No. 209-1 and the CARES Act.
5. Individual judges may hold civil hearings, conferences, and bench trials in the exercise of their discretion, subject to intervening orders of the judge assigned to the matter. It is presumed that such court proceedings will be in person unless the presiding judge determines that video or telephone conferencing enhance safety of the public, litigants, and attorneys. The Court has implemented safety precautions for the public and members of the bar and parties, such that in-person hearings are available.
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. The Court will not permit indefinite extensions, and if such is needed, substitute counsel should be considered.
7. Grand jury proceedings will proceed in-person as currently scheduled, subject to further order by the Chief Judge.
8. All attorney admissions ceremonies will take place as directed by Judge William L. Campbell, Jr. Attorneys who must be admitted on an emergency basis may contact the Clerk's office for assistance.
9. The Court will not conduct public naturalization ceremonies between now and May 31, 2022, but it will conduct virtual ceremonies, as necessary.
10. Petty offense dockets will be scheduled in-person at the discretion of the presiding magistrate judge.
11. The Office of the Clerk of Court remains open for business and employees are expected to be present in person. As determined by management, employees who telework productively may continue to do so on a rotating basis, as this reduces the number of people in the courthouse and the risk for exposure to COVID-19. The Clerk's Office intake window will be open daily from 9:00 a.m. to 3:00 p.m. During hours when the intake window is not open, all manual filings and criminal debt payments may be 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. Alternatively,

such filings can be mailed to the court. 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 for business and employees are expected to be present in person. As determined by management, employees who telework productively may continue to do so on a rotating basis, as this reduces the number of people in the courthouse and the risk for exposure to COVID-19.
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 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.

The Court will continue to closely monitor the COVID-19 outbreak and vaccination data, as well as guidance offered by the CDC and 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 conduct judicial business in the normal course while implementing necessary safeguards and may be extended or modified, as necessary.

FOR THE COURT



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