

**UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

IN RE:)
REVISED TRANSITION PLAN FOR CIVIL) Amended Administrative Order 2020-11
AND CRIMINAL HEARINGS DURING)
PANDEMIC)

FIRST AMENDED ORDER

WHEREAS this Court continues to evaluate its response to the spread of the COVID-19 virus and recognizes the need to further clarify its role regarding the preservation of public safety and health while effectively administering justice during this period of national emergency;

WHEREAS the Judicial Conference of the United States (“JCUS”) has found under the CARES Act, H.R. 748 (“CARES Act”), that emergency conditions due to the national emergency declared by the President will materially affect the functioning of the federal courts generally;

WHEREAS on March 13, 2020, the Court adopted Administrative Order 2020-3 postponing non-emergency criminal cases and grand juries and excluding certain time under the Speedy Trial Act;

WHEREAS on March 30, 2020, the Court adopted Administrative Order 2020-4 finding that emergency conditions exist throughout this District, as found by the JCUS under the CARES Act, and authorized audio and video conferences as outlined in the CARES Act;

WHEREAS this Court is comprised of three divisional courthouses in Kansas City, Topeka and Wichita which span a distance of 200 miles, and there may be relevant differences in the severity of the COVID-19 outbreak;

WHEREAS the Centers for Disease Control and Prevention (“CDC”), the Administrative Office of United States Courts, and state and local governments issued guidelines for purposes of making local decisions on operational status based on local data as conditions change;

WHEREAS certain people are more vulnerable to the COVID-19 virus because of the age or health conditions of themselves or those with whom they reside; and

WHEREAS custodial defendants in particular have living arrangements that do not allow for social distancing or other recognized forms of disease prevention rendering them at an increased risk of virus transmission;

NOW, THEREFORE, the Court hereby adopts the following Order:

1. In consultation with the Clerk of Court, the Chief Judge will continue to monitor and review the relevant data to determine if the Court is adequately preserving the public health and safety in the functioning of the justice system. The Administrative Orders may change to reflect the current conditions.

Presiding Judge Discretion to Conduct Courtroom Hearings in Civil and Criminal Cases

2. Giving due consideration to public health and safety, the nature of the hearing, the interest of those involved, the protective measures in place in the courthouse and courtroom, and the general interests of justice, the presiding judge has the discretion to conduct courtroom hearings in civil and criminal cases.

Protective Measures

3. In conducting courtroom hearings, this Court will take reasonable protective measures to ensure the safety and health of parties, attorneys, court personnel, and other courtroom participants, including but not limited to: providing plexiglass and physical barriers, providing sanitizers and wipes, requiring social distancing, requiring wearing of masks or face shields when doing so does not impede communication, and, when practical, sanitizing of exposed areas between hearings. The presiding judge has the discretion to determine what reasonable measures should be taken, giving due consideration to the health and safety of all persons in the courtroom and the recommendations of the Facility Security Committee and Court Security Committee.

Presiding Judge Discretion to Conduct Hearings by Video and Teleconferencing

4. Pursuant to the CARES Act and the Recovery Guidelines, the presiding judge has the discretion and is strongly encouraged to use video and teleconferencing in criminal hearings, especially for those cases involving custodial defendants. The presiding judge also has the discretion to use video and teleconferencing in civil hearings or trials.

Motions for Continuance

5. The court is mindful that in-person hearings may pose heightened risks to some parties, counsel or witnesses. Motions for continuance that are based in whole or in part on particularized health conditions of a party, counsel or witness need not include detailed medical information, but such motions must include sufficient information to allow the presiding judge to determine the length of the continuance, whether the hearing should be conducted in-person with particular protective measures, or whether the hearing should be conducted remotely by video or teleconferencing. To that end, while such motions need not include detailed medical information, they must include a request for the specific accommodation sought. In a criminal case, the period of postponement caused by the motion will be excluded under the Speedy Trial Act as the Court specifically finds that for public safety reasons, the ends of justice served by granting the continuance outweigh the best interest of the public and the defendant in a speedy trial, pursuant to 18 U.S.C. section 3161(h)(7)(A).

CARES Act Authorizations for Video or Teleconferencing Hearings

6. Pursuant to the CARES Act, the Chief Judge of this Court hereby authorizes the use of videoconferencing, or teleconferencing if videoconferencing is not reasonably available, 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.

Under section 15002(b)(4) of the CARES Act, the presiding judge may use this authorization only upon the consent of the defendant after consultation with counsel. Such consultation with counsel may be accomplished by remote means, including but not limited to video or teleconference. Absent consent of the defendant, the presiding judge may hold a courtroom hearing or continue the hearing, in the judge’s discretion, giving due consideration to public health and safety, and the interests of justice. Because the hearings under section 15002(b)(4) must be conducted without undue delay, if the defendant does not consent to hearing by video or teleconference, the presiding judge has the discretion to conduct a courtroom hearing with the defendant present, irrespective of Paragraph 5 of this Order. Any time periods of postponement caused by the defendant not consenting to a remote hearing will be excluded under the Speedy Trial Act, as the Court specifically finds that for public safety reasons, the ends of justice served by granting this continuance

outweigh the best interest of the public and the defendant in a speedy trial, pursuant to 18 U.S.C. section 3161(h)(7)(A).

7. Pursuant to the CARES Act and Paragraphs 1 through 5 of this Order, if the presiding judge in a particular case determines that felony pleas and/or sentencing hearings cannot be conducted in the courtroom without seriously jeopardizing public health and safety, then this Court authorizes on its own motion the use of videoconferencing, or teleconferencing if videoconferencing is not reasonably available, in the criminal procedures specifically enumerated in section 15002(b)(2)(A) of the CARES Act, to wit: 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. Under section 15002(b)(2)(A) of the CARES Act, the presiding judge must find for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice. Further, under section 15002(b)(2) of the CARES Act, the presiding judge may use this authorization only upon the consent of the defendant after consultation with counsel. Such consultation with counsel may be accomplished by remote means, including but not limited to video or teleconference. Any time periods of postponement caused by the defendant not consenting to a remote hearing will be excluded under the Speedy Trial Act, as the Court specifically finds that, for public safety reasons, the ends of justice served by granting this continuance outweigh the best interests of the public and the defendant in a speedy trial, pursuant to 18 U.S.C. section 3161(h)(7)(A).
8. As noted in Administrative Order 2020-10, the Chief Judge reviewed the CARES Act authorizations granted in Administrative Order 2020-4 and pursuant to section 15002(b)(3) of the CARES Act, the aforementioned authorizations are extended until the earlier of: (1) the date the Chief Judge determines the authorization is no longer warranted, (2) the date on which emergency authority granted by the JCUS is terminated, (3) the date authorization has been terminated pursuant to section 15002(b)(5) of the CARES Act, or (4) December 9, 2020. If this authorization has not been terminated before December 9,

2020, this Court will repeatedly review this authorization and determine whether to extend it, in a frequency not to exceed 90 days.

Supersedes Administrative Orders 2020-3, 2020-4, 2020-10 and 2020-11

9. This Order supersedes Administrative Orders 2020-3, 2020-4, 2020-10 and 2020-11.

SO ORDERED this 1st day of September 2020.

s/

JULIE A. ROBINSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT