

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

No. 20-JP-1-RJ

FILED

APR 8 2020

PETER A. MOORE, JR., CLERK
US DISTRICT COURT, EDNC
BY AM DEP CLK

**In re: Duty Court Proceedings Before
United States Magistrate Judge Robert
B. Jones, Jr. During the National
Emergency Created by the COVID-19
Pandemic**

Judicial Preference Order

The COVID-19 virus continues to impact the Eastern District of North Carolina. As of the date of this order the COVID-19 virus has caused over 3,200 North Carolinians to fall ill, hundreds have been hospitalized, and dozens have died. The virus is expected to continue to pose issues for the Eastern District of North Carolina for the foreseeable future.

Public health authorities have said that minimizing interactions with other people is one of the most effective ways to limit the spread of the virus. Yet initial criminal proceedings in this court often cause many people to be in close contact with each other for extended periods of time.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which permits the court to conduct most initial criminal proceedings by videoconference or teleconference under certain conditions.

In response to the CARES Act, the Judicial Conference of the United States has found that emergency conditions based on the national emergency declared by the President have affected and will materially affect the functioning of the federal courts generally. On April 1, 2020, Chief Judge Terrence W. Boyle entered Standing Order 20-SO-7 authorizing the use of videoconferencing (or teleconferencing if videoconferencing is not reasonably available) in the Eastern District of North Carolina for various initial criminal proceedings so long as the defendant consents after consulting with counsel.

In order to minimize the chances of spreading the COVID-19 virus among those who appear at initial criminal proceedings while ensuring that criminal defendants still receive the rights they are entitled to under the Constitution and laws of the United States, United States Magistrate Judge Robert B. Jones, Jr. enters the following order:

I. Requests for Initial Appearances

In order to make the necessary arrangements for videoconferencing (or teleconferencing if videoconference is not reasonably available), the United States should make requests for initial appearances no later than 12:00 p.m. the day before the initial appearance. Requests made after this deadline may result in delays in the scheduling of initial appearances.

II. Scheduling of Duty Court Proceedings

Judge Jones will generally hold duty court each day commencing at 9:30 a.m.

The daily calendar for duty court will assign a specific start time for each matter. To minimize the number of people in the courtroom at any one time, participants, witnesses, and observers are discouraged from entering the courtroom before the scheduled start time of their proceeding.

III. Conducting Initial Appearances by Remote Means

Judge Jones intends to conduct proceedings by videoconference (or teleconference if videoconference is not reasonably available) to the maximum extent allowed by law.

The court will confirm with each defendant at the beginning of their proceeding that they consent to conducting the proceeding through videoconference (or teleconference if videoconference is not reasonably available) and have had a chance to discuss that decision with counsel.

Defense counsel should notify the court as soon as possible before a proceeding if they do not believe the defendant will consent to a proceeding occurring by videoconference (or teleconference if videoconference is not reasonably available).

If a defendant does not consent to have their initial appearance by remote means, Judge Jones will proceed with the initial appearance through remote means and then schedule a time for the defendant to come to court for an in-person initial appearance.

Judge Jones will provisionally appoint the Federal Public Defender's Office to represent any defendant who does not consent to have his or her initial appearance conducted by videoconference (or teleconference if videoconference is not reasonably available). The defendant will complete their financial disclosure affidavit before their in-person initial appearance and the court shall make a final determination during the in-person initial appearance whether the defendant will continue to be entitled to court-appointed counsel.

Counsel may appear by videoconference (or teleconference if videoconference is not reasonably available) if it is technologically feasible. Counsel should notify Judge Jones' courtroom deputy clerk/case manager in advance of the hearing if they wish to appear remotely.

IV. Conference with Attorney Prior to Initial Appearance

Because of visitation restrictions enacted by many detention centers in response to the COVID-19 virus, defense attorneys may have difficulty meeting with their clients before court proceedings. The court will allow representatives of the Federal Public Defender's Office or defense counsel who have entered a notice of appearance to speak with a defendant by the videoconference (or teleconference if videoconference is not reasonably available) system for a reasonable period of time before the defendant's initial appearance is scheduled to begin.

During this time, the court expects that defense counsel will complete a financial affidavit for appointment of counsel; discuss whether the defendant will consent to having their initial appearance and any future hearings by videoconference (or teleconference if videoconference is not reasonably available); and discuss the provisions regarding defendants signing forms discussed below.

To preserve confidential communications between attorney and client, the courtroom will be closed to the public during this time. The court will also disable its courtroom recording technology during the meeting.

The courtroom will be reopened before the defendant's proceeding begins.

If defense counsel needs to consult with their client prior to a hearing other than an initial appearance, they should notify the court as soon as possible.

V. Conducting Hearings by VideoConference or Teleconference

Judge Jones intends to conduct hearings related to duty court matters by videoconference (or teleconference if videoconference is not reasonably available) to the greatest extent allowed by law. The court will confirm with each defendant at the beginning of their hearing that they consent to conducting the hearing through videoconference (or teleconference if videoconference is not reasonably available) and have had a chance to discuss that decision with counsel.

If a defendant does not consent to have a hearing conducted by videoconference (or teleconference if videoconference is not reasonably available), the court will continue the matter until a date when it can conduct the hearing in-person in a manner that minimizes the chance for spreading the COVID-19 virus.

With respect to detention hearings, Judge Jones recognizes that the Bail Reform Act allows the defendant the "opportunity to testify, to present witnesses, [and] to cross-examine witnesses who appear at the hearing[.]" 18 U.S.C. § 3142(f). If a defendant requests to present live testimony, Judge Jones will honor that request. Where counsel for a defendant and the United States agree to proceed by proffer of witness testimony it will be permitted. Notwithstanding, Judge Jones retains the right to require live testimony if, in his discretion, he believes such testimony is appropriate.

If a party anticipates calling witnesses, counsel for that party should consult with opposing counsel as soon as possible to discuss whether the witness can provide testimony by videoconference (or teleconference if videoconference is not reasonably available).

Counsel may appear by videoconference (or teleconference if videoconference is not reasonably available) if it is technologically feasible. Counsel should notify Judge Jones' courtroom deputy clerk/case manager in advance of the hearing if they wish to proceed in this manner.

VI. Notification to Court of Waivers, Continuances, and Conditions of Release

Counsel must alert the court as soon as practicable of the need for continuances, agreement on conditions of release, and waivers of hearings. The court may accept oral waivers of hearings if the defendant has not completed the waiver form before court and technology does not allow for the defendant to complete the forms in court.

VII. Felony Arraignments

To the extent Judge Jones is assigned to conduct a felony arraignment proceeding, he will assess on a case-by-case basis whether it is appropriate to hold the arraignment by videoconference (or teleconference if videoconference is not reasonably available).

VIII. Misdemeanor Matters

To the extent it is practicable, misdemeanor matters that are scheduled to be heard by Judge Jones in Wilmington and New Bern will be handled in the manner specified in this order.

IX. Signatures in Criminal Cases

The Federal Rules of Criminal Procedure allow a defendant to consent to certain proceedings or waive certain rights if they do so in writing. Various documents including financial affidavits, appearance bonds and orders setting conditions of release, require a defendant, among others, to sign forms. The difficulties created by COVID-19 may frequently make it impractical to obtain the defendant's signature in a safe and timely manner.

Accordingly, if the Federal Rules of Criminal Procedure or the local rules of practice of this court require a defendant to sign a form, defense counsel or Judge Jones may sign the form on the defendant's behalf if the defendant consents after having the opportunity to consult with counsel.

In the event that the Federal Rules of Criminal Procedure or the local rules of practice of this court do not explicitly require a defendant to sign a form, Judge Jones will obtain the defendant's consent or waiver in whatever form he deems most practicable under the circumstances, so long as the defendant consent after having the opportunity to consult with counsel.

X. Interaction with Other COVID-19-Related Orders

This Practice Preference Order applies in all criminal proceedings before Judge Jones. However, if any aspect of this order conflicts with a Standing Order issued by the court or an order entered by a district judge presiding over a case, the provisions of those documents will control.

XI. Prohibition on Photographing, Recording, or Rebroadcasting Proceedings

The court reminds persons granted remote access to proceedings of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. Violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted

entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the court.

XII. Expiration of Order

This order will automatically expire upon the termination of Standing Order 20-SO-7 or upon a finding by the Judicial Conference that the emergency conditions due to the national emergency declared by the President no longer materially effect the functioning of this court or the functioning of the courts generally.

Unless a condition listed in the prior paragraph occurs, this order will remain in effect for 90 days unless terminated earlier. If emergency conditions continue to exist 90 days from the entry of this order, Judge Jones will review this order and determine whether to extend it.

Dated: April 8, 2020



ROBERT B. JONES, JR.
UNITED STATES MAGISTRATE JUDGE