

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

In the matter of

SUSPENSION OF COURT
PROCEEDINGS EFFECTIVE
MARCH 30, 2020

**MISCELLANEOUS
GENERAL ORDER
No. 20-11**

This Miscellaneous General Order replaces and supersedes the Court’s Miscellaneous General Order 20-10 concerning changes to Court operations and deadlines during the coronavirus disease (COVID-19) pandemic. As of the date of this Order, the President of the United States has declared a national emergency in response to the outbreak of COVID-19. The Governor of the State of Alaska declared a public health disaster emergency in response to the COVID-19 pandemic. Additionally, several municipalities throughout Alaska have declared states of emergency in response to confirmed cases of COVID-19 in Alaska. Except for individuals engaged in supporting critical infrastructure or essential services, federal, state, and local authorities have urged and—in the case of Alaska residents—have ordered individuals to avoid leaving their homes, not to participate in any public or private gatherings that include any number of non-household members, not to travel between communities, and to practice “social-distancing” when in public.

On March 24, 2020, the Judicial Council of the Ninth Circuit issued its Policy Regarding Electronic Conduct of Court Proceedings During the COVID-19 Virus Outbreak. The Policy authorizes district courts to restrict public access to courthouses and provide public access to proceedings through electronic means until further notice.

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 judges in their districts to conduct certain criminal proceedings by video or audio conference. The President signed the CARES Act into law on March 27, 2020. 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 due to the national emergency declared by the President under the National Emergencies Act with respect

to COVID-19 have materially affected and will materially affect the functioning of the federal courts generally.”

The Court has considered the guidance issued by the Judicial Conference of the United States, the Judicial Council of the Ninth Circuit, and public health officials across the nation. The Court has also weighed the right of the public and media to access the Court against the compelling interest of protecting the safety of the public, including the health of all those entering and working in the Court. In light of these considerations, the Court supersedes Miscellaneous General Order 20-10 and orders as follows:

A. Criminal Matters:

1. All Grand Jury proceedings scheduled to be held from February 18, 2020, through May 19, 2020, are continued. Pursuant to 18 U.S.C. § 3161(b), any case charged by complaint from February 18, 2020, to May 19, 2020, shall have an additional 30 days from the date of arrest for filing of the indictment. Due to health and safety concerns regarding the COVID-19 virus and the requirement of grand jurors to travel, sit in close proximity to one another, and interact with counsel and court staff, the Court finds that the resulting period of delay from February 18, 2020, through May 19, 2020, serves the ends of justice in a manner that outweighs the best interest of the public and the defendant in a speedy trial. Accordingly, the delay shall be excluded in computing the time within which an indictment must be filed pursuant to 18 U.S.C. § 3161(h)(7)(A) and (B)(i). Unless further delay is excluded by order of the Court, the government shall have a total of 60 days from May 19, 2020, to file an indictment in any case charged by complaint from February 18, 2020, to May 19, 2020.
2. To protect the constitutional right of defendants to a speedy trial and pursuant to Federal Rules of Criminal Procedure 5 and 10, the Court will continue to hold initial appearances and arraignments in criminal cases without unnecessary delay. Judges should conduct such proceedings by video conferencing, or telephone conferencing if video conferencing is not reasonably available for use.
3. Initial Appearance for individuals arrested in the District of Alaska pursuant to a federal complaint will occur at 9:00 a.m. the day following the arrest. The arresting agency will transport and maintain custody of the defendant until he or she is placed in the custody of

the U.S. Marshals Service at the end of the Initial Appearance. The Detention Hearing will be scheduled for 2:00 p.m. or later that same day, depending upon the Court's availability. This schedule will allow the pretrial officer to interview the defendant between the time of the Initial Appearance and the Detention Hearing if the officer has been unable to obtain access to the defendant prior to that time. Where defendants are to appear via telephone or video teleconference, the assigned judge may need to adjust the timing for such appearances to accommodate defendants' limited access to telephone or video teleconference equipment.

4. All criminal jury trials scheduled to commence on or before May 1, 2020, are continued pending further order of the assigned judge. Judges may issue other orders concerning future continuances as necessary and appropriate. All trial-specific deadlines in criminal cases scheduled to begin on or before May 1, 2020, are continued pending further order of the assigned judge.
5. Except as directed by an individual judge, criminal proceedings, including sentencings, supervised release revocation hearings, motion hearings, plea hearings, misdemeanor bench trials, and all proceedings under Federal Rule of Criminal Procedure 5.1, are suspended until May 1, 2020.
6. All in-person status hearings for criminal cases are vacated. In those cases, counsel shall file a written joint status report within 14 days of this Order. If there is need for a status hearing due to emergency circumstances, counsel may make application to the court for a telephonic hearing.
7. Due to the outbreak of COVID-19, the following facts make a criminal jury trial impractical at this time:
 - (A) Petit juries in the District of Alaska are drawn from disparate, often remote, communities throughout the District, which may require some jurors to travel to Anchorage by airplane. Additionally, throughout the proceedings, jurors would be required to sit close to other jurors in the jury box and deliberation room. Thus, a jury cannot be safely empaneled for a criminal trial in light of the current pandemic.
 - (B) The Federal Bureau of Prisons and the Department of Corrections for the State of Alaska have restricted access to their correctional facilities for all visitors including

defense counsel. These new restrictions prevent defense attorneys from meeting with their clients to adequately prepare their defense for trial.

(C) In light of the current pandemic and the guidance issued by federal, state, and local public health authorities, it is not safe for counsel, witnesses, jurors, court staff, or members of the public to be present in the courtroom for a criminal trial.

Due to the foregoing facts, the time period of the continuances implemented by this General Order will be excluded under the Speedy Trial Act. The Court specifically finds that the ends of justice served by ordering the continuances outweigh the best interests of the public and any defendant's right to a speedy trial, pursuant to 18 U.S.C. § 3161(h)(7)(A), (B)(i), and (B)(iv). Any motion by a criminal defendant seeking an exception to this Order to exercise that right should be directed to the District Judge assigned to the matter. Absent further order of the Court, the period of the exclusion shall be from March 16, 2020, through May 1, 2020.

8. Judges may hold, and shall prioritize, any critical criminal proceeding which cannot be postponed without substantially prejudicing either party or irreversibly impeding the fair administration of justice. Judges should conduct such proceedings by video conferencing, or telephone conferencing if video conferencing is not reasonably available for use, where practicable and consistent with the law.
9. Acting pursuant to § 15002(b) of the CARES Act and the authority granted by the Judicial Conference of the United States, the Chief Judge finds that emergency conditions due to the COVID-19 outbreak will materially affect the functioning of the courts within this judicial district. Thus, pursuant to the authority granted under § 15002(b)(1) of the CARES Act, the Chief Judge hereby authorizes judges in this district, with the consent of the defendant or the juvenile after consultation with counsel, to use video conferencing, or telephone conferencing if video conferencing is not reasonably available for use, for the following events:
 - (A) Detention hearings under 18 U.S.C. § 3142.
 - (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) 24 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 18 U.S.C. § 3148.
- (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.
- (J) Proceedings under 18 U.S.C. § 403 (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

Pursuant to § 15002(b)(2) of the CARES Act, the Chief Judge further specifically finds 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 in person without seriously jeopardizing public health and safety. As a result, if judges in individual cases find, for specific reasons, that felony pleas or sentencings in those cases cannot be further delayed without serious harm to the interests of justice, judges may, with the consent of the defendant or the juvenile after consultation with counsel, conduct those proceedings by video conference, or by telephone conference if video conferencing is not reasonably available. This authority extends to equivalent plea, sentencing or disposition proceedings under 18 U.S.C. § 403.

This authorization is effective for 90 days unless earlier terminated. If the emergency persists longer than 90 days, the Chief Judge will review the situation for possible extension of authority pursuant to the provisions of the CARES Act. Notwithstanding the foregoing, pursuant to the provisions 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 outbreak no

longer materially affect the functioning of either the Federal courts generally or the courts within this district.

10. Judges may otherwise take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties.

B. Civil Matters:

1. The Court finds that in response to the public health guidance for COVID-19, governmental agencies and businesses have instituted social distancing measures in the workforce by enforcing telework protocols, rotating staff, or temporarily suspending operations. Government attorneys, private attorneys, and clients have been impacted by these restrictions, closures, and cutbacks, making it difficult to proceed with discovery and other aspects of civil litigation as previously scheduled. Therefore, in order to avoid any default or prejudice to civil litigants, the Court imposes a stay on all civil matters for 30 days, unless otherwise ordered by the presiding judge in a specific case.
2. All civil jury trials scheduled to commence on or before May 1, 2020, are continued pending further order of the assigned judge. Judges may issue other orders concerning future continuances as necessary and appropriate. All trial-specific deadlines in civil cases scheduled to begin before May 1, 2020, are continued pending further order of the assigned judge.
3. In civil cases, no hearings scheduled between March 23, 2020, and May 1, 2020, will go forward except for emergency matters, such as requests for temporary restraining orders and preliminary injunctions, as ordered by the assigned judge. Any hearings on emergency civil matters will proceed by telephone or video only.
4. All in-person status hearings for civil cases scheduled between March 23, 2020, and May 1, 2020, are vacated. In those cases, counsel shall file a written joint status report. If there is need for a status hearing due to emergency circumstances, counsel may make application to the court for a telephonic hearing.

5. All civil filing deadlines are stayed pending further order of the assigned judge. Any party may seek relief from the stay by filing a motion establishing with good cause why the stay should be lifted as to that litigant's matter.
6. Judges may otherwise take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties.

C. Bankruptcy Matters:

1. General Orders 2020-3 and 2020-4 issued by the United States Bankruptcy Court for the District of Alaska remain in effect.
2. No hearings in bankruptcy appeals pending before the District Court scheduled to commence on or before May 1, 2020 will go forward except for emergency time-sensitive matters. In such case, counsel shall file a written joint status report describing the emergency circumstances and, if practicable, requesting a telephonic hearing.

D. Access by the Public:

1. All non-case related activities scheduled in the James M. Fitzgerald U.S. Courthouse in Anchorage, the U.S. Courthouse in Fairbanks, and the U.S. Courthouse in Juneau, are canceled until further notice. This includes naturalization ceremonies, attorney admission ceremonies, mock trials, CLE events, school tours, and all other non-case related gatherings.
2. In light of the guidance issued by the federal, state, and local government and to protect the health and safety of defendants, counsel, court staff, and the public, the James M. Fitzgerald U.S. Courthouse in Anchorage, the U.S. Courthouse in Fairbanks, and the U.S. Courthouse in Juneau, shall be closed to the public except to persons with a scheduled appointment or entering to submit a physical filing to the drop box located in the lobby of each courthouse.
3. If criminal or civil proceedings must be held, the public will be permitted to observe on a toll-free teleconference line. Dial-in information will be available in the individual docket of each case on PACER and on the court's calendar which shall be posted on the Court's website and in the lobby of each court house. Members of the public and media are strictly prohibited from recording or broadcasting any hearing, in whole or in part, in any fashion

or for any purpose. Further instructions and restrictions are set forth on the Court's website, which may change as necessary.

4. If criminal proceedings must be held, close family members of defendants, victims (as defined in 18 U.S.C. § 3771(e)(2)), close family members of victims, or anyone permitted by law to make a statement during the proceedings may do so by telephone or video conferencing. Defense counsel shall provide the dial-in/video connection information to persons who may make statements on the defendant's behalf. Counsel for the government shall inform the victim(s) and family members of the victim(s) of the opportunity to make a statement and shall provide the dial-in/video connection information to such persons.
5. All hearings conducted pursuant to this Order shall also be recorded by the Court using reliable means. Members of the public or the press may request that the Clerk's Office provide a duplicate of the audio record of any public proceeding. Until further notice, a duplicate of the audio record of any public proceeding held while the courthouse is closed to the public shall promptly be made available at no cost to the requestor. Fees will be applied when requesting additional duplicates of the same audio record.
6. Anyone with a scheduled appointment or who is otherwise required to appear in-person but believes they have mistakenly been denied entry, should proceed as follows:
 - Those represented by an attorney should contact their attorney;
 - Attorneys and pro se litigants scheduled to appear in court before a judge, should contact that judge's chambers or courtroom deputy (see court website at www.akd.uscourts.gov);
 - For all other matters or questions, please contact the Clerk's Office at (907) 677-6100 (Anchorage), (907) 451-5791 (Fairbanks), or (907) 586-7458 (Juneau).
7. Judges may otherwise take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties and members of the public.

E. Court Services and Employees:

1. The Clerk's Office lobby shall be closed to the public. Physical filings may be submitted in the drop boxes located in the lobby of each court facility near court security. Cash payments will not be accepted. The Clerk's Office will remain available by telephone, mail

will be received, and new filings will be processed.

2. All U.S. Probation and U.S. Pretrial Services offices will be closed to the public but will remain in operation. Drug testing and other supervisory activities will continue. A probation or pretrial services duty officer will answer questions telephonically at (907) 677-6170.
3. All court employees, including Clerk's Office staff, U.S. Probation and Pretrial Services staff, and Chambers staff, shall telework whenever possible except as otherwise directed by their supervisor. While teleworking, all employees shall contact their direct supervisor daily, or as directed by their supervisor, for accountability and information dissemination.
4. It may be necessary from time to time for court employees to be physically present at the courthouse to perform certain essential functions. While working in the courthouse, court employees are to practice social distancing and minimize face-to-face interactions with others to the extent practicable.

DATED this 30th day of March, 2020

/s/ Timothy M. Burgess

Hon. Timothy M. Burgess
Chief United States District Judge

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