

THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

In the matter of

COURT OPERATIONS EFFECTIVE
NOVEMBER 1, 2021

**MISCELLANEOUS GENERAL
ORDER 21-24**

The Coronavirus Disease 2019 (“COVID-19”) pandemic continues to be an ongoing national emergency under the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* The Judicial Conference of the United States found that “emergency conditions due to the national emergency declared by the President with respect to COVID-19 will materially affect the functioning of the federal courts generally,” and this statement remains in effect today. The State of Alaska continues to report some of the nation’s highest per capita rates of COVID-19 virus transmission, cumulative case rate per 100,000 people, and hospitalization. The Court must balance public health and safety with its duty to protect litigants’ rights and to resolve cases.

THEREFORE, in consideration of the foregoing, the Court hereby orders that certain continuances, operations, and procedures established in MGO 21-22 shall be modified as further specified below. The Court makes these modifications as it works to resume in-person operations. This Order shall be the controlling Order on Court operations effective November 1, 2021, and supersedes prior MGOs to the extent they are inconsistent.

Judges retain discretion, on a case-by-case basis, to schedule in-person criminal proceedings and otherwise take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties. In doing so, judges must consider in each individual case whether convening an in-person hearing poses a serious threat to health and safety. Accordingly, effective November 1, 2021, individual judges may order certain hearings to proceed in person, if necessary, with proper restrictions to continue to protect public safety and prevent the spread of COVID-19.

Because of the unique challenges posed by jury selection, jury trials in both criminal and civil cases are continued until at least December 6, 2021, unless excepted by the assigned judge in a particular case in accord with paragraph A.4. or B.2.

A. Criminal Matters:

1. In consideration of the ongoing concerns outlined in this General Order and the necessity that Grand Jurors travel and sit in close proximity to one another, the Court finds that it is impractical to hold upcoming Grand Jury proceedings in a safe manner at a single location. Further, the Court finds that the safest method for conducting Grand Jury proceedings is to permit Grand Jurors to appear in the courthouse location nearest to their residence.

Accordingly, all Grand Jury proceedings scheduled to commence on or after November 16, 2021, will be held in a hybrid format, with both in-person and remote sessions. Grand Jurors residing near Anchorage will appear in person at the Anchorage courthouse. Grand Jurors residing closer to either Fairbanks or Juneau shall attend remotely from either the Fairbanks or Juneau courthouse, whichever is nearest to their residence. The Court will continue to actively monitor the COVID-19 situation in Alaska and will recommence Grand Jury sessions with all Grand Jurors appearing in Anchorage as soon as it is safe and practicable to do so. The Court requires all persons, regardless of vaccination status, to wear a mask inside the federal courthouses and encourages all individuals to practice social distancing where practicable.

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 may conduct such proceedings via video or teleconference, unless otherwise ordered by the assigned judge.

3. All criminal jury trials scheduled to occur on or before December 6, 2021, are continued, except those criminal jury trials that the assigned judge may select to proceed under paragraph A.4. 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 December 6, 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.

4. The Court anticipates, and the parties should be prepared, for criminal jury trials proceeding on a limited basis after December 6, 2021. Although most criminal jury trials scheduled to occur on or before December 6, 2021, are continued, assigned judges may make exceptions as justice requires.

5. As directed by the presiding judge, in-person criminal proceedings, including sentencings, supervised release revocation hearings, motion hearings, plea hearings, and misdemeanor bench trials may proceed on a limited basis with proper restrictions to continue to protect the public safety and prevent the spread of COVID-19.

6. Parties with currently set in-person hearings may file a motion and waiver to proceed by virtual appearance where a virtual appearance is practicable and consistent with the law.

7. The Court finds that the COVID-19 pandemic continues to materially affect the functioning of the Court and for the reasons set forth in MGO 21-22, makes a jury trial impractical at this time. Additionally, because of the unique challenges of jury selection in Alaska and logistical limitations due to COVID-19 safety protocols, 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 presiding judge assigned to the matter. Absent further order of the Court, the period of the exclusion shall be from October 4, 2021, through December 6, 2021.

The Court understands that continuing jury trials has and will continue to cause hardship for all parties. For criminal cases, presiding judges will hold trial setting status conferences as required. Prior to any status conference, parties are required to confer to determine if a stipulation can be entered to continue the trial date and toll time under the Speedy Trial

Act, which may eliminate the need for a status conference. Each presiding judge will make case-specific findings and enter an order (whether as part of a stipulation or as a standalone order).

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 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.

9. The provisions related to authorization under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) set out in MGO 21-22 remain in effect.

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. All civil jury trials scheduled to commence on or before December 6, 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 also issue orders concerning future continuances as necessary and appropriate. All jury trial-specific deadlines in civil cases scheduled to begin on or before December 6, 2021, are vacated pending further order of the assigned judge.

2. Although civil jury trials scheduled to occur on or before December 6, 2021, are continued, assigned judges may make exceptions as court resources allow and as justice requires.

3. All civil proceedings scheduled to occur on or before December 6, 2021, shall be conducted by video conference or telephone, unless otherwise ordered. The parties may request to proceed in an in-person hearing.

4. 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 December 6, 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.

5. 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 the 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. 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 masking requirements as set out in MGO 21-15. 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. 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. A toll-free teleconference line will remain available only for the public to observe virtual proceedings. 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, unless the presiding judge orders otherwise. For remote proceedings, 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. 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. 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, please 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).

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 and members of the public.

E. Court Services and Employees:

1. Effective November 1, 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 shall continue to adhere to masking requirements and practice social distancing where practicable.

2. Effective November 1, 2021, all U.S. Probation and U.S. Pretrial Services offices will be open to the public. All staff and visitors shall continue to adhere to masking requirements and practice social distancing where practicable.

3. Effective November 1, 2021, Court employees, including Clerk’s Office staff, U.S. Probation and Pretrial Services staff, and Chambers staff, shall return to work at the courthouse unless otherwise directed by their supervisor; 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 21-15, practice social distancing, and minimize face-to-face interactions with others to the extent practicable.

DATED this 29th day of October, 2021.

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

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