

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED
MARCH 30, 2020

In re: Court Operations under the Exigent
Circumstances Created by COVID-19 and
Related Coronavirus Health Conditions

General Order No. 88

GENERAL ORDER ON REMOTE HEARINGS BY VIDEO AND TELEPHONE CONFERENCING

This order authorizes the use of video and telephone conferencing technology in light of the COVID-19 emergency.

I. Authorization

Congress and the President have enacted the CARES Act, H.R. 748 temporarily authorizing the use of video and telephone hearings in criminal cases. Pursuant to section 15002(b)(1) of the Act, as Chief Judge, I hereby authorize the use of hearings by video (or telephone if video is not reasonably available) for all events listed in Section 15002 of the Act. These include: detention hearings, initial appearances, preliminary hearings, waivers of indictment, arraignments, probation and supervised release revocation hearings, pre-trial release revocation hearings, appearances under F.R.Crim.P. 40, misdemeanor pleas and sentencings, and juvenile hearings.

Pursuant to section 15002(b)(2) of the Act, I specifically find 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 in this District 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, the judges may, with the defendants' consent, use video conferencing for felony pleas and sentencings in those cases, and may use teleconferencing if video conferencing is not reasonably available.

Pursuant to Section 15002(b)(3) of the legislation, this authorization will remain in effect for 90 days unless terminated earlier. If emergency conditions continue to exist 90 days from the entry of this order, I will review the authorization and determine whether to extend it.

II. Initial Appearances and Arraignments

All five of the secure facilities most commonly used by the U.S. Marshals Service to detain defendants on orders of the District of Vermont now have the capability of providing a video transmission to the Burlington and Rutland courthouses. Courtroom 110 in Burlington is best suited for this purpose.

Upon consent of the defendant, initial appearances and arraignments will occur by video or by telephone if video is unavailable. The defendant will not be transported to the courthouse. Instead, he or she will appear on the video monitors in the courtroom or on a speaker phone.

The court anticipates that defense counsel will confer privately with defendants by telephone prior to the hearing. If there is a need for a private discussion between the defendant and defense counsel during the hearing, all video connections will be placed on mute by court staff except the connection between defense counsel and the defendant. The defense counsel will signal when the conference is complete, and the hearing may resume. In the event of a telephone hearing, all connections will be terminated except the line between the defendant and defense counsel. The connection of all parties will be reestablished after the private discussion is complete.

At present the court does not have the capacity to provide remote video or phone access to defense counsel, the Government, or the judges. In-person attendance in court will be necessary for initial appearance and arraignment. The court will revise this order if the use of multiple images from multiple locations becomes available.

The parties are strongly encouraged to address issues related to detention or release at the initial appearance or arraignment and to avoid when possible requests for a subsequent detention hearing pursuant to 18 U.S.C. § 3142(f).

The courtroom will remain open to members of the public and the media for initial appearances and arraignment.

III. Other motions in criminal cases

With respect to the other 8 categories of hearings identified in § 15002(b)(1), the judge assigned to a case is authorized to make a case-by-case decision about whether video or telephone hearing is appropriate. Because video hearings now require attendance of the participants (except the defendant) in court, the assigned judge may make a determination that video is not reasonably available and may proceed by telephone hearing.

A video or telephone hearing may occur only with the consent of the defendant. Defendants will be permitted to watch or listen to the hearing from jail if detained. Defendants who are released will be able to listen to the hearing. A telephonic hearing is the only available option for remote access in the case of a released defendant.

Individual judges may schedule video or telephonic hearings for other hearings and motions at their discretion. Because General Order No. 87 tolled the running of the Speedy Trial Act during the current emergency, it is not likely that the judges will schedule evidentiary motions such as suppression motions during the COVID-19 emergency period.

In the event of a video hearing, a court reporter will attend and create a record or the hearing may be recorded. In the event of a telephone hearing, a court reporter will attend telephonically.

IV. Change of plea and sentencing

A change of plea or a sentencing may proceed upon the individual order of the judge assigned to the case in the same manner as video arraignment. Such a hearing requires a specific finding by the assigned judge that further delay will result in serious harm to the interests of justice.

Defense counsel and the Government are authorized to sign plea agreements by electronic signature. Defendants will continue to sign manually.

V. Availability of judges

In a continued effort to practice social distancing and to minimize contact between persons in the courthouses, the judges have agreed to conduct hearings on designated days of the week as follows:

Judge Sessions – Mondays
Judge Reiss – Thursdays
Judge Crawford – Wednesdays
Judge Brown – Tuesdays

Because Judge Conroy’s schedule of initial appearances and arraignments depends upon the availability of the defendant, his hearings will be scheduled throughout the week.

VI. Civil motions and bankruptcy hearings

Individual judges are authorized to conduct civil motion hearings and hearings in bankruptcy cases by telephone, with or without the presence of a court reporter. Counsel and the parties do not need to travel to the courthouse for a telephone hearing.

The court will send out the call-in details in advance of any telephone hearing. Decisions about whether to hold a telephonic hearing and whether to record it, whether to provide a court reporter by telephone, or whether to memorialize it in a written order are left to the individual discretion of the assigned judge.

Each judge continues to function with an assigned team including a judicial assistant or career law clerk and a courtroom deputy. The telephone line for the chambers number remains in place. CM/ECF filings remain current. Counsel or parties may continue to contact chambers in the normal manner for questions about schedules and hearings.

Civil hearings remain open to the public. Upon request a member of the public or a media representative will be given the call-in information for a telephone conference and may listen.

Recording and broadcast of court hearings remains contrary to law and will result in the suspension of the opportunity to attend by telephone.

All civil jury trials remain postponed at the present time.

Dated at Burlington, in the District of Vermont, this 30th Day of March, 2020.

/s/ Geoffrey W. Crawford
Chief Judge
U. S. District Court