

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

**PROTOCOL GOVERNING IN-COURT
PROCEEDINGS DUE TO EXIGENT
CIRCUMSTANCES CREATED BY COVID-19**

**ADM-1
ORDER 20-6**

ORDER

This Standing Order shall apply to all hearings scheduled to occur in the Rudman Courthouse until April 10, 2020.

1. The court will conduct in-court hearings at the Rudman Courthouse on Tuesdays and Thursdays. The presiding judge has the discretion to determine which matters shall be scheduled for in-court hearings.
2. No more than 10 people may be present in the courtroom for any hearing. In criminal cases, counsel for the defendant shall provide the presiding judge's case manager with the names of 2 individuals who will be attending the hearing in person. Counsel for the government shall provide the name(s) of any victim(s) who will be attending the hearing in person. No other persons, other than court personnel and security, may attend the hearing in person. In civil cases, counsel should consult and provide to the presiding judge's case manager the names of up to 4 people who may attend the hearing. The identity of the designated attendees shall be provided at least 24 hours prior to the scheduled hearing.
3. Each hearing will be video broadcast into an overflow courtroom. Not more than 10 members of the public or media may be present in the overflow courtroom for any hearing. Persons will be admitted on a first-come, first serve basis, and no member of the public or media will be allowed to enter the courthouse to observe the hearing once the overflow courtroom reaches the 10 person maximum.
4. Only counsel, the parties, and persons present to observe the proceeding shall be admitted into the Rudman Courthouse, and access shall be limited to entering and exiting the designated courtroom.
5. Counsel shall inform the court, and advise designated attendees that they may not attend the hearing, if they have tested positive for COVID-19 in the past 14 days, have had contact with anyone who has tested positive for COVID-19 in the past 14 days, have COVID-19 symptoms

(fever, cough, shortness of breath), are under an order to self-quarantine, or have been to, or had contact with anyone who has been to, the countries listed on Standing Order ADM-1, 20-9. Counsel should also inform the court if they, or their client, is in a high-risk category (e.g. over 60 years old, heart disease, diabetes, lung disease, weakened immune system, or pregnant) and would prefer the matter be rescheduled to a future date.

6. With the exception of criminal defense counsel and the defendant, all persons attending a hearing in the courtroom or observing in the overflow courtroom shall stay at least 6 feet away from other people at all times. In criminal cases in which the defendant personally appears in the courtroom, the court encourages criminal defense counsel to maintain a 6 foot distance from their client and to communicate by a court-provided telephone during the hearing. The court will also liberally recess proceedings to permit counsel to consult with a client during a hearing in a side conference room where they can maintain a distance of 6 feet. Interpreters will provide interpretation services for criminal defendants using a court-provided telephone during the hearing.

7. In criminal cases in which the defendant is incarcerated, with the exception of change of plea and supervised release revocation hearings, there is a presumption that the defendant will participate by videoconference unless defense counsel files an objection to a videoconference appearance 24 hours prior to the scheduled hearing. If no objection is filed, the proceeding will be held with the defendant appearing by video conference. The presiding judge will confirm the defendant's consent to appear by videoconference at the commencement of the hearing. During the hearing, defense counsel and any interpreter will have the ability to communicate with a defendant appearing by videoconference.

8. For in-court change of plea and supervised release revocation hearings, the incarcerated defendant shall be transported to the courthouse for the hearing.

9. Given the limitations on access to the courtroom, for sentencing hearings defense counsel may present letters of support or make proffers of support on behalf of a defendant in lieu of live testimony.

10. For initial appearances, arraignments, detention hearings, and bail revocation or review hearings, counsel will present witness testimony by proffer unless live witness testimony is permitted on motion of counsel.

11. Exhibits shall be pre-marked and submitted to the presiding judge's case manager by email with a copy to opposing counsel at least 24 hours prior to the scheduled hearing.

12. The official court record will be taken by audio recording.

13. The General Services Administration will provide disinfecting cleaning services on counsel tables and telephones after each hearing before persons enter the courtroom for the next hearing.

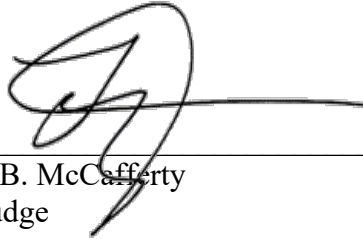
14. The United States Marshal Service is responsible to enforce the access restrictions set forth in this order.

15. If an unrepresented person or an attorney contends that there are urgent and compelling reasons for an in-court hearing in any case, the person or attorney should file a written motion, which must be served on the other party or parties, explaining why the particular case should receive an in-court hearing. The presiding judge will determine whether an in-court hearing is necessary.

16. The court recognizes that these limitations constitute a partial closure of the courtroom, see Bucci v. United States, 662 F.3d 18, 22 (1st Cir. 2011), and may as a result impact both the defendant's Sixth Amendment right to a public trial and trial-related proceedings and the public's right to access court proceedings under the First Amendment. The court has considered reasonable alternatives and concluded that these measures are necessary, but no more restrictive than necessary, to protect the substantial interest of maintaining the health of participants in and observers of these hearings, as well as that of the general public, during the present pandemic. See id. at 22 (citing Waller v. Georgia, 467 U.S. 39, 46 (1984)).

SO ORDERED.

Date: March 20, 2020



Landya B. McCafferty
Chief Judge