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## **PROCEDURES FOR HEARINGS IN CRIMINAL CASES BEFORE CHIEF JUDGE PAMELA PEPPER DURING THE COVID-19 PANDEMIC**

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Chief Judge Pepper will schedule all criminal hearings other than jury trials by videoconference.

The court is re-setting the large backlog of hearings that were continued during the three and a half months that in-person hearings were suspended. The court is giving priority to those hearings adjourned for the longest time while trying to promptly schedule new hearings and balancing the need to reserve enough time for required in-person hearings. Given these circumstances, if a party is unavailable on the date and time the court has scheduled a hearing, the party seeking to change the hearing date must file a motion, explaining why the party cannot participate on the scheduled date and providing the court with three alternative dates/times agreed upon by the parties. (The moving party need not provide private details about medical conflicts.) The court will make every effort to re-schedule the hearing at one of the agreed-upon times, but if it is not able to do so, the court will set the hearing when it has time available.

### **I. Procedures for Defendants Who Consent to the Court Conducting the Hearing by Video**

If the defendant *consents* to the court conducting the scheduled hearing by video, the parties do not need to notify the court. They need only log on to the Zoom link on the date and time scheduled for the hearing. The court will make a record during the hearing regarding the defendant's consent to proceed

by video, and in the case of a felony plea or sentencing hearing, will make a specific finding regarding the impact of further delay on the interests of justice.

When a defendant consents to appear by video, *all* parties must appear by video, including counsel or other parties who are employed by agencies located in the 517 East Wisconsin federal building.

Zoom instructions for attorneys are available on the court's web site.

<https://www.wied.uscourts.gov/sites/wied/files/documents/WIEDZoomforAttorneys.pdf>.

Tips for successful video hearings also are available on the web site.

[https://www.wied.uscourts.gov/sites/wied/files/documents/TIPS\\_FOR\\_SUCCESFUL\\_VIDEO%20HEARINGS.pdf](https://www.wied.uscourts.gov/sites/wied/files/documents/TIPS_FOR_SUCCESFUL_VIDEO%20HEARINGS.pdf).

Members of the public—including friends, family, victims and the press—are welcome to attend Zoom hearings but must mute audio. The court prohibits anyone other than the court from making an audio or video recording of any Zoom hearing. The court prohibits publishing still photos from Zoom hearings on any format, including any social media platform and any media site.

## **II. Procedures for Defendants Who Do Not Consent to the Court Conducting the Hearing by Video**

If the defendant *does not* consent to the court conducting a hearing by videoconference, the defendant must file a notice advising the court of non-consent. The form will be attached to the notice of hearing. Before filing the notice, defense counsel and the government must confer, so that the defendant may include the following information in the notice:

- The amount of time the parties believe the hearing will take;
- Whether either side anticipates calling witnesses, and if so, how many witnesses each side plans to call;

- Whether the defendant is in custody, and if so, in what facility; and
- The days/times during the week scheduled for the hearing that the parties are available.

A copy of the notice is available on Chief Judge Pepper's page of the court web site, <https://www.wied.uscourts.gov/judges/pamela-pepper>.

A. Procedures for parties entering the courthouse:

Parties entering the courthouse will be required to:

- pass through security screening;
- wear masks or face coverings in accordance with General Order 20-15. [https://www.wied.uscourts.gov/sites/wied/files/documents/General\\_Order\\_20--15\\_Mask\\_policy.pdf](https://www.wied.uscourts.gov/sites/wied/files/documents/General_Order_20--15_Mask_policy.pdf);
- socially distance; and
- answer screening questions related to COVID-19 symptoms.

Parties should expect delays in entering the building.

Parties may be denied access to the building if they do not comply with the above requirements, if they have certain symptoms, if they have been diagnosed with COVID-19 or if they have been told to quarantine or have been in close contact with (defined as being within six feet of someone for fifteen minutes or more) anyone who meets those criteria. If a party who is scheduled to appear in person before Chief Judge Pepper is excluded from the building at screening, that party must call (414) 297-3335 and notify chambers staff.

Building elevators hold only one person or family unit safely for social distancing purposes. Parties should expect wait time for elevators. Parties may use stairs if they are able, maintaining social distancing in the stairwells and maintaining only one person or family group on a landing at a time.

B. Procedures for Parties Appearing In Person Before Chief Judge Pepper:

The only people authorized to be physically present in the courtroom are the judge, the courtroom deputy, the court security officer, the defendant, one defense attorney, up to two U.S. deputy marshals, one prosecutor, one probation officer, up to two interpreters (if necessary) and one witness (if necessary). Any party other than the defendant—lawyers, probation officers, interpreters and witnesses—may appear via video even if the hearing is scheduled in person. Friends, family, victims, press and members of the public are not authorized to be physically present in the courtroom; they may attend via Zoom through the link on the docket, or may watch via YouTube.

Cleaning supplies will be available in the courtroom to allow parties to wipe down tables, chairs and other surfaces. Court staff will wipe down frequently touched surfaces before each hearing. The court will provide hand sanitizer for all parties. Parties who can should bring their own water to the courtroom and should avoid sharing pens or notepads.

The defendant and defense counsel must appear in the courtroom **ten (10)** minutes prior to the scheduled start time of the hearing. The prosecutor and the probation officer must appear in the courtroom **at** the scheduled time of the hearing. Staggered appearance times will allow parties to maintain social distance while entering the courtroom.

In any hearing involving witnesses who will be present in person, the court's staff will notify the parties regarding where witnesses should wait until called. For this reason, it is important that the parties include in the notice of in-person hearing the number of witnesses the parties plan to call.

Parties physically present in the courtroom must wear masks or face coverings in accordance with General Order 20-15. Witnesses who sit at the

witness stand behind the Plexiglas partition may remove their masks or face coverings while testifying. Parties must sit at least six feet from any other person in the courtroom, with the exception that in hearings involving an in-custody defendant, one deputy U.S. Marshal may sit six feet or less from the defendant for security purposes. The court will assist the parties in maintaining social distance by assigning seats.

The defendant and defense counsel will be separated from each other at the defense table by a Plexiglas partition. The court has closed-circuit devices for the defendant and defense counsel to use if they need to communicate privately; the devices allow the defendant and counsel to speak privately without violating social distancing requirements.

Parties must upload to the docket any documents they wish the court to consider at the hearing. The court will publish documents, if necessary.

If parties wish to speak with the judge outside the hearing of the public, they should ask to be heard off the record. The court's staff will send remote viewers to the Zoom waiting room until the parties have completed their discussions with the court, then allow them to resume viewing.

If parties wish to have someone participating by Zoom speak at the hearing, they must provide the court with the name or names of the person or persons who will be speaking. Parties may provide this information during the hearing. The speaker should be sure his or her device (computer, phone or tablet) shows the speaker's name so that the court's staff can identify the speaker. Anyone attending by Zoom who is not speaking will be required to mute audio. No one other than the court may make an audio or video recording of any Zoom hearing. The court prohibits publishing still photos from Zoom

hearings on any format, including any social media platform and any media site.

At the end of the hearing, the defendant and defense counsel (and, if the defendant is in custody, the deputy U.S. Marshals) will leave the courtroom first. Once they have left, the prosecutor and probation may leave the courtroom.