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

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

No. 20-JP-1-RN

**In re: Duty Court Proceedings Before
United States Magistrate Judge Robert
T. Numbers, II 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 2,500 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. And 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.

To help 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 T. Numbers II enters the following order:

I. Requests for Initial Appearances

So that the court may make necessary arrangements for videoconferencing, 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

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 coming to the courtroom before the scheduled start time for their proceeding.

III. Conducting Initial Appearances by Videoconference or Teleconference

Judge Numbers intends to conduct proceedings 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 proceeding that they consent to conducting the proceeding through videoconference or teleconference 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 a defendant does not consent to have their initial appearance by videoconference or teleconference, Judge Numbers will proceed with the initial appearance through videoconference or teleconference and then schedule a time for the defendant to come to court for an in-person initial appearance.

Judge Numbers will provisionally appoint the Federal Public Defender's Office to represent any defendant who does not consent to have their initial appearance conducted by videoconference. The defendant will complete the financial disclosure affidavit before their in-person initial appearance and the court will make a final determination during the in-person initial appearance whether the defendant will continue to be represented by court-appointed counsel.

Counsel may appear by videoconference (or teleconference if videoconference is not reasonably available to the court) if it is technologically feasible. Counsel should notify Judge Numbers's case manager ahead 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 are having trouble 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 system for 15 minutes beginning at the time set for the defendant's initial appearance 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 the initial

appearance and 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 court will reopen the courtroom 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 Video Conference

Judge Numbers 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 the hearing that they consent to conducting the hearing through videoconference or teleconference and have had a chance to discuss that decision with counsel.

If a defendant does not consent to have a hearing conducted by videoconference, 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.

The court requests that the parties proceed by proffer as frequently as possible. As for detention hearings, Judge Numbers 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 party requests to present live testimony at any hearing, Judge Numbers will honor that request. Judge Numbers also 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 to the court).

Counsel may appear by videoconference (or teleconference if videoconference is not reasonably available to the court) if it is technologically feasible. Counsel should notify Judge Numbers's case manager ahead of the hearing if they wish to appear remotely.

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 the defendant to complete the forms in court.

VII. Felony Arraignments

If a district judge assigns Judge Numbers to conduct a felony arraignment proceeding, he will assess case-by-case whether it is appropriate to hold the arraignment by videoconference.

VIII. Misdemeanor Matters

Judge Numbers will handle misdemeanor matters in Raleigh as specified in this order. Judge Numbers will issue separate guidance on how he will handle misdemeanor matters in Fayetteville.

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. And 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.

Thus, if the Federal Rules of Criminal Procedure or the local rules of this court require a defendant to sign a form, defense counsel or Judge Numbers 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 this court do not explicitly require a defendant to sign a form, Judge Numbers will obtain the defendant's consent or waiver in whatever form he deems most practicable under the circumstances, so long as the defendant consents 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 United States Magistrate Judge Robert T. Numbers, II. But 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 orders 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 lead to 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 based on 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 Numbers will review this order and determine whether to extend it.

Dated: April 6, 2020



Robert T. Numbers, II
United States Magistrate Judge