

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

Miscellaneous Case No. 2:20-mc-00052



**IN RE: COURT OPERATIONS IN LIGHT OF
THE EXIGENT CIRCUMSTANCES
PRESENTED BY THE COVID-19 PANDEMIC**

GENERAL ORDER #10

Since March 13, 2020 a series of General Orders have been entered modifying court operations in light of the exigent circumstances created by the COVID-19 pandemic. From that time through June 30, 2020, petit jury trials and most grand jury meetings were postponed. By General Order #7 entered on June 25, 2020, petit jury trials and grand jury matters were permitted to resume in light of the status of the presence of COVID-19 in the community and taking into account guidance from public health authorities. Between July and mid-September, several jury trials and grand jury meetings occurred throughout the district, with safety protocols in place intended to minimize the possibility that participants may be exposed to the virus. However, on September 18, 2020, in response to a rise in the spread of the virus in the community, the Court issued General Order #9 continuing all jury matters until

further notice. In addition, the grand jury meetings scheduled for the months of September and October were continued.

The Court adopts its previous findings on this matter contained in the prior orders. The Court further finds that over the past few weeks, the presence of the virus in the community has demonstrated exponential growth well above what was seen at the time the Court entered General Order #9. According to figures available from the West Virginia Department of Health and Human Resources¹, the number of current hospitalizations is more than triple what it was on September 18, 2020, and all other markers, such as daily case counts, daily case positivity percentage, and deaths, have all shown sharp increases. All of the counties that comprise the Southern District of West Virginia are considered to be at a higher risk level for indoor in-person activities. Courts around the nation have struggled to conduct trial proceedings safely in this environment.²

Given the current status of the virus spread in the community, coupled with the increasingly strident warnings by government health officials, the Court is mindful of the need to use a particularly cautious approach to resuming court activities, paying careful attention to the extent of community spread. Petit jury trials and grand jury meetings, in particular, require large groups of individuals from throughout the district to travel and assemble indoors, often in close proximity

¹ The figures quoted are available at: West Virginia Department of Health and Human Services “Coronavirus Disease 2019” <https://dhhr.wv.gov/COVID-19/Pages/default.aspx> (last visited December 3, 2020).

² See e.g. “Only 9 Trials in 9 Months: Virus Wreaks Havok on N.Y.C. Courts” <https://www.nytimes.com/2020/12/02/nyregion/courts-covid.html> (New York Times, Dec. 2, 2020); “COVID-19 Outbreak Leads to Mistrial in EDTX” <https://www.law360.com/articles/1329617> (Katie Buehler, Nov. 17, 2020).

to each other. Other court proceedings that involve fewer individuals may continue to be conducted remotely using videoconferencing and other technologies, or, in the discretion of the presiding judicial officer, may be conducted in-person in accordance with social distancing and other safety guidelines. In light of these circumstances, the Court is of the opinion that the restrictions on petit jury trials and grand jury meetings should continue.

IT IS THEREFORE ORDERED, that this Court's previous directive issued on September 21, 2020 shall remain in full force and effect, and all civil and criminal petit jury selections and trials scheduled to commence before any district or magistrate judge in the Southern District of West Virginia are CONTINUED until further order of the Court. Resumption of petit jury selections and trials will be carefully considered after reviewing the status of community spread in the District and the recommendation of state and national public health authorities; and it is further

ORDERED that with regard to criminal trials, due to the Court's reduced ability to obtain an adequate spectrum of petit jurors and the effect of the above public health recommendations on the availability of counsel and Court staff to be present in the courtroom, the time period of the continuances implemented by this Order will be excluded under the Speedy Trial Act, as the Court specifically finds that the ends of justice served by ordering the continuances outweigh the best interests of the public and each defendant in a speedy trial, pursuant to 18 U.S.C. § 3161(h)(7)(A); and it is further

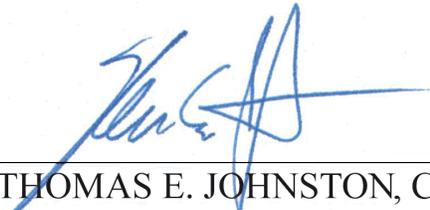
ORDERED that all grand jury meetings currently scheduled for the remainder of the month of December are CONTINUED, and grand jury meetings scheduled to be held in calendar year 2021 will be evaluated on a case-by-case basis in light of the circumstances in the relevant community; and it is further

ORDERED that all other civil and criminal proceedings in the U.S. District Court for the Southern District of West Virginia, may be conducted in-person in the discretion of the presiding judicial officer, provided that the in-person proceeding is conducted in a manner that complies with social distancing and other safety guidelines. The courtrooms of the district are all marked with social distancing locations, and the presiding judicial officer has authority and discretion to require the participants and officials who are present at any in-person court proceeding to comply with any additional precautions that are deemed necessary under the circumstances. Where practical, presiding judicial officers may continue the use of existing videoconferencing and other technologies to conduct court proceedings in accordance with prior directives of the Court; and it is further

ORDERED that the mask-wearing requirements of General Order #8 remain in full force and effect, and the courthouse entry restrictions set forth in General Order #2 remain in full force and effect, and it is finally

ORDERED that the United States Marshal, his Deputies, and the Court Security Officers shall enforce this order and deny entry to those individuals not wearing a mask.

SO ORDERED this 4th day of December, 2020.



THOMAS E. JOHNSTON, CHIEF JUDGE