

Important Email Announcement from the U.S. District Court for the Southern District of California

August 4, 2020

To: Practitioners in the U.S. District Court for the Southern District of California

From: The Co-Chairs of the Lawyer Representatives for the Southern District of California

Dear fellow practitioners in the Southern District of California,

These are challenging times for all. Moreover, the COVID-19 pandemic presents particular challenges for the courts. Above all, there is a delicate balance to be maintained in ensuring that civil and criminal cases and controversies are adjudicated without undue delay, while ensuring that necessary health and safety measures are put in place. In our capacity as the co-chairs for the Lawyer Representatives for the Southern District of California, I and Licia Vaughn have the privilege of sitting on the Court's Strategic Committee on Resumption of Regular Court Proceedings ("Strategic Committee"), chaired by District Judge Anthony J. Battaglia. To make sure that you are keeping informed of the efforts the Court is taking to address COVID-19 concerns, we are providing a brief update on the general health and safety measures the Court has adopted, as well as the Court's current plans for eventually resuming jury trials, while at the same time ensuring adequate safety and social distancing is adhered to.

As you may know, on March 17, 2020, Chief Judge Larry A. Burns issued "Order of the Chief Judge (OCJ) 18," declaring a judicial emergency for a period of 30 days under 18 U.S.C. 3174, and setting forth Emergency Orders for the Southern District of California due to the COVID-19 public health emergency. The judicial emergency has subsequently been extended by the Court several times, most recently on July 13, 2020, for an additional 30 days. We encourage you to check the Court's website frequently for updates, or, even better, to receive these updates automatically by subscribing to court news, which you can do at the following link:

<https://www.casd.uscourts.gov/Subscribe-News-Updates.aspx>.

Please be assured that the Court has and continues to take extensive measures to ensure the protection and safety of members of the bar, the public, and the Court staff. Among other things, the Court has sought the advice of an occupational medicine practitioner on how to resume and perform court functions safely during the on-going pandemic. The practitioner and staff from Sharp Rees-Stealy medical group, joined by Judge Battaglia and other Court staff, along with a representative from General Services Administration, conducted a physical inspection of the San Diego federal courthouses. Following the site reviews, the practitioner provided a favorable review of the safety of the courthouses, along with a set of recommended practices and procedures for conducting hearings and trials. The El Centro Courthouse has also been reviewed by a health practitioner to ensure safe operations in that facility. On June 10, 2020, the Court issued "Order of the Chief Judge No. 29" (as updated and extended from time to time), which detailed the Interim Safety Protocols for In-Person Court Proceedings, which are applicable to the Edward J. Schwartz Courthouse, the James M. Carter and Judith N. Keep Courthouse, the Jacob Weinberger Bankruptcy Courthouse and the El Centro United States Courthouse. We encourage you to review this Order, which outlines the general safety measures and courtroom procedures along with more specific safety measures for courtroom proceedings and for the taking of testimony and exhibits.

Please be advised that, unless otherwise ordered, scheduled hearings will be in-person hearings unless otherwise ordered by the relevant district or magistrate judge. Any requests for exceptions must be made by written motion unless otherwise ordered by the relevant district or magistrate judge. A form has been provided

for your use in requesting an exception, which is available at the following link:

<https://www.casd.uscourts.gov/assets/pdf/forms/Motion%20to%20Appear%20VTC.pdf>. The form is designed to protect your privacy, while at the same time ensure that exceptions are only granted for good cause.

Separately, the Court plans to soon recommence jury trials, being guided by the report of the US Administrative Office of the Courts on conducting federal jury trials and convening grand juries during the pandemic, which is available at the following link:

https://www.uscourts.gov/sites/default/files/combined_jury_trial_post_covid_doc_6.10.20.pdf. The report details various factors to consider, from prospective juror questionnaires to creating safe spaces for jurors to deliberate. In preparation for this recommencement, the Court has developed a set of Jury Trial Safety Protocols, which will supplement the procedures in CJO No. 29. The Court's Trial Safety Protocols have been developed with guidance received from the occupational medicine practitioner, referenced above. The Court has carefully analyzed the physical layouts of the Court facilities, including, without limitation, the jury assembly room, all courtrooms and auxiliary spaces! , to ensure adequate social distancing is adhered to during all phases of a trial. The Court is also putting in place procedures that will ensure that trial scheduling is coordinated to ensure that maximum safe occupancy of the court facility is adhered to.

The Court is also focused upon the need to ensure that the venire is adequate. To that end, the Court has developed a COVID-19 Jury Questionnaire, which is designed to elicit information at an early stage regarding the jurors' ability and willingness to serve under the current public health conditions. Chief Judge Burns presently plans to assemble a jury pool of prospective jurors and proceed to preside over an initial trial on August 10, 2020. The trial will be conducted under these Jury Trial Safety Protocols and will be observed by the members of the Strategic Committee, who will provide any further recommendations for improvement of the processes and procedures.

Please also note that Judge Battaglia and the San Diego Chapter of the Federal Bar Association will be putting on a webinar for the bar, which will demonstrate how a jury case will be tried under the Jury Trial Safety Protocols. The webinar, scheduled for August 5, 2020, at Noon, will utilize a pre-recorded video that reenacts a mock trial, and webinar participants will have the opportunity to ask questions and provide comments. Registration information is available here: <https://www.fbasd.org/chapter-events>.

In closing, the Court is open for business! At the same time, the Court is taking every possible measure to ensure your safety and the safety of your clients, witnesses, Court staff and the public.

Cordially,

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