

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

IN RE: COURT OPERATIONS
IN RESPONSE TO COVID-19

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)
) *Fifth Amended Standing Order*
) Misc. Number: 3:20-mc-00416-RBH

Due to the continuing and evolving COVID-19 national public health emergency and the resulting necessary modifications of court operations, the Court finds it appropriate to amend the August 21, 2020 Fourth Amended Standing Order (*see* Misc. No. 3:20-mc-00371-RBH) to extend various continuance dates and account for other Standing Orders that have been issued (*see* Misc. No. 3:20-mc-00122-RBH; Misc. No. 3:20-mc-00272-RBH).¹ Accordingly, the Court issues the following order, effective immediately:

1. All civil and criminal jury selections, jury trials, and roster meetings are CONTINUED (i.e., postponed) until further order of the Court unless an individual Presiding Judge determines there is a need to go forward with a jury trial.
2. All grand jury proceedings are CONTINUED, unless otherwise ordered by the Chief Judge.
3. Existing deadlines in civil cases, whether set by the court or by the Federal Rules of Civil Procedure or Local Rules, are not further extended by this Order. Any judge has the inherent authority to extend any deadlines in his or her cases. This Order does not toll any applicable statutes of limitation.
4. Any non-jury civil matters currently set, or to be set, shall not be continued, unless canceled or rescheduled by the Presiding Judge. The individual Presiding Judge has the discretion to decide whether to proceed with a hearing, without a hearing, reschedule the hearing for a later date, or address the matter via video or telephone conference, if practicable. Absent an order from the individual Presiding Judge, the matter will proceed as set.

By separate order, on September 29, 2020, the Court will extend its Amended Standing Order Regarding Video Teleconferencing and Telephone Conferencing (*see* Misc. No. 3:20-mc-00272-RBH), which pursuant to the CARES Act (H.R. 748) allows certain criminal proceedings to occur by video or telephone conferencing if a criminal defendant consents. Where a statute or rule requires a defendant's presence within a certain time, and where video or telephone conferencing cannot be accomplished (i.e., failure of a defendant to consent or otherwise), then applicable initial criminal proceedings are to be conducted in person to satisfy constitutional and statutory requirements. Individual judges in their discretion may also schedule in-court

¹ The Court incorporates the public health concerns previously summarized in the March 16, 2020 Standing Order.

plea/sentencing hearings, especially in cases where the defendants do not consent to video or telephone conferencing proceedings. Other criminal proceedings scheduled, or to be scheduled, shall not be continued unless canceled or rescheduled by the Presiding Judge.

5. Individual judges presiding over criminal proceedings may take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties.
6. Due to the Court's reduced ability to obtain an adequate spectrum of jurors and the above-referenced public health considerations associated with criminal jury trials and grand jury proceedings, the time period of the continuances implemented by this Standing Order will be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A). The Court finds that the ends of justice served by ordering these continuances outweigh the best interest of the public and defendants in a speedy trial, as well as the interest of defendants in a timely indictment. The Court may extend the period of exclusion as circumstances may warrant.
7. To the extent possible, judges should stagger their court hearings to minimize the number of people coming into the courthouses, enforce the Court's current face coverings/masks order (see Misc. No. 3:20-mc-00176-RBH), and enforce social distancing during court proceedings.
8. This order does not affect the Court's consideration of civil or criminal motions that can be resolved without court appearance.
9. The Probation Office shall remain open unless otherwise ordered by the Court.
10. Regarding the District Clerk's Office, the Court hereby incorporates the provisions of its March 31, 2020 Standing Order In Re: District Clerk's Office Operations in Response to COVID-19 (see Misc. No. 3:20-mc-00122-RBH).

The Court will vacate or amend this Standing Order as necessary and appropriate.

IT IS SO ORDERED.

DATED this 18 day of September, 2020.


R. Bryan Harwell
Chief United States District Judge