

COURT OPERATIONS AND ACCESS DURING
COVID-19 PANDEMIC AND

GENERAL ORDER

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 Order, over 6.8 million people in the United States have contracted COVID-19 and over 200,000 people in the United States have died;

WHEREAS, as the of the date of this Order, over 450,000 people in New York have contracted COVID-19, and over 32,000 people in New York have died;

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 businesses in the State of New York are being allowed to open based upon a phased reopening plan but 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, the Bureau of Prisons and New York State’s Department of Corrections and Community Supervision have restricted visits—including attorney visits—to their facilities, and the Federal Public Defender’s Office for the Western District of New York has sought to limit in-

person meetings with their clients, all of which is impacting the ability of attorneys to properly prepare for criminal proceedings;

WHEREAS, the circumstances surrounding the COVID-19 Pandemic Event remain a serious concern in the Western District of New York, New York State, and the United States;

The Court's Response

WHEREAS, the Court has implemented 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;

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 use video or telephonic video conferencing in certain criminal proceedings, 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, the June 26, 2020 General Order requires the Court to review the situation after 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, this authorization is effective for an additional ninety (90) days, commencing with the expiration of the Court’s June 26, 2020 General Order on September 25, 2020, and expiring on December 24, 2020, unless earlier terminated. If the emergency persists longer than ninety (90) days, 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 who have been asked to self-quarantine by any doctor, hospital, or health agency;
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 fourteen (14) days; or
5. Persons with a fever, a 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 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;

Criminal Matters

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

IT IS FURTHER ORDERED that this Order does not affect the Court's consideration of criminal motions that can be resolved without oral argument or personal appearances;

Civil Matters

IT IS FURTHER ORDERED that this Order does not affect the Court's consideration of civil motions that can be resolved without oral argument or personal appearances;

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 electronic Alternative Dispute Resolution ("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 December 24, 2020, 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

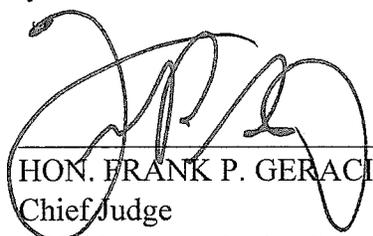
IT IS FURTHER ORDERED that this General Order supersedes this Court's General Orders issued on March 12, 2020; March 13, 2020; March 16, 2020; March 18, 2020; March 19, 2020; March 20, 2020; March 27, 2020; April 17, 2020; April 23, 2020; May 13, 2020; June 15, 2020; June 26, 2020; and July 15, 2020.

Termination of General Order

IT IS FURTHER ORDERED that this General Order shall remain in effect through December 24, 2020, 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: September 23, 2020
Rochester, New York



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