

4-10-2020

IN THE UNITED STATES COURTS
FOR THE DISTRICT OF MONTANA

Clerk, U.S. District Court
District of Montana
Missoula Division

IN RE: PUBLIC ACCESS AND
COURT OPERATIONS IN
RESPONSE TO CORONAVIRUS
COVID-19 PUBLIC EMERGENCY

ADMINISTRATIVE ORDER 20-18

This Administrative Order amends and supersedes Administrative Order No. 20-17 dated March 27, 2020, relative to cases and proceedings before the United States District Court and the operation of the federal courthouses in Montana. Bankruptcy Court proceedings are addressed in General Order 2020-04. Administrative Order Nos. 20-15 and 20-16 remain in effect.

The current outbreak of the coronavirus 2019 disease (“COVID-19”) continues to spread in the State of Montana. Although for many this disease appears to cause only flu-like symptoms, for others it can pose a serious risk, even death. The seriousness of this outbreak and need for special measures is self-evident. The President of the United States has declared a national emergency, and the Governor of Montana has issued a statewide shelter-in-place order which he recently extended through April 24, 2020.

There is currently no vaccine to prevent COVID-19. The CDC and local public health officials have advised that the best way to prevent illness is to avoid

opportunities for exposure. The virus is thought to spread mainly from person-to-person, particularly between people who are in close contact with one another (within about 6 feet) and through contact with contaminated surfaces. Although the Governor of Montana's shelter-in-place order is, by its terms and under the Tenth Amendment, not applicable to the federal courts, its restrictions prohibiting all but essential business and governmental activity are prudent. The Court cannot apply the recommended social distancing measures and simultaneously continue its operations in the usual way.

IT IS HEREBY ORDERED that the United States Courts for the District of Montana will adopt the following measures effective April 10, 2020 and through May 29, 2020:

1. The federal courthouses in the District of Montana will be **CLOSED** to the public pursuant to 41 C.F.R. § 102-74.375(b), subject to exceptions allowing the Court to meet its constitutional duties and handle emergencies related to public safety, public health and welfare, and individual liberty. No members of the public, other than litigants with a scheduled proceeding, counsel of record in that matter, investigators or employees of counsel, court interpreters, contract court reporters, and witnesses may enter the United States Courthouses in Montana without prior permission from a judge of this district, the Probation and Pretrial Services Office, or other agency housed in

the courthouse(s). Agencies should grant such permission only where necessary to ensure the continued performance of essential governmental functions.

2. Notwithstanding the foregoing, all entrants to any federal courthouse are subject to the entry restrictions adopted March 16, 2020, and posted at courthouse locations and on the Court's website.
3. All jury trials (criminal and civil) and associated final pretrial conferences through May 29, 2020, are vacated, to be reset by order of the presiding judge. This order does not vacate any pending deadlines other than the trial dates and final pretrial conferences. Attorneys seeking to modify any other deadlines should file a motion before the presiding judge.
4. The grand jury that was empaneled at Missoula, Montana, on September 25, 2019, shall convene at 9:00 a.m. on May 6, 2020. The Clerk of Court and the United States Attorney are directed to take all necessary measures to minimize the risk of exposure to grand jurors and other participants in the proceedings, in accordance with guidance from the CDC and local public health officials. Pursuant to this directive, grand jurors should be instructed to report on May 6 to the federal courthouse nearest to their place of residence, where they may convene remotely via videoconference with their fellow grand jurors from other courthouse locations. All other grand jury

proceedings scheduled through May 29, 2020 are vacated, unless otherwise ordered by the chief judge. The chief judge retains the discretion to convene a grand jury under exigent circumstances upon the motion of the United States Attorney.

5. Given the high likelihood that public health considerations will place severe constraints on the pool of the potential jurors and the availability of counsel and court staff, presiding judges in criminal cases are encouraged to evaluate whether any delay occasioned by this order should be excluded under the Speedy Trial Act, 18 U.S.C. § 316(h)(7)(A), based on a finding that the ends of justice served by such a delay outweigh the interests of the public and the defendant in a speedy trial.

6. Individual judges may continue to hold non-jury proceedings such as bench trials, in-person hearings, settlement conferences, sentencing hearings, and other court matters as they deem appropriate, on a case-by-case basis.

Counsel may seek to continue such matters by appropriate motions. Counsel may choose to appear remotely for any civil proceeding. The use of telephonic or video proceeding is encouraged to the greatest extent possible. This order does not limit any judge's discretion to consider and decide a pending matter without oral argument.

7. Magistrate judges will continue to preside over preliminary criminal matters,

such as initial appearances, arraignments, detention hearings, and the issuance of warrants. These proceedings shall be conducted by telephonic or video means to the greatest extent possible.

8. In criminal matters, counsel need not file a motion for leave to appear remotely for an initial appearance, arraignment, detention hearing, or change of plea hearing. Counsel must file a motion for leave if seeking to appear remotely for an uncontested revocation or sentencing proceeding. Counsel are expected to appear in person for contested revocation or sentencing proceedings, absent leave of court in extraordinary circumstances. The United States must seek leave of court to facilitate any victim's remote participation in any proceeding.
9. On March 27, 2020, the President signed into law the CARES Act, H.R. 748. The Judicial Conference of the United States having subsequently found that "emergency conditions due to the national emergency declared by the President" will "materially affect the functioning of either the Federal courts generally or a particular district court of the United States," the undersigned Chief Judge hereby authorizes "the use of video conferencing, or telephone conferencing if video conferencing is not reasonably available," for the ten types of criminal procedures enumerated in Section 15002(b)(1) of the CARES Act. The undersigned Chief Judge

further specifically finds 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 contemplated by Section 15002(b)(2) of the CARES Act. These findings will be reviewed after 90 days as required by Section 15002(b)(3)(A) of the CARES Act.

10. In an effort to limit unnecessary risk of exposure to an individual, all documents and signatures required from any party including, but not limited to, financial affidavits, consents to waive preliminary hearing, pretrial and probation reports, and appearance bonds/orders for release may be performed electronically with the [/s/name] format. Defense counsel may sign on behalf of a criminal defendant, after receiving consent, and file the document electronically.

11. During the pendency of this order, and pursuant to Federal Rule of Evidence 502(d), the attorney-client privilege applicable to a communication between an attorney and client using electronic communication technology available at a local detention facility is not waived by the presence of third parties or the existence of monitoring, regardless of whether the monitoring is disclosed. For this paragraph to apply, the following factors must be satisfied: (a) the communication is otherwise covered by the attorney-client

privilege; (b) the communication is made using a third-party teleconferencing or video conferencing system available at the detention facility; and (c) defense counsel makes a statement at the beginning of the electronic communication indicating that the conversation is protected by the attorney-client privilege.

12. The Bankruptcy Court has provided additional information specific to Bankruptcy proceedings by General Order 2020-04.

13. The Clerk of Court is directed to explore all available means to facilitate remote participation of all parties in court proceedings and make a reliable record of such proceedings, and to keep the Court advised of the available options. The Clerk of Court shall promptly establish means of remote public access to court proceedings and post instructions for public access on the Court's website. Those instructions shall include clear notice that the public and media are strictly prohibited from recording or broadcasting any hearing, in whole or on part, in any fashion.

14. The following non-case-specific hearings and events are cancelled through May 29, 2020, to be subsequently rescheduled as appropriate:

- Group tours or visits
- Naturalization ceremonies
- Attorney admission ceremonies.

15. The Clerk of Court and Chief United States Probation Officer shall require all staff to work remotely to the greatest extent possible and shall direct staff to report to a courthouse only to the extent necessary to perform essential court functions or to support court hearings. The Clerk of Court and Chief United States Probation Officer may support court proceedings remotely by assigning court reporters, courtroom deputies, or probation officers to participate from another courthouse location where practicable.

16. The Clerk's Office, while closed to the public, will continue to provide essential court services, receive mail, and process payments remotely. The Clerk of Court is directed to post instructions on the Court's website for the public to continue to access these services. Electronic filings may still be made through the CM/ECF system. For self-represented litigants and others without access to CM/ECF system, the Clerk of Court is directed to post instructions on the Court's website to facilitate filing outside of the CM/ECF system, including the establishment of drop boxes at courthouse locations and alternate means of electronic filing.

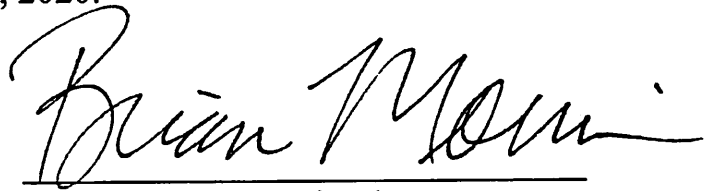
17. The Chief Probation Officer shall take all reasonable measures to limit the risk of exposure to the novel coronavirus for officers in the field.

18. Announcements regarding any further restrictions to Court services will be posted on the Court's public webpage at <https://www.mtd.uscourts.gov>, and

attorneys will receive updates and notices via the CM/ECF system or other electronic means.

19. The Court will continue to assess the public health situation during the pendency of this order. The Court may vacate or amend this administrative order as circumstances require.

DATED this 10th day of April, 2020.

A handwritten signature in black ink that reads "Brian Morris". The signature is written in a cursive style with a horizontal line underneath it.

Brian Morris, Chief Judge
United States District Court