
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

IN THE MATTER OF CRIMINAL
PROCEEDINGS AND SUPERVISION
DURING THE CORONAVIRUS
OUTBREAK

**GENERAL ORDER
20-010**

With the substantial increase in confirmed COVID-19 cases in Utah within the past week, the court has determined that it must implement the following changes to criminal proceedings as a means of protecting, as much as possible, the health of the participants while preserving the rights of those accused of committing crimes.

Therefore, IT IS HEREBY ORDERED effectively immediately:

ATTORNEY-CLIENT PRIVILEGE¹

1. Under Federal Rule of Evidence 502(d), a communication made from March 23, 2020 to May 1, 2020, between an attorney and a client, using electronic communication technology available at a local detention facility, is not waived by the presence of third parties or the existence of monitoring, whether or not the monitoring is

¹ In response to the coronavirus (COVID-19) outbreak, many local detention facilities throughout Utah that house federal inmates have reasonably restricted the ability of attorneys to meet privately with their clients. While electronic options (telephone calls or videoconferencing) are available, those options often do not facilitate secure, private communications because inmates share a common area and can overhear each other's conversations. Furthermore, transporting inmates to and from detention facilities to the courthouse for hearings, where attorneys can speak privately with their clients, currently increases the risk of exposure to and the spread of the virus.

disclosed. For attorney-client privilege to be preserved and not waived, the following factors must be satisfied: (1) the communication is covered by the attorney-client privilege, (2) the communication must be made using a third-party teleconferencing or video conferencing system available at the detention facility, and (3) defense counsel must make a statement at the beginning of the electronic communication, indicating that the conversation is protected by the attorney-client privilege.

PRETRIAL SERVICES REPORTS

2. In consideration of the many restrictions enumerated in General Orders 20-008 and 20-009, between March 23, 2020 and May 1, 2020, all Pretrial Services Reports (often referred to as Bail Reports) will be filed under seal in the court's CM/ECF system. A Pretrial Services Report must be stamped SEALED and emailed—at the same time—to the prosecutor and defense counsel who are appearing at the hearing in which the report will be considered. Prior to the hearing, defense counsel may discuss the report with their client.

3. Within seven days of the initial detention hearing, the prosecutor and defense counsel must destroy their copies of the report, with the exception of the criminal history portion that counsel is already permitted to retain. The court expects that, as officers of the court, the prosecutor and defense counsel will fully comply with this requirement, and do so timely.

4. The prosecutor and defense counsel will not release or provide copies of the report to any other person.

5. Destruction of the report means (1) deleting any emails containing the report from an email inbox and email trash or deleted items, and (2) shredding paper copies or placing paper copies into a secured document shredding container.

CRIMINAL HEARINGS

6. With the number of local COVID-19 cases increasing each day, the court will hold in-person criminal hearings only in exceptional circumstances and after the exhaustion of all other available options. Therefore, all reasonable available efforts must be made to conduct the hearing employing existing telephonic or video conference options prior to proceeding with an in-person hearing. Toward that end, counsel are instructed to contact and work with Rebecca Skordas, the court's CJA Supervising Attorney, and the judge's courtroom deputy to enable hearings to proceed by electronic means.

7. When electronic means are unavailable or when the defendant does not consent to using teleconferencing, the court will conduct any in-person proceedings, including an initial appearance, arraignment, or detention hearing, at the courthouse as follows:

- a. Before the court proceeding, the defendant will be escorted by the United States Marshal Services (USMS) to courtroom 8.200. All court personnel, defense counsel, prosecutor, witnesses, and the judicial officer will convene in courtroom 8.100, where all proceedings will be carried out by video conferencing, provided that the defendant consents under Federal Rules of Criminal Procedure 5(f) and 10(c). Defense counsel may, at their discretion, choose to be present in courtroom 8.200 as long as they stay at least six feet away from their client.
- b. Depending on the court's technological capabilities, interpreters will provide interpreting services from courtroom 8.100 if possible—or

alternatively, from courtroom 8.200, using headsets and sitting at least six feet away from the defendant.

- c. The court will provide defendant with sufficient opportunity to communicate privately with their attorney before the proceeding starts. The court will also liberally recess proceedings to permit counsel to consult with a client during a hearing in a location where they can maintain a distance of at least six feet.
- d. In advance of any in-person proceedings, counsel must inform the court 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 in General Order 20-008. 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 need the matter to be rescheduled.
- e. All persons attending an in-person proceeding at the courthouse must stay at least six feet away from other people at all times.

8. Currently, it is difficult to obtain a wet signature on financial affidavits because of the restrictions on in-person contact with inmates at local detention facilities. Even so, defense counsel remains obligated to complete and review the financial affidavit with their client privately as circumstances permit before the judge enters the

courtroom and convenes the hearing. At the beginning of initial appearances conducted by teleconference, the court will excuse the prosecutor from the hearing before engaging in a colloquy with the defendant about their financial circumstances to confirm the information obtained by defense counsel is true and correct. Defense counsel will be permitted to file a signed financial affidavit at a later date to be determined by the magistrate judge presiding at the hearing.

9. In the event that a local detention facility is on lockdown, the court will reschedule criminal proceedings involving defendants located at that facility.

MOTIONS FOR TEMPORARY RELEASE UNDER 18 USC § 3142(i)

10. The court anticipates that defense counsel will likely file Motions for Temporary Release under 18 USC § 3142(i) because of this pandemic. The magistrate judge who entered the initial detention order in the case will decide these motions. Defendants, however, can seek review of the magistrate judge's decision by a district judge.

UNITED STATES PROBATION AND PRETRIAL SERVICES OFFICE

11. The United States Probation and Pretrial Services Office for the District of Utah is closed to the public for walk-in access due to the coronavirus. Persons under supervision should not report in person to the office.

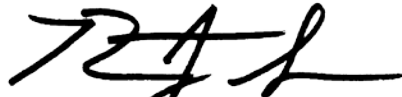
12. Instead, persons under supervision should contact the main office number at 801-535-2701.

13. Please note that this situation does not affect the supervision of defendants and offenders in the community. The office will continue its efforts to monitor and enforce court-ordered conditions of release throughout the District of Utah.

This Order remains in effect until the court orders otherwise.

SO ORDERED this 23rd day of March, 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'R. J. Shelby', written over a horizontal line.

ROBERT J. SHELBY
CHIEF UNITED STATES DISTRICT JUDGE