

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: ADMINISTRATIVE ORDER)
 CONCERNING JURY TRIALS) Misc. No. 2:20-mc-394-MRH
 AND CERTAIN OTHER)
 PROCEEDINGS RELATIVE TO)
 COVID-19 MATTERS)
)

**ADMINISTRATIVE ORDER
(UPDATED AS OF MAY 29, 2020)**

WHEREAS, public health authorities have advised, and continue to advise, public and private agencies to continue to take all necessary and appropriate precautions to reduce the possibility of exposure to and transmission of novel coronavirus (“COVID-19”) and to slow the spread of the disease; and

WHEREAS, jury selection in this District frequently involves large jury venire pools, often consisting of individuals in the age category identified by the Centers for Disease Control and Prevention (“CDC”) as being particularly at risk, or who are otherwise at substantially enhanced health risks for other recognized reasons, along with many individuals being required to travel extensively and from a distance for such service; and

WHEREAS, there has been in place for more than sixty (60) days a “stay at home” directive from the Governor of the Commonwealth of Pennsylvania relative to travel outside of the home and the gathering of groups in public settings, which has had the effect of closing numerous places of employment, schools and other institutions for that extended period of time; and

WHEREAS, while such publicly applicable limitations have been relaxed to a degree, they nonetheless still direct that organizations and institutions take all reasonable steps to secure the public health by compliance with applicable recommendations of the CDC and other governmental and health agencies including physical distancing of individuals and other protective measures; and

WHEREAS, the process of responding to jury summonses and service on juries by those employed in essential public functions, including in healthcare operations, creates a serious impact on the capacity of persons so employed and summoned to serve, increasing substantially the likelihood of the need to summon ever-larger jury venire pools for potential service and diminishing the representative nature of the pool of summoned jurors; and

WHEREAS, the resumption of any jury trials in this Court likely will involve the extensive use of juror questionnaires and complex voir dire processes, which will generate a time period of eight (8) to ten (10) weeks from the time of initial jury summons to jury selection, along with very significant limitations on the number of jury trials that can be conducted at the same time in order to comply with public health protocols; and

WHEREAS, governmental “stay at home” orders applicable to all portions of this judicial district, dating to March 12, 2020, have resulted in no trial jurors being currently summoned to serve in any Division of this Court, and such orders have materially and substantially impaired or wholly curtailed the ability of defense counsel to engage in case and field investigations; and

WHEREAS, the fragility of the current employment situation of many of those who would be summoned in the near term for jury service would increase the likely severe hardship on those so summoned, impacting the ability to generate representative jury pools of those that

could actually serve without such significant hardship, and at the same time substantially increasing the need for ever-larger pools of summoned jurors, generating the gathering of larger groups of individuals; and

WHEREAS, the detention centers where this District's federal detainees are resident have limited for health safety reasons the movement of detained individuals from and then back to those facilities, and have also severely limited or as to many detained individuals prohibited physical visitation of counsel with those detained in those facilities that is necessary for purposes of consultation and trial preparation and full engagement by such persons in the defense of their case, and the timing of the return of detention centers to full and open operations and the terms of such remain materially uncertain; and

WHEREAS, the on-going limitations on reasonably available COVID-19 testing and contact tracing protocols increases the uncertainty of the current and near-term health status of summoned jurors and other necessary trial participants and the ability to assess their health status and which currently counsel the need for precautionary actions including but not limited to the use of face coverings by all trial participants; and

WHEREAS, the Court has been carefully considering and applying the phased resumption of operations protocols applicable to the federal trial courts, including this Court, which do not yet counsel the resumption of civil and criminal jury trials in this Court, and which upon resumption counsel substantial limitations on the number of persons present in any court proceeding and directing significant physical distancing of all in attendance (including the public for public proceedings), including all trial participants and the public; and

WHEREAS, the Administrative Office of the United States Courts ("AO") has convened a special task force of experienced federal trial judges and court executives which is considering

the development of “best practices” for the conduct of jury trials in the federal courts, giving substantial consideration to the health and safety of all trial participants and the public, which recommendations remain under advisement; and

WHEREAS, the Pennsylvania Courts of Common Pleas in Allegheny and Erie counties have yet to resume trial operations, and in Allegheny County, that court has suspended all civil and criminal jury trials until September 2020 for substantially the reasons stated herein; and

WHEREAS, as a public institution committed to the sound administration of equal justice under law, this Court believes that it should continue to take reasonable and prudent actions to further that mission consistent with public health needs and the health needs of trial and proceeding participants;

NOW, THEREFORE, in order to continue to further public health and safety, the health and safety of Court personnel, counsel, litigants, other case participants, jurors, and the general public and in order to reduce the number of large gatherings necessarily attendant to trial jury selection in all Divisions of this Court, to permit for the effective trial preparation of counsel for jury trials and other proceedings, to take into consideration the necessary lead time for the effective issuance of a sufficient number of juror summons in conformity with the Court’s Jury Plan and the use of relevant juror questionnaires, and in order to minimize travel by participants in Court proceedings, (particularly travel by public conveyance), by virtue of the direction of the Board of Judges, and the provisions of 28 U.S.C. §§ 137(a), 139 and 452, the United States District Court for the Western District of Pennsylvania hereby issues the following Order, in furtherance of the above and the Court’s similar Orders of March 13, 2020 and April 16, 2020:

1. This Court, and the United States Courthouses in Pittsburgh, Johnstown, and Erie, will remain open for the conduct of official business, subject to the following provisions.

2. All civil and criminal jury selections and jury trials in the Western District of Pennsylvania scheduled to begin (or are to be scheduled to begin) on or before **September 8, 2020** are continued pending further Order of the Court. The Court may issue further Orders concerning this or future general or specific continuances as may be deemed necessary and appropriate. All such continued jury selections and trials will be reset by further Order of the assigned judicial officer.

3. All trial-specific or other deadlines in all civil and criminal cases remain in effect unless modified by further Order of the Court or by Order of the assigned judicial officer. It is the sense of the Court that its judicial officers will continue to apply the principles of flexibility and accommodation to reasonable requests for filing or scheduling adjustments necessitated by reasonable fact-based travel, health or safety concerns or directives of public health officials.

4. Aside from ordering a jury trial to begin on or before September 8, 2020, the judicial officer presiding over any action or proceeding may take such further actions consistent with this Order as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the substantial rights of the parties.

5. The Court is cognizant of the trial, procedural, and substantive rights of all litigants, and also particularly of the rights of criminal defendants to a speedy and public trial under the Sixth Amendment (and the particular application of that right in cases involving defendants who are detained pending trial). Therefore, any request by a criminal defendant or the United States in a criminal proceeding, or of a party to any civil action, seeking relief from any provision of this Order, including as to the provisions of Paragraph 2 above, is to be directed to the Chief Judge via a Motion filed at Misc. No. 20-mc-394-MRH, with a copy of such Motion being filed as a Notice

on the case-specific docket and notice of such filing also being provided directly to the Chambers of the Chief Judge. Any such request for relief will be resolved by the Chief Judge or his designee.

6. For each and all of the reasons set forth herein, and in the Court's prior Administrative Orders as to these matters, the time period of March 13, 2020 through September 8, 2020 shall be "excluded time" under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), as the Court finds that the ends of justice served by taking that action substantially outweigh the interests of the parties and the public in a speedy trial, for all of the reasons set for the in this Order, including in the "whereas" clauses above. Therefore, in continuation of the Court's Administrative Orders of March 13, 2020 and April 16, 2020 on these matters (which excluded the time from March 13, 2020 through April 26, 2020, and April 16 through June 12, 2020, respectively), the period of time from March 13, 2020 to September 8, 2020 is considered to be excluded time in *all* criminal proceedings in this Court pursuant to U.S.C. § 3161(h)(7)(A), the Court specifically finding and concluding that the ends of justice served by taking such actions and by such delay materially outweigh the best interests of the public and the defendants in a speedy trial in *all* such pending cases, because, at least, the health and safety circumstances caused by COVID-19 make it necessarily and equally highly unlikely that a jury can be empaneled in *any* criminal cases under the current public health circumstances and under the applicable directives and orders of relevant local, state and federal health and governmental authorities. Specifically, the Court further finds and concludes that such exclusion is necessary in *all* cases to assure that as to cases going to trial, a full, unhindered, continuously serving jury venire and seated jury in every case, which is central to the sound administration of justice, is available. Such exclusion of time is further and also necessary in cases not yet set for trial, and in those cases previously set for trial but continued by this or other Order, in order to address the current actual, and reasonably anticipated future,

profound difficulties or impossibility in defense counsel quickly and effectively communicating with or visiting with detained clients (including those detained in locales under a declared state of emergency and/or where access to jails or detention centers for physical counsel visits is limited and in some cases prohibited with no currently anticipated date for resumed “normal” operations) for the purposes of trial preparation and consultation between client and counsel, along with the inherent delay in the scheduling and rescheduling of criminal trials as a consequence of the exclusion period herein and as contained in prior Orders of this Court. The Court may by further Order extend or modify the period of exclusion as circumstances may warrant, and the assigned judicial officer may by Order also do so relative to any specific proceeding.

7. Individual judicial officers may hold hearings, conferences, sentencings, change of plea hearings, and bench trials in the exercise of their sound discretion, consistent with the principles of this Order and the other Administrative Orders of this Court, and after such reasonable consultation with counsel as they may deem appropriate. Such proceedings may be held via video/telephone conference as permitted by law, or at the appropriate time in person if such becomes appropriate in the then-existing circumstances as to Court operations and as to public health and safety considerations and directives and advisories from relevant public health authorities (including as to the limitation for health and safety reasons on the movement of detained persons to and from detention centers), and as those matters may evolve.

8. All judicial officers are encouraged to continue to conduct proceedings by telephone or video conferencing wherever in their judgment doing so is practicable in a given case and on terms as permitted by law, and to take reasonable measures to avoid the necessity of out-of-town travel (especially by public conveyance) of any litigant, counsel or the public. In furtherance of this Court’s Alternative Dispute Resolution (“ADR”) Policies and Procedures, the

designated ADR neutral in any proceeding is hereby authorized to permit participation in any ADR proceeding via video and telephone conference, if in their judgment such will be effective and doing so will minimize travel (especially by public conveyance) by any participant. All judicial officers are encouraged to continue to minimize the need for the personal physical appearance of a detained person at any proceeding for the protection of the health of such detained person, counsel and the public, unless such personal physical appearance is otherwise appropriate and required by law.

9. Criminal matters before Magistrate Judges, such as initial appearances, arraignments, detention hearings, and the issuance of search warrants, shall continue utilizing such procedures as they or the Court may direct which are consistent with the tenor of this Order. Central Violations Bureau proceedings may be conducted, rescheduled or continued at the direction of the Chief Magistrate Judge.

10. Grand juries shall meet as may be directed by further Order of the Court. Naturalization proceedings necessary to preserve the substantial and urgent interests of those to be naturalized may be conducted so long as such occurs in conformity with applicable public health advisories, are limited in time and scope to the minimum necessary, and are limited in attendance to only those necessary to the administration of an oath of citizenship or as may otherwise be required by law.

11. Formal proceedings of the Court's RISE, Veterans', and BRIDGES Court Programs are held in abeyance until further Order. The respective "special court" teams and the Probation Office may, at their election, conduct informal sessions and/or supervision via video or teleconference as they deem appropriate.

12. Non-case related meetings and events scheduled to occur at a Court facility prior to September 8, 2020 shall be rescheduled to a later date via the appropriate Court office, unless otherwise authorized by the Court. The Clerk's Office, Probation Office, and all other Court offices and services shall otherwise remain open subject to further Order of the Court. The Chief Judge of the Bankruptcy Court for this District shall enter such Orders as she deems appropriate for the conduct of that Court's business.

13. This Order amends and updates this Court's Administrative Orders of March 13, 2020 and April 16, 2020 on these matters and is subject to amendment or modification in any regard by further Order.

s/ Mark R. Hornak
Mark R. Hornak
Chief United States District Judge

May 29, 2020