

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GENERAL ORDER No. 74

Temporary Use of Teleconferencing, Videoconferencing, and Other Procedures in Criminal Matters Pursuant to the Coronavirus Aid, Relief, and Economic Security Act ("CARES ACT")
(Reauthorized September 16, 2020)

WHEREAS, on March 13, 2020, the President of the United States declared that the Coronavirus Disease 2019 ("COVID-19") outbreak constitutes a national emergency under the National Emergencies Act, 50 U.S.C. §§ 1601 et seq.; and

WHEREAS, on March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which provides that, subject to certain requirements, video teleconferencing and telephone conferencing may be used in enumerated criminal proceedings in certain circumstances during the national emergency related to COVID-19 and thirty (30) days thereafter; and

WHEREAS, the Judicial Conference of the United States has found that emergency conditions due to the national emergency declared by the President with respect to COVID-19 materially affect the functioning of all federal courts; and

WHEREAS, the current public health crisis has caused, is causing, and is expected to continue to cause extraordinary disruption throughout this District, including but not limited to the temporary closure of offices; the imposition of travel restrictions and discouragement of the use of mass transportation; the dislocation of many residents; disruptions and delays in the use of the mails; reduction of court staff scheduled to work in-person at each courthouse due to the physical distancing recommendations of public health officials; and impact on the availability of parties, attorneys, witnesses and court staff to appear in court due to contact-tracing and self-isolation measures upon exposure to COVID-19; and

WHEREAS, the health crisis in general – and safety protocols and limitations affecting Santa Rita Jail, courthouse facilities, and U.S. Marshals Service transport in particular – continue to restrict transportation of in-custody defendants and severely limit defense counsel's ability to meet with detained clients;

IT IS ORDERED THAT, on motion of the undersigned, the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, is authorized for the following proceedings with the consent of the defendant, after consultation with counsel:

- Detention hearings under section 3142 of title 18, United States Code;

- Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;
- Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;
- Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;
- Arraignments under Rule 10 of the Federal Rules of Criminal Procedure;
- Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;
- Pretrial release revocation proceedings under section 3148 of title 18, United States Code;
- Appearances under Rule 40 of the Federal Rules of Criminal Procedure;
- Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure;
- Proceedings under chapter 403 of title 18, United States Code (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings; and

IT IS FURTHER ORDERED THAT, the undersigned specifically finds that felony pleas under Rule 11 of the Federal Rules of Criminal Procedure; felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure; and equivalent plea and sentencing, or disposition, proceedings under chapter 403 of title 18, United States Code (commonly known as the “Federal Juvenile Delinquency Act”) cannot all be conducted in person without seriously jeopardizing public health and safety; and

IT IS FURTHER ORDERED that, because the CARES Act does not require the consent of a defendant to be in writing, such consent may be obtained in the form most practicable under the circumstances, so long as the defendant's consent is clearly reflected in the record; and

IT IS FURTHER ORDERED that, for instances in which the Federal Rules of Criminal Procedure explicitly require the consent of a defendant to be in writing (such as, for example, Rule 32(e), which requires the written consent of the defendant before a pre-plea presentence report is disclosed), if obtaining an actual signature is impractical given the health and safety concerns presented: (i) a defendant may sign a document electronically; or (ii) defense counsel or the presiding judge may sign on the defendant’s behalf if the defendant, after an opportunity to consult with counsel, consents; and

IT IS FURTHER ORDERED THAT, because of the limited availability of videoconferencing for federal defendants at the Santa Rita Jail, videoconferencing may not be reasonably available, meaning that proceedings may occur with the defendant appearing by telephone, to the extent that the defendant has not lawfully waived his participation in the hearing altogether; and

IT IS FURTHER ORDERED THAT this order shall, unless otherwise specified, remain in place for at least ninety days, pending review and reauthorization before that period expires.

ADOPTED: March 30, 2020

FOR THE COURT:

AMENDED: June 24, 2020
September 16, 2020



PHYLLIS J. HAMILTON
CHIEF JUDGE