

Feb 25, 2021

**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** ) **(Eleventh Amended)**  
**BY COVID-19** )

**ORDER**

On December 15, 2020, Ninth Amended Administrative Order No. 209 was entered addressing court operations in the Middle District of Tennessee and imposing restrictions through February 28, 2021, due to the exigent circumstances created by the spread of COVID-19. On January 12, 2021, Tenth Amended Administrative Order No. 209 was entered, which slightly modified Ninth Amended Administrative Order No. 209 regarding civil jury trials.

The Court continues to monitor 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 762,673. Regarding Nashville, Davidson County, the number of confirmed COVID-19 cases is currently at 83,597 with several thousand more cases in the counties surrounding Davidson County, all of which are in the Middle District of Tennessee.

The Mayor of Nashville, in April 2020, implemented 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 1 and Phase 2 of the plan, and since October 1, 2020, Nashville has consistently remained in Phase 3, or a modified version thereof, with public health restrictions and rigorous protocols in place. Despite the significant, unprecedented, and rapid increase in COVID-19 cases in November and December, with a record high number of hospitalized COVID-19 patients in Davidson County hospitals, Nashville remained in Phase 3, with some modifications, of its Roadmap for Reopening

Nashville. In January, the reopening key metrics remained unsatisfactory, but Nashville has seen improvement in February, with the lowest number of active cases since November 2020, a stable transmission rate, a declining hospitalization rate, and a decreasing trend in new cases over a 14-day period. To date, 115,524 total doses of the COVID-19 vaccine have been administered to qualified recipients who live and work in Davidson County, although this is minimal taking into consideration the total county population and the fact that each recipient receives two doses.

Even though key metrics are trending in the right direction, widespread immunity from the vaccine will take several months, and the public is advised to remain vigilant in following public health restrictions and protocols. The 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 require continued 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 impose 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 conditions also urge all residents over age 65 and those at high risk to stay home; other residents are encouraged 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). The Court is currently at a modified version of Phase 1 after stepping back from a modified version of Phase 2 in December 2020 when the COVID-19 outbreak in Nashville was at an all-time high. Based on the recent downward trend of local COVID-19 key metrics, the Court has determined that movement to a modified version of Phase 2 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 in the courthouse and prevent the spread of COVID-19, the Court **ORDERS** as follows:

1. At the discretion of the presiding judge, criminal jury selections and jury trials scheduled to begin between now through April 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. There, however, may be limited circumstances related to COVID-19 in a particular case where the presiding judge determines that a trial must be continued.
2. When continuing a criminal jury trial as contemplated in paragraph 1, the presiding judge may determine the following facts make a particular criminal jury trial impractical at the scheduled time:
  - (a) Based on the 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 a criminal case without COVID-19 issues repeatedly arising during the trial that would complicate and delay the proceeding.
  - (b) Having polled the jurors summoned for jury service, 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 a reluctance to serve due to safety, child care and virtual school issues. In addition, some jurors state their desire to receive the COVID-19 vaccine before reporting for jury duty. These responses 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 will be extremely difficult to conduct a criminal jury trial following local health directives limiting participants to no more than 25 and maintaining social 6-foot distancing, even if physical barriers such as plexiglass are in place. As such, depending on the circumstances of the case and the number of people required to be present in the courtroom for a criminal jury trial, the public health and safety of counsel, witnesses, jurors, court staff, and members of the public can be seriously jeopardized.

- (e) The Court has limited capacity regarding facilities and personnel based on current public health and safety circumstances caused by COVID-19, and it must proceed cautiously to protect the public safety and prevent the spread of COVID-19 in the courthouse. The Court cannot currently accommodate multiple simultaneous criminal trials in the Nashville courthouse. Pursuant to Local Criminal Rule 18.01, “all criminal cases in the District will be tried in the Nashville Division unless the Trial Judge transfers the case to another division.” As set forth in United States v. Erwin, 155 F.3d 818, 824 (6<sup>th</sup> Cir. 1998)(en banc), there is no constitutional or statutory requirement that a defendant’s trial take place in a specific courtroom or division within a federal judicial district. If there are multiple simultaneous criminal trials scheduled in Nashville and circumstances do not allow for a criminal trial to be moved to another division, i.e., Cookeville or Columbia, the presiding judge may determine that a continuance of the trial is necessary.

Due to the foregoing, the Court finds 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), and 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), and Eighth Amended Administrative Order of November 30, 2020 (which excluded the time from March 17, 2020 to January 15, 2021), and Ninth Amended Administrative Order of December 15, 2020 (which excluded time to from March 17, 2020 to February 28, 2021), the period of exclusion shall be from March 17, 2020 to April 15, 2021. 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 presiding judge assigned to the matter.

3. Civil jury selections and jury trials scheduled to begin now through April 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. There, however, may be limited circumstances related to COVID-19 in a particular case where the presiding judge determines that a trial must be continued.

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 by video conference where practicable, or telephonically if video conferencing is not reasonably available. Conducting such proceedings remotely is encouraged due to the limited space in magistrate judge courtrooms, which prevents the required 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.
5. Pleas and sentencings scheduled before a district judge will proceed as scheduled. Such proceedings may be conducted in person or by video conferencing, or by telephone conferencing if video conferencing is not reasonably available. Although the presiding district judge, who has a larger courtroom, may determine that an in-person hearing is most appropriate in a particular case, especially when there are very few people in the courtroom, video conferencing or telephone conferencing may be appropriate on a limited basis because it minimizes the number of people in the courtroom and the courthouse and helps to ensure the safety of counsel, witnesses, court staff, and members of the public. Conducting such proceedings remotely is authorized pursuant to First Amended Administrative Order No. 209-1 and the CARES Act.
6. Individual judges may 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. The Court has implemented safety precautions for the public and members of the bar and parties, such that small 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 April 15, 2021, with the exception of Grand Jury Panel No. 2019-1, who 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 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 April 15, 2021.

9. All attorney admissions ceremonies are continued through April 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 April 15, 2021, but it may conduct virtual ceremonies, as necessary.
11. Petty offense dockets will be scheduled at the discretion of the presiding magistrate judge.
12. The Office of the Clerk of Court, subject to intervening orders of the Court, remains open for business. Employees will continue to telework on a rotating basis, which reduces the number of people in the courthouse and the risk for exposure to COVID-19. 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, subject to intervening orders of the Court, remains open. Employees will continue to telework on a rotating basis, which, again, reduces the number of people in the courthouse and the risk for exposure to COVID-19.
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