

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

In re: Extending Authorization of
Temporary Use of Video Teleconferencing,
Telephone Conferencing, and Other Procedures
in Criminal Matters Pursuant to the
Coronavirus Aid, Relief, and
Economic Security Act ("CARES ACT")

Administrative Order
20-AO-046

ADMINISTRATIVE ORDER

The Court issues this Administrative Order as another in a series of Administrative Orders to address court operations during the time of the spread of the Coronavirus Disease that emerged in 2019, known as COVID-19. This Order extends the temporary use of video teleconferencing, telephone conferencing and other procedures in criminal proceedings until December 28, 2020.

In response to a declaration on March 13, 2020, under the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, that the COVID-19 outbreak constitutes a national emergency, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which was signed into law on March 27, 2020. Under section 15002(1) of that Act, on March 29, 2020, the Judicial Conference of the United States found that emergency conditions due to the declared national emergency with respect to COVID-19 have materially affected and continue to materially affect the functioning of the federal courts. On March 30, 2020, I initially authorized the use of video teleconferencing and telephone conferencing for all court hearings listed in section 15002(b) of the Act in Administrative Order 20-AO-25, extending such use by Administrative Orders 20-AO-027 and 20-AO-038R.

On March 10, 2020, the Governor of the State of Michigan issued Executive Order No. 2020-4, which declared a state of emergency in Michigan to address the COVID-19 pandemic, extended several times, the latest through October 1, 2020 in Executive Order No. 2020-177. In Executive Order No. 2020-183, the Governor continued to order work to be performed remotely, social distancing measures, mask wearing, limits on food service establishments and bars, limits on indoor and outdoor gatherings, among others.

The CARES Act provides that ninety days after the chief judge makes the authorizations in the Administrative Orders cited above, the chief judge must "review the authorization and determine whether to extend the authorization." Section 15002(b)(3)(A). If the authorization is extended, the chief judge must "review the extension of authority not less frequently than once every 90 days until the earlier of—(i) the date on which the chief judge (or other judge or justice) determines the authorization is no longer warranted; or (ii) the date on which the emergency authority is terminated under paragraph (5)." Section 15002(b)(3)(B).

As of September 21, 2020, there were 117,406 confirmed cases of COVID-19 (6,665 confirmed deaths) in Michigan, with the 7-day case average at 685 and 7-day death average at 9. COVID-19 has caused and continues to cause extraordinary disruption throughout this District, including, but not limited to, the temporary closure of offices; the imposition of travel and crowd gathering restrictions; discouragement of the use of mass transportation; the dislocation of many residents; encouragement of wearing facemasks and disruptions and delays in the use of the mails. Cases of COVID-19 were diagnosed among employees and contractors working at the Detroit courthouse which required the closure of many court operations and made it impossible for most members of the court staff to appear in person for work. Continued contact restrictions put in by the detention facilities used by the U.S. Marshal's Service in this District hindered and continues to hinder the movement of defendants to and from court. Many of the detention facilities reported positive COVID-19 cases among the prisoners and staff. These and other considerations made it necessary for judges in this District to conduct proceedings remotely, by video teleconference or telephone conference, with defense counsel and defendants sometimes in separate locations.

After review of the previous authorization and based on these findings on the status of the continued public health crisis, on my own motion, I hereby continue to authorize under section 15002(b)(1) and (b)(3) of the CARES Act, the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, for the following proceedings, with the consent of the defendant, or juvenile, after consultation with counsel:

- Detention hearings under section 3142 of title 18, United States Code;
- Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;
- Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;
- Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;
- Arraignments under Rule 10 of the Federal Rules of Criminal Procedure
- Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;
- Pretrial release revocation proceedings under section 3148 of title 18, United States Code;
- Appearances under Rule 40 of the Federal Rules of Criminal Procedure;
- Misdemeanor pleas and sentencings as described in Rule 43(6)(2) of the Federal Rules of Criminal Procedure;
- 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.

For the reasons stated above, on my own motion, I find that felony pleas under Rule 11 of the Federal Rules of Criminal Procedure; felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure; and equivalent plea and sentencing, or disposition, proceedings under chapter 403 of title 18, United States Code (commonly known as the "Federal Juvenile Delinquency Act") cannot be conducted in person without

seriously jeopardizing public health and safety. I therefore continue to authorize video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, to be used in such proceedings under the following conditions:

- (1) the defendant, or juvenile, after consultation with counsel, consents to the use of video teleconferencing or teleconferencing for the proceeding; and
- (2) the presiding judge finds that the proceeding cannot be further delayed without serious harm to the interests of justice.

Because the CARES Act does not require the consent of a defendant or juvenile to be in writing, such consent may be obtained in whatever form is most practicable under the circumstances, as long as the defendant's consent is clearly reflected in the record.

For instances in which the Federal Rules of Criminal Procedure explicitly require the consent of a defendant to be in writing (such as, for example, Rule 32(e), which requires the written consent of the defendant before a pre-plea presentence report is disclosed), if obtaining an actual signature is impractical given the health and safety concerns presented:

- (1) a defendant may sign a document electronically; or
- (2) defense counsel or the presiding judge may sign on the defendant's behalf if the defendant, after an opportunity to consult with counsel, consents.

All participants in video teleconferencing or telephone conferencing, the media, and members of the public are strictly prohibited from recording or broadcasting proceedings. Anyone violating this provision is subject to sanctions, including fines and/or a ban from participating in any future court proceedings, in person or remotely.

Any authorization to use video teleconferencing or telephone conferencing pursuant to this Order may be terminated by further Order of the Court or under subsections (b)(3) and (b)(5) of the relevant provisions of the CARES Act.

Under section 15002(b)(3) of the CARES Act, these authorizations will remain in effect until December 28, 2020 unless terminated earlier by order of this Court. If emergency conditions continue to exist after December 28, 2020, I will review these authorizations and determine whether to extend all or some of them.

IT IS SO ORDERED.

FOR THE COURT:

S/Denise Page Hood
Denise Page Hood
Chief Judge