

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



COURT OPERATIONS AND ACCESS DURING
COVID-19 PANDEMIC AND

GENERAL ORDER NO. 145

VIDEO AND TELECONFERENCING FOR
CRIMINAL PROCEEDINGS UNDER THE
CARES ACT

The COVID-19 Pandemic

WHEREAS, the Centers for Disease Control (“CDC”) has advised people to take precautions in light of the Coronavirus Disease 2019 (“COVID-19”) Pandemic Event and noted that the best way to prevent illness is to avoid being exposed to this virus;

WHEREAS, as of the date of this General Order and according to the CDC, over 27 million people in the United States have contracted COVID-19 and over 498,000 people in the United States have died from the virus;

WHEREAS, as of the date of this General Order, over 1.4 million people in New York have contracted COVID-19, and over 46,000 people in New York have died from the virus;

WHEREAS, in response to the COVID-19 Pandemic Event, the President of the United States, the Governor of the State of New York, the County Executives for the Counties of Monroe and Erie and the surrounding counties, and the Mayors of the Cities of Rochester and Buffalo have declared states of emergency;

WHEREAS, some non-essential businesses in the State of New York remain partially closed, individuals are requested to wear masks or face coverings when not social distancing in public, and there are limits to the number of persons who may congregate in one place at a given time;

WHEREAS, Bureau of Prisons and New York State’s Department of Corrections and Community Supervision report that there are outbreaks of COVID-19 in several of their facilities

within this jurisdiction, and many facilities have restricted visits—including attorney visits—to their facilities;

WHEREAS, in a letter dated December 2, 2020 to the undersigned, the Federal Public Defender's Office for the Western District of New York and the Criminal Justice Act Panel Representative indicated that the situation has made it "nearly impossible to conduct safe and meaningful investigations," requiring attorneys to limit in-person meetings with their clients and witnesses and "severely reduc[ing] the ability of the criminal defense bar to do what is necessary to move cases forward while steadfastly safeguarding the interests of [their] clients," and properly preparing for trial;

WHEREAS, New York State Unified Court System has stayed all civil and criminal jury trials;

WHEREAS, the District's Jury Administrators have received many inquiries from potential jurors who are either reluctant to serve under the current circumstances or who are confused about jury service because of the current situation and the stay of state court proceedings;

WHEREAS, over the past several months, there was a surge of COVID-19 cases in micro-clusters around Rochester and Buffalo, causing the Governor of the State of New York to impose additional restrictions on certain areas, and straining hospital capacity and resources in both cities due to a significant increase in the number of hospitalizations and patients being treated in intensive care units;

WHEREAS, most recently, the number of positive cases of COVID-19, hospitalizations, and patients being treated in intensive care units are decreasing in number;

WHEREAS, the United States Food and Drug Administration has authorized the emergency use of two vaccines for COVID-19 and, as of the date of this General Order, 65 million vaccines have been administered;

WHEREAS, nevertheless, the circumstances surrounding the COVID-19 Pandemic Event remain a grave concern in the Western District of New York, New York State, and the United States, due at least in part to several new variants of the virus;

The Court's Response

WHEREAS, the Court has consulted with an epidemiologist and implemented recommended measures to reduce the number of people and level of interaction at proceedings conducted in the courthouses of the United States District Court for the Western District of New York (the "District"), including limiting the number of courtrooms being utilized in each courthouse to help with social distancing and permitting and requiring attorneys and other personnel to participate by video or telephone, when appropriate;

WHEREAS, on March 12, 2020, the Court issued a General Order restricting entry to the courthouses of the United States District Court for the Western District of New York in certain circumstances due to the COVID-19 Pandemic Event;

WHEREAS, on March 13, 2020, the Court issued a General Order detailing court operations during the COVID-19 Pandemic Event and continuing civil jury trials, grand jury selections, and naturalization ceremonies for a period of sixty (60) days;

WHEREAS, the Court's March 13, 2020 General Order encouraged judges to reduce personal appearances in both civil and criminal proceedings as much as practicable;

WHEREAS, on March 16, 2020, the Court issued a General Order permitting mediators to adjourn mediation sessions and extending mediation deadlines in all cases for a period of sixty (60) days;

WHEREAS, on March 18, 2020, the Court issued a General Order continuing criminal jury trials for a period of sixty (60) days;

WHEREAS, on March 19, 2020, the Court issued a General Order permitting judges to reschedule or hold attorney admissions ceremonies virtually;

WHEREAS, on March 20, 2020, the Court issued a General Order regarding financial deposits;

WHEREAS, on March 27, 2020, the Court issued a General Order permitting attorneys on the CJA Panel to submit interim vouchers in certain circumstances;

WHEREAS, on March 30, 2020, the Court issued a General Order permitting judges, with the consent of the defendant, to conduct certain criminal proceedings by videoconference, or, where videoconference is not reasonably available, by teleconference;

WHEREAS, on April 17, 2020, the Court issued a General Order explaining how members of the public and the press can attend court proceedings by teleconference or videoconference;

WHEREAS, on April 23, 2020, the Court issued a General Order requiring entrants to the courthouses to, among other things, wear a mask or other face covering when entering and moving about the courthouses;

WHEREAS, on May 13, 2020, the Court issued a General Order extending many of the above General Orders to June 15, 2020;

WHEREAS, on June 15, 2020, the Court issued a General Order extending many of the above General Orders to July 15, 2020;

WHEREAS, on June 26, 2020, the Court issued a General Order extending the teleconferencing and videoconferencing authority under the CARES Act to September 25, 2020;

WHEREAS, on July 15, 2020, the Court issued a General Order extending many of the above General Orders regarding operations to September 25, 2020;

WHEREAS, on September 23, 2020, the Court issued a General Order extending many of the above General Orders regarding operations and the teleconferencing and videoconferencing authority under the CARES Act to December 24, 2020;

WHEREAS, on December 8, 2020, the Court issued a General Order extending many of the above General Orders regarding operations and the teleconferencing and videoconferencing authority under the CARES Act to February 24, 2021;

Findings Regarding Video and Teleconferencing Required by CARES Act

WHEREAS, on March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which authorized the Judicial Conference of the United States to provide authority to Chief District Judges to permit the use of video or audio conference to conduct certain criminal proceedings;

WHEREAS, on March 27, 2020, the President signed the CARES Act into law;

WHEREAS, on March 29, 2020, the Judicial Conference of the United States made the appropriate findings as required under the CARES Act, finding specifically that emergency conditions continue to exist due to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601, *et seq.*) with respect to COVID-19 and those emergency conditions have materially affected and will materially affect the functioning of the federal courts generally;

WHEREAS, on March 30, 2020, the Court issued a General Order permitting the judges in this District to conduct certain criminal proceedings by videoconference, or, where videoconference is not reasonably available, by telephone, as set forth in the CARES Act, for a period of ninety (90) days;

WHEREAS, on June 26, 2020, the Court issued a General Order extending the March 30, 2020 authorization to conduct certain criminal proceedings by videoconference, or, where videoconference is not reasonably available, by telephone;

WHEREAS, on September 23, 2020, the Court issued a General Order extending the June 26, 2020 authorization to conduct certain criminal proceedings by videoconference, or, where videoconference is not reasonably available, by telephone;

WHEREAS, on December 8, 2020, the Court issued a General Order extending the September 23, 2020 authorization to conduct certain criminal proceedings by videoconference, or, where videoconference is not reasonably available, by telephone until February 24, 2021;

WHEREAS, the December 8, 2020 General Order requires the Court to review the situation within ninety (90) days to determine whether to extend the video and telephonic conferencing authority;

WHEREAS, acting pursuant to Section 15002(b) of the CARES Act and the authority granted by the Judicial Conference of the United States, as Chief Judge, I find that emergency conditions continue to exist due to the COVID-19 Pandemic Event and that those conditions continue to materially affect the functioning of the courts within this District;

WHEREAS, pursuant to Section 15002(b)(2) of the CARES Act, as Chief Judge, I further specifically find that felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure cannot be conducted on a regular basis in person without seriously jeopardizing public health and safety;

Video and Telephone Conferencing

IT IS HEREBY ORDERED that, pursuant to the authority granted under Section 15002(b)(1) of the CARES Act, judges in this District, with the consent of the defendant or the juvenile after consultation with counsel, are authorized to use video conferencing, or telephonic conferencing if video conferencing is not reasonably available for use, for the following events:

- (A) Detention hearings under Section 3142 of Title 18, United States Code;
- (B) Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;
- (C) Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;
- (D) Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal

Procedure;

- (E) Arraignments under Rule 10 of the Federal Rules of Criminal Procedure;
- (F) Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;
- (G) Pretrial release revocation proceedings under Section 3148 of Title 18, United States Code;
- (H) Appearances under Rule 40 of the Federal Rules of Criminal Procedure;
- (I) Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure; and
- (J) Proceedings under Chapter 403 of Title 18, United States Code (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings;

IT IS FURTHER ORDERED that if a judge in an individual case finds, for specific reasons, that felony pleas or sentencings in those cases cannot be further delayed without serious harm to the interests of justice, the judge may, with the consent of the defendant or the juvenile after consultation with counsel, conduct those proceedings by video conference, or by telephonic conference if video conferencing is not reasonably available. Under Section 15002(b)(2)(B) of the CARES Act, this authority extends to equivalent plea, sentencing, or disposition proceedings under 18 U.S.C. § 403 (commonly referred to as the “Federal Juvenile Delinquency Act”);

IT IS FURTHER ORDERED that, pursuant to Section 15002(b)(3) of the CARES Act, and based upon the fact that the COVID-19 Pandemic Event continues and has not been abated—in fact, although the incidence of COVID-19 cases appears to be decreasing, there continues to be great concern about the magnitude of COVID-19 and, in particular, new strains of the virus which

have been recently discovered—this authorization is effective through April 23, 2021, unless earlier terminated. If the emergency persists longer than April 23, 2021, I will review the situation for a possible extension of authority pursuant to the provisions of the CARES Act;

IT IS FURTHER ORDERED that, notwithstanding the foregoing, pursuant to Section 15002(b)(3) of the CARES Act, this authority shall terminate on the last day of the covered emergency period or the date on which the Judicial Conference of the United States finds that emergency conditions due to the national emergency declared by the President under the National Emergencies Act with respect to the COVID-19 Pandemic Event no longer materially affect the functioning of either the Federal courts generally or the courts within this District;

Visitor Restrictions

IT IS HEREBY ORDERED that the following persons shall not enter any United States courthouse in the Western District of New York:

1. Persons not wearing a mask or face covering;
2. Persons asked or required by any doctor, hospital, health agency, or state to self-quarantine or isolate;
3. Persons who have been diagnosed with COVID-19 who are not fully recovered;
4. Persons who have had contact with anyone who has been diagnosed with COVID-19 in the preceding ten (10) days; or
5. Persons who are ill or who are suffering from a fever, cough, or shortness of breath;

IT IS FURTHER ORDERED that court security staff shall inquire of all persons seeking entry to any courthouse whether they meet any of the above criteria for restricting visitors, and if so, deny their entry;

IT IS FURTHER ORDERED that all visitors entering either courthouse must submit to a temperature scan to detect a fever and the United States Marshals Service may deny entry to any person who registers a fever or who refuses to submit to such temperature scan;

IT IS FURTHER ORDERED that the United States Marshals Service may also deny entry to the courthouse to any person considered a risk of carrying COVID-19;

IT IS FURTHER ORDERED that all persons shall wear a mask or face covering while in public spaces of the courthouse unless otherwise directed by the Court and any person failing to do so may be removed from the courthouse by court security staff or the United States Marshals Service;

Civil and Criminal Jury Trials

IT IS FURTHER ORDERED that all criminal and civil jury trials to commence through April 23, 2021 before any judge in any courthouse in the District are hereby CONTINUED;

Other Proceedings

IT IS FURTHER ORDERED that all **in-person** criminal and civil appearances are CONTINUED through April 23, 2021, unless the in-person appearance is deemed essential by the presiding or referral judge;

IT IS FURTHER ORDERED that this General Order does not affect the Court's consideration of civil and criminal matters that can, pursuant to this General Order, be resolved by telephone or videoconference—with a criminal defendant's consent—or without oral argument or personal appearances;

Speedy Trial Exclusion

IT IS FURTHER ORDERED that due to the effect of all of the above circumstances—including that although the number of COVID-19 cases and hospitalizations have decreased over the past month, the recent discovery of new variants of COVID-19 and relatively high numbers of COVID-19 cases compared to previous months have continued to reduce the Court's ability to obtain an adequate spectrum of jurors—and public health recommendations on the availability of counsel, court staff, witnesses, and defendants to be present in the courtroom and in consideration of concerns raised by the Federal Public Defender for the Western District of New York and the

Criminal Justice Act Panel Representative, the time period of the continuance implemented by this General Order will 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 in a speedy trial, pursuant to 18 U.S.C. § 3161(h)(7)(A);

Grand Jury

IT IS FURTHER ORDERED that Grand Jury returns may take place by video teleconference pursuant to Federal Rule of Criminal Procedure 6;

Naturalization Proceedings

IT IS FURTHER ORDERED that the Court hereby grants the office of the United States Citizenship and Immigration Services the authority to perform administrative naturalization ceremonies under 8 U.S.C. § 1421 until further action of the Court;

Public and Media Access to Proceedings

IT IS FURTHER ORDERED that civil and criminal hearings may be conducted on a videoconference line or, where one is not reasonably available, a toll-free teleconference line. That line will be available to members of the public and the media, to the extent practicable. A note will appear on each case's individual docket on PACER and dial-in instructions can be obtained by calling the judge's Chambers directly. Further instructions can be found on the court's website or by calling the Clerk's Office. Members of the public and media may listen to the proceedings but may not participate in them. Members of the public and media are strictly prohibited from recording or broadcasting any hearing, in whole or in part, in any fashion. *See* Local R. Civ. P. 83.5; Local R. Crim. P. 53. Failure to comply with the above restriction on recording or broadcasting may result in a contempt finding. Further restrictions are set forth on the court's website and may change from time to time;

IT IS FURTHER ORDERED that courtrooms will only be able to accommodate a limited number of people in order to maintain social distancing. The judge has the final, discretionary

authority to grant or deny any specific request to appear in person, and to limit the number of persons entering the courtroom;

Attorney Admissions

IT IS HEREBY ORDERED that, at the discretion of the judge performing the attorney admission, the judge may:

1. Waive the personal appearance by the applicant and sponsor when provided the necessary documents including a Certificate of Good Standing;
2. Perform the admission ceremonies through any available communication technology, such as but not limited to: video conferencing, teleconferencing, Skype or Facetime;
3. Reschedule the applicant's date of admission. This may include rescheduling of case deadlines to accommodate the new date of admission;

Mediation

IT IS FURTHER ORDERED that the Court's Alternative Dispute Resolution ("ADR") Program remains open, subject to the limitations set forth below:

1. All ADR deadlines are extended for an additional period of sixty (60) days unless otherwise determined by the presiding or referral judge;
2. The Mediator in any case may elect to adjourn mediation sessions until April 23, 2021;
3. Notwithstanding the above, no in-person mediation sessions will be conducted in the courthouses of the Western District of New York through April 23, 2021, unless approved by the presiding or referral judge;
4. If a mediation is adjourned, the Mediator shall prepare a Mediation Certification confirming to the Court that the mediation session has been adjourned, including

the new date for the mediation session as agreed upon by the Mediator and the parties, and send it to "adrprogram@nywd.uscourts.gov" for filing;

5. This Order shall apply to all Case Management/Scheduling Orders with ADR deadlines issued through April 23, 2021;

IT IS FURTHER ORDERED that electronic ADR filings including stipulations selecting a mediator and mediation certifications may still be made through the CM/ECF system and ADR Program;

CJA Interim Voucher Payments

IT IS FURTHER ORDERED that, through April 23, 2021, CJA Panel Attorneys may submit interim vouchers for compensation, without prior Court approval, so long as the voucher exceeds \$500 and is not submitted within two months of a prior interim voucher in the same criminal matter;

Financial Deposits

IT IS FURTHER ORDERED that treasury deposits will be reduced to once per week each Thursday in order to further limit staffing;

Courthouses Remain Open

IT IS FURTHER ORDERED that the Western District of New York courthouses remain open, subject to the limitations contained above;

IT IS FURTHER ORDERED that filings will continue to be processed in civil and criminal cases via the CM/ECF electronic system and by mail. Paper documents may be received in the drop box located just inside the courthouses;

Superseding of Previous General Orders

IT IS FURTHER ORDERED that this General Order supersedes this Court's General Orders issued on March 12, 2020; March 13, 2020; March 16, 2020; March 18, 2020; March 19,

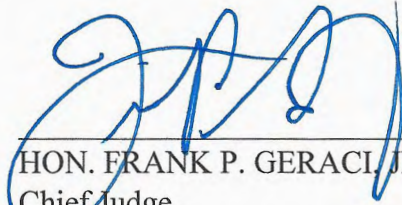
2020; March 20, 2020; March 27, 2020; April 17, 2020; April 23, 2020; May 13, 2020; June 15, 2020; June 26, 2020; July 15, 2020; September 23, 2020; and December 8, 2020;

Termination of General Order

IT IS FURTHER ORDERED that this General Order shall remain in effect through April 23, 2021, unless otherwise ordered by the Court. The Court reserves the right to amend, modify, terminate, or extend this General Order at any time.

IT IS SO ORDERED.

Dated: February 24, 2021
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court