

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

In the matter of

EASING RESTRICTIONS ON
COURT PROCEEDINGS
EFFECTIVE APRIL 5, 2021

**MISCELLANEOUS GENERAL
ORDER 21-09**

On March 30, 2020, the Court issued Miscellaneous General Order 20-11 concerning changes to Court operations and deadlines during the COVID-19 pandemic. Additionally, on April 7, 2020, the Court issued Miscellaneous General Order 20-12 concerning expedited detention hearing procedures. Since April 20, 2020, the Court has issued Miscellaneous General Orders 20-13, 20-17, 20-20, 20-24, 20-27, 20-29, 20-34, 20-38, **20-40**, and most recently, **21-05**, which modified the operations, and procedures and extended those continuances, to *April 5, 2021*.

Alaska is experiencing reduced COVID-19 case counts and all Alaskans over the age of 16 are now eligible to receive a COVID-19 vaccination.¹ According to the State of Alaska, 31% of Alaskans age 16 and over have received at least one dose of the vaccine, including frontline workers and those most vulnerable to COVID-19, and 21.6% of Alaskans are fully vaccinated.² Effective February 14, 2021, the State of Alaska allowed its Public Health Disaster Emergency Declaration to expire as the State carefully transitions to the next phase of easing restrictions due to the outbreak of the COVID-19 virus. These changes include lifting certain travel restrictions as set out in Health Advisory Nos. 2 and 3. Effective March 8, 2021, the Municipality of Anchorage issued Emergency Order 19, which carefully lifts capacity restrictions and eases gathering limitations while protecting core public health measures. Effective March 16, 2021, the Anchorage School District reopened to all K-12 students.³

¹State of Alaska, *COVID-19 Vaccine Status Update*, <http://dhss.alaska.gov/dph/epi/id/pages/COVID-19/vaccine.aspx> (last visited Mar. 29, 2021).

²State of Alaska *Vaccine Monitoring Dashboard*, <https://experience.arcgis.com/experience/c74be37e02b44bb8b8b40515eabbab55> (last visited Mar. 30, 2021).

³Anchorage School District, *COVID-19 Information*, <https://www.asdk12.org/domain/5368> (last visited Mar. 18, 2021).

The Court must balance public health and safety with its duty to protect litigants' rights and to resolve cases. Certain public health mandates imposed by the State of Alaska and local communities, including a "social distancing" advisory, remain in effect to continue protecting public safety and preventing the spread of COVID-19. The Court continues to monitor circumstances in the District of Alaska and to reevaluate its operations plan in light of the rapidly evolving situation. While the Court finds that the pandemic continues to materially affect the functioning of the District of Alaska Court, the Court finds that with appropriate precautions, a limited number of proceedings can now be conducted in-person without seriously jeopardizing public health and safety.

Accordingly, effective April 5, 2021, a limited number of felony sentencings, felony changes of plea, and initial appearances/arraignments/preliminary hearings may be conducted in-person; all other criminal proceedings will be conducted by videoconference or by telephone with the consent of the defendant. All civil proceedings will be conducted by videoconference or by telephone, unless otherwise ordered. Because of the unique challenges of jury selection, jury trials in both criminal and civil cases are continued until *May 3, 2021*, unless excepted by the assigned Judge in particular cases in accordance with paragraph A.5. or B.3.

The Court anticipates and the parties should be prepared for criminal and civil jury trials proceeding on a limited basis beginning May 3, 2021.

Beginning April 5, 2021, the parties shall resume providing Chambers Copies of all filings as required by Local Civil or Criminal Rules. Mandatory Chambers Copies may be placed in the Court's drop box, mailed as permitted, or hand-delivered to the Clerk's Office.

The Court hereby orders that certain continuances, operations, and procedures established in the prior Miscellaneous General Orders shall be modified as further specified below. Any changes from prior orders implemented by this Order are *italicized and bolded* for ease of identification. Specifically, the Court orders as follows:

A. Criminal Matters

1. [REMOVED]
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,

arraignments, and preliminary hearings in criminal cases without unnecessary delay. Judges will continue to conduct such proceedings by videoconference *with the consent of the defendant*, unless otherwise ordered by the assigned judge.

3. [REMOVED]
4. All criminal jury trials scheduled to occur before **May 3, 2021**, are continued, except those criminal jury trials that the assigned Judge may select to proceed under paragraph A.5. Judges may issue other orders concerning future continuances as necessary and appropriate. All trial specific deadlines in criminal cases scheduled to begin before **May 3, 2021**, are continued pending further order of the assigned judge. Pretrial deadlines, such as motion deadlines, will remain in effect.
5. The Court anticipates and the Parties should be prepared for criminal jury trials proceeding on a limited basis *beginning May 3, 2021*. Although all criminal jury trials scheduled to occur before **May 3, 2021**, are continued, assigned Judges may make exceptions as justice requires.
6. [REMOVED]
7. [REMOVED]
8. [REMOVED]
9. 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 courthouses by airplane.

(B) The Federal Bureau of Prisons and the Department of Corrections for the State of Alaska *had previously* restricted access to their correctional facilities for all visitors including defense counsel. These restrictions prevented defense attorneys from meeting with their clients to adequately prepare their defense for trial. *However, effective March 17, 2021, the Department of Corrections for the State of Alaska has eased restrictions for access to its correctional facilities allowing counsel to*

*begin resuming meeting with their clients, so long as the client is fully vaccinated.*⁴ *This will facilitate the Court's ability to begin resuming criminal jury trials in the near future.*

(C) [REMOVED]

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 3, 2021*.

The Court is actively monitoring the current state of the pandemic and developing strategies to mitigate the challenges described above.

10. 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 will conduct such proceedings by videoconferencing, or telephonically if videoconferencing is not reasonably available, *with the consent of the defendant*, unless otherwise ordered.
11. The expedited procedure governing motions for release of pretrial and presentence defendants based on the COVID-19 pandemic set forth in Miscellaneous General Order 20-12 shall remain in effect until at least *May 3, 2021*.
12. Acting pursuant to § 15002(b) of the CARES Act and the authority granted by the Judicial Conference of the United States, Miscellaneous General Order 20-13 found that emergency conditions due to the COVID-19 outbreak will materially affect the functioning of the courts within this judicial district. *On February 24, 2021, the President notified Congress that the pandemic continues to cause significant risk to the public health and safety of*

⁴ *Department of Corrections Press Release, <https://doc.alaska.gov/commish/pressreleases/Press%20Release%20-%20DOC%20Reopens%20Attorney-Client%20Visitation%20to%20Fully%20Vaccinated%20Inmates.pdf> (last visited Mar. 18, 2021).*

*the nation, continuing the national emergency concerning the COVID-19 pandemic beyond March 1, 2021.*⁵ Thus, pursuant to the authority granted under § 15002(b)(1) of the CARES Act, Miscellaneous General Order 20-13 authorized 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 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) 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, Miscellaneous General Order 20-13 further specifically found 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

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White House Letter on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/24/a-letter-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/> (Feb. 24, 2021) (last visited Mar. 16, 2021).

Procedure could not 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 was initially effective for 90 days as of May 1, 2020, as established by Miscellaneous General Order 20-13, and pursuant to the authority granted in § 15002(b)(3) of the CARES Act, the Chief Judge reauthorized the use of video or telephone conferencing for additional 90 day periods as set forth in Miscellaneous General Orders 20-20, 20-29, 20-40, *and 21-05*, unless earlier terminated. *The 90-day extension authorized by Miscellaneous General Order 21-05 expires on May 12, 2021. However, acting pursuant to § 15002(b), the Chief Judge finds that emergency conditions due to the COVID-19 outbreak persist and continue to materially affect the function of the courts within this judicial district. The Chief Judge specifically finds that while the number of active COVID-19 cases in the District of Alaska has decreased since Miscellaneous General Order 21-05 was issued, the threat of this virus and emerging variants remains. Reauthorization under the CARES Act will permit the proceedings listed above to proceed by videoconference or by telephone if videoconferencing is not reasonably available, at the discretion of and with specific findings made by individual judges.*

The Chief Judge finds that a limited number of proceedings can safely take place in person at this time; but the Chief Judge also finds that the continued use of videoconferencing, and telephone conferencing when videoconferencing is not reasonably available, for most hearings is necessary to prevent seriously jeopardizing public health and safety. In addition, neither the President nor the Judicial Conference of the United States have terminated the emergency authority under § 15002(b)(5). Thus, pursuant to the authority granted in § 15002(b)(3), the Chief Judge reauthorizes the use of videoconferencing, or telephone if videoconference is not reasonably available, as set forth above, and in Miscellaneous General Orders 20-13, 20-20, 20-29, 20-40, and 21-05

for an additional 90 days from the date of this Miscellaneous General Order, 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.

13. 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 recognizes that COVID-19 *restrictions* may still impact attorneys and their clients, making it difficult to proceed with discovery and other aspects of civil litigation as previously scheduled. Accordingly, motions for further extensions of time may be made to the judge assigned to the matter.
2. All civil jury trials scheduled to commence before *May 3, 2021*, are continued pending further order of the assigned judge. The parties are encouraged to consider alternative avenues for resolution, including bench trials or consent to trial by Magistrate Judge, in light of the suspension of jury trials. Judges may issue other orders concerning future continuances as necessary and appropriate. All jury trial-specific deadlines in civil cases scheduled to begin before *May 3, 2021*, are vacated pending further order of the assigned judge.
3. Although civil jury trials scheduled to occur before *May 3, 2021*, are continued, assigned Judges may make exceptions as Court resources allow and as justice requires.
4. *All civil proceedings shall be conducted by video conference or telephone, unless otherwise ordered. The parties may request to proceed in an in-person hearing.*

5. Outside of Court proceedings, parties to civil matters are encouraged to proceed by telephone or video conference where practicable. Depositions scheduled to occur before **May 3, 2021**, should proceed via video conference, unless the parties otherwise agree or the Court orders otherwise. Any disputes concerning scheduling or virtual accommodations may be resolved by application to the Court.
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, 2020-4, 2020-6, 2020-7, 2020-8, and 2020-9 issued by the United States Bankruptcy Court for the District of Alaska remain in effect.
2. All bankruptcy proceedings shall be conducted by video conference or telephone, unless otherwise ordered. The parties may request to proceed in an in-person hearing.

D. Access by the Public:

1. All non-case related activities scheduled in the James M. Fitzgerald U.S. Courthouse in Anchorage, and U.S. Courthouses in Fairbanks and 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. ***After careful consideration of the*** guidance issued by the federal, state, and local government, ***including state and local restrictions regarding public services and gatherings, and the Court's pandemic mitigation efforts*** to protect the health and safety of defendants, counsel, court staff, and the public, ***effective April 5, 2021***, the James M. Fitzgerald U.S. Courthouse in Anchorage and the U.S. Courthouses in Fairbanks and Juneau shall ***be open*** to the public. Anyone entering the Courthouse must comply with the Court's social distancing and personal protective equipment requirements, including the requirement to wear a face covering as set out in Miscellaneous General Order 20-32. ***The library is open to the public by appointment only. Library contact information is as follows: anchoragelibrary@lb9.uscourts.gov or phone 907-271-5655.***
3. When criminal or civil proceedings are held in-person, the public will be permitted to observe in-person as space allows while maintaining social distancing in the designated

courtroom. If a courtroom does not have sufficient space for socially-distanced spectators, a live stream of the proceedings shall be available for public viewing in another room at the courthouse. ***Beginning April 5, 2021, public access to virtual proceedings shall be in person at the courthouse; the public access telephone line will no longer be used, unless otherwise ordered.***

4. In criminal proceedings, 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. ***For remote proceedings***, Defense counsel shall provide the dial-in/video connection information to persons who may make statements on the defendant's behalf, and 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. ***For in-person proceedings, counsel shall notify the Court in advance of the hearing that there are person(s) seeking to participate at that proceeding by telephone or video conference.***
5. [REMOVED]
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, please contact your 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. ***Effective April 5, 2021***, the Clerk's Office lobby shall be ***open*** to the public. ***For those wishing to submit physical filings without visiting the Clerk's Office, the drop boxes located in the lobby of each court facility near court security will remain available. The***

finance and receipting schedule shall return to normal. All staff and visitors will continue to adhere to social distancing and masking requirements.

2. *Effective April 5, 2021*, all U.S. Probation and U.S. Pretrial Services offices will be *open* to the public. *All staff and visitors will continue to adhere to social distancing and masking requirements.*
3. *Court employees, including Clerk’s Office staff, U.S. Probation and Pretrial Services staff, and Chambers staff, will return to work at the courthouse on any given day; others may continue to* telework as 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. While working in the courthouse, court employees are required to wear face-coverings as set out in Miscellaneous General Order 20-32, to practice social distancing and minimize face-to-face interactions with others to the extent practicable.

DATED this 31st day of March, 2021.

/s/ Timothy M. Burgess
Hon. Timothy M. Burgess
Chief United States District Judge

/s/ Sharon L. Gleason
Hon. Sharon L. Gleason
United States District Judge

/s/ Joshua M. Kindred
Hon. Joshua M. Kindred
United States District Judge

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