

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

In the matter of

SUSPENSION OF COURT
PROCEEDINGS EFFECTIVE
DECEMBER 23, 2020

**MISCELLANEOUS GENERAL
ORDER 20-40**

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, and most recently, 20-38, which modified the operations, and procedures and extended those continuances, to January 4, 2021.

In recent weeks, the infection rate in Alaska has exponentially increased with a sustained high number of active COVID-19 cases and increased hospitalizations. Effective **December 16, 2020**, Alaska Governor Mike Dunleavy issued a *new* Public Health Disaster Emergency Declaration due to the outbreak of COVID-19 *virus occurring throughout the state, as evidenced by the current significant and widespread community transmission of the virus, and record daily numbers of new cases*. The Court must balance public health and safety with its duty to protect litigants' rights and to resolve cases. Therefore, in consideration of certain public health mandates imposed by the State of Alaska and local communities, including a "social distancing" advisory, and to continue protecting the public safety and preventing the spread of COVID-19, the Court hereby orders that certain continuances, operations and procedures established in prior orders shall remain in effect until at least **March 1, 2021**. The Court continues to monitor the circumstances in the District of Alaska and reevaluate its operations plan in light of the rapidly evolving situation.

Accordingly, the Court will *continue to* hold most proceedings via video or teleconference. Individual judges may order certain hearings to proceed in-person, if necessary, with proper restrictions such as social distancing within the courtrooms and wearing personal protective equipment to continue to protect the public safety and prevent the spread of COVID-19. Because of the unique challenges of jury selection, jury trials in both criminal and civil cases are continued

until at least ***March 1, 2021***, unless excepted by the assigned Judge in particular cases in accord with paragraph A.5. or B.3. 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 should conduct such proceedings via video or teleconference, unless otherwise ordered by the assigned judge.
3. [REMOVED]
4. All criminal jury trials scheduled to occur before ***March 1, 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 on or before ***March 1, 2021***, are continued pending further order of the assigned judge. Pretrial deadlines, such as motion deadlines, will remain in effect. If an evidentiary hearing is required, the parties should jointly inform the court if they are willing to conduct the evidentiary hearing by video conference.
5. The Court anticipates and the Parties should be prepared for criminal jury trials proceeding on a limited basis after ***March 1, 2021***. Although all criminal jury trials scheduled to occur before ***March 1, 2021***, are continued, assigned Judges may make exceptions as justice requires.
6. Except as directed by an individual judge, in-person criminal proceedings, including sentencings, supervised release revocation hearings, motion hearings, plea hearings, and

misdemeanor bench trials are suspended until at least *March 1, 2021*. Unless the parties indicate otherwise, all in-person hearings will be vacated and reset.

7. Parties with currently set in-person hearings are encouraged to proceed by virtual appearance where a virtual appearance is practicable and consistent with the law. In order to proceed with a currently set hearing, the parties shall file a joint status report indicating their agreement to proceed by telephone or video conference and the defendant's waiver of physical appearance within 7 days of this Order.
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 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 prudent for counsel, witnesses, jurors, court staff, or members of the public to be present in the courtroom for a criminal jury 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 *March 1, 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 should conduct such proceedings in-person unless the assigned judge orders otherwise and determines that video conferencing, or telephone conferencing if video conferencing is not reasonably available for use, is practicable and consistent with the law.
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 *March 1, 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. 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 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 was initially effective for 90 days as of May 1, 2020, as established by Miscellaneous General Order 20-13. *Miscellaneous General Orders 20-20 and 20-29 reauthorized the use of video conferencing, or telephone conferencing, as set forth above and in Miscellaneous General Order 20-13 for two additional 90-day periods, unless earlier terminated. The 90-day extension authorized by Miscellaneous General Order 20-29 expires on January 26, 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 the number of active COVID-19 cases in the District of Alaska has not abated since Miscellaneous General Order 20-29 was issued, and that some of the highest daily increases have occurred in recent weeks. Reauthorization under the CARES Act will permit cases to proceed by video or telephone conference at the discretion of and with specific findings made by individual judges. 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 video conferencing, or*

telephone conference, as set forth above, and in Miscellaneous General Orders 20-13, 20-20, and 20-29, 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's stay on civil matters, including all filings under 18 U.S.C. §§ 2241, 2254, and 2255, expired on June 1, 2020. Except as otherwise ordered by the assigned judge in a particular case, any filing deadlines affected by the stay shall be extended to reflect the 60-day time period of the stay. The Court recognizes that COVID-19 measures 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 on or before **March 1, 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 **March 1, 2021**, are vacated pending further order of the assigned judge.

3. Although civil jury trials scheduled to occur before *March 1, 2021*, are continued, assigned Judges may make exceptions as Court resources allow and as justice requires.
4. In civil cases with in-person hearings scheduled to commence on or before *March 1, 2021*, the parties shall file either a joint status report within 14 days of this Order indicating their agreement to proceed with the hearing by telephone or video conference or a request for a new hearing date.
5. Outside of court proceedings, parties to civil matters are encouraged to proceed by telephone or video conference where practicable. Depositions scheduled to occur on or before *March 1, 2021*, should proceed via video conference. 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. No in-person hearings in bankruptcy appeals pending before the District Court scheduled to commence on or before *March 1, 2021*, will go forward. The parties are encouraged to proceed by telephone or video conference where practicable.

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. 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 and the U.S. Courthouses in Fairbanks and Juneau shall have limited access 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. 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.

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. A toll-free teleconference line will only remain available for the public to observe virtual proceedings. Dial-in information will be available in each case's individual docket on PACER and on the Court's calendar, which shall be posted on the Court's website. Phones must be muted and unless otherwise ordered, 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 and may change as necessary.
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. 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. [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. The Clerk's Office lobby shall be closed to the public except for those submitting physical filings 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 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 23rd day of December, 2020.

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

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