

APPENDIX 7

Plan for Resumption of In-Person Court Proceedings In Phase 2

1. *Remote Proceedings Continue to be the Norm.* During Phase 2, routine court proceedings, including matters before Magistrate Judges, will continue to be held remotely by audio and video conferencing.
 - a. *Authorization for Remote Criminal Proceedings Generally:* The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Div. B, Title V, § 15002(b) (enacted March 27, 2020), authorizes, during emergency conditions with appropriate findings by the Chief Judge, the “use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available” for most criminal proceedings, with consent of the defendant, after consultation with counsel.
 - b. *Authorization for Remote Felony Pleas and Sentencings:* Under the CARES Act, felony pleas and sentencings, under Federal Rules of Criminal Procedure 11 and 32, may also be conducted remotely, with the consent of the defendant after consultation with counsel, when the Chief Judge “specifically finds” that such felony pleas and sentencings “cannot be conducted in person without seriously jeopardizing public health and safety,” *see* D.D.C. Standing Order Nos. 20-17, 20- 54, 20-75 (March 29, 2020; June 26, 2020; and Sept. 23, 2020, respectively), and the presiding district judge “in a particular case finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice.”

2. *Party Request for In-Person Proceeding.* The presiding Judge may grant a request from a party to hold a court proceeding in person if the presiding Judge agrees that an in-person appearance by a party is necessary.

3. *Hybrid Proceedings.* If a request for an in-person proceeding is granted, the presiding Judge should determine whether all, or only requesting, parties and counsel as well as court personnel must appear in person. Considering the continuing challenges with public transportation and remote schooling during the COVID-19 pandemic in this metropolitan area, “hybrid” proceedings with some participants appearing via audio or videoconference should be permitted to allow for more expeditious hearings when all participants may be safely available.

4. *Face masks.* Face masks covering the mouth and nose should be worn by all in-court participants. The Court encourages the use of disposable masks as disposable masks may allow speakers to be more easily understood than cloth masks. The Court will provide disposable masks upon request.

5. *Courtroom Set-up.* The following courtroom conditions are important to mitigate public health and safety risks:

- a. In-person proceedings will only take place in courtrooms in which **plexiglass barriers** have been installed and designated seating areas have been marked.
- b. No more than 3 people should be seated at a counsel table, physically distanced from each other by 6 feet, with plexiglass separators between them if possible.
- c. Attorneys and their clients may use the wireless private intercom system (Clear-Com) provided by the Court to communicate privately in the courtroom and use a court-provided cleansing wipe to clean the headsets before and after the proceeding.
- d. The number of persons in a courtroom should be limited to the minimum necessary. Although the gallery of each courtroom may accommodate up to 14 individuals with seating distanced at least 6 feet apart, during Phase 2, visitor access to the courthouse continues to be restricted. *See* ¶ 7 (regarding public access).
- e. Any individual seeking to observe an in-person court proceeding from the gallery must receive permission in advance from the presiding Judge. Prior to any in-court proceeding, the parties may seek permission from the presiding Judge for the attendance of any individual other than the counsel and party. The presiding Judge may permit seating for a limited number of guests of each party and members of the media or arrange for use of an overflow courtroom.

6. *Entry Screening.* All persons attending a court proceeding at the courthouse must abide by all screening requirements for entry into the courthouse. If an attorney or party fails to pass the screening test at the temperature kiosk, they should leave the building immediately and contact the courtroom deputy for further instructions.

7. *Media and Public Access.* Given the limited seating available in courtrooms, *see* ¶ 5.d., and the need, due to public health and safety, to keep the number of people in a courtroom to a minimum, media and public access to in-court proceedings will generally continue to be provided through the Court's public access audioconference lines. A presiding Judge may provide public access to a proceeding through videoconferencing if the videoconferencing system being used affords sufficient safeguards against possible disruption of the proceeding by an outside observer.

a. *High-Interest Matters.* The Media Room may be open for coverage of high-interest matters. During Phase 2, access to the Media Room will be limited to only 4 members of the media per day. Anyone using the Media Room must sit in a designated seats and wear a face mask at all times.

8. *Multi-Defendant Cases.* Given the limitation on the number of individuals who may be seated at counsel table, *see* ¶ 5.b., in-person proceedings in multi-defendant cases should be held in the Ceremonial Courtroom and scheduled on the master calendar, unless an alternative seating arrangement is agreed to, in consultation with the U.S. Marshals Service (USMS), in the presiding Judge's courtroom.

9. *Scheduling.*

- a. *DOC Testing Protocol.* Any in-person proceeding with a defendant detained at the DC Jail or another facility should be scheduled at least **five days in advance** in order to facilitate pre-appearance testing for COVID-19 or other protocols. **NOTE:** After a defendant housed at the DC Jail is tested a few days prior to an in-person court proceeding, that defendant is not isolated at the jail and may be exposed to COVID-19 after the test but before the court proceeding. Facilities other than the DC Jail may not have a testing protocol in place before in-court proceedings.
- b. *Single In-Court Proceeding Per Day Per Courtroom.* To ensure adequate time for deep-cleaning of the courtroom after each in-person proceeding during Phase 2, **no more than one in-court proceeding per day in any one courtroom should be scheduled.**
- c. *USMS Limitation.* Due to both staffing shortages at the USMS and the need to maintain appropriate distancing in the courthouse cellblock, the USMS is able to accommodate up to 8, possibly 10, detained defendants at the courthouse for in-person proceedings each day. The Court will monitor the numbers of individuals being requested to be produced at the courthouse each day to ensure the courthouse cellblock capacity is not exceeded. **NOTE:** The USMS is unable to accommodate attorney visits in the cellblock.