

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 21-04

(Adding Super. Ct. Crim. R. 62)

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), the Board of Judges of the Superior Court approved new Superior Court Rule of Criminal Procedure 62; and

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), the new rule, to the extent that it modifies the Federal Rules of Criminal Procedure, has been approved by the District of Columbia Court of Appeals; it is

ORDERED, that Superior Court Rule of Criminal Procedure 62 is hereby enacted as set forth below; and it is further

ORDERED, that the new rule shall take effect immediately and shall govern all proceedings thereafter commenced and insofar as just and practicable all pending proceedings.

Rule 62. Rules Emergency

(a) CONDITIONS FOR A RULES EMERGENCY.

(1) *In General.* The Chief Judge may declare or extend a rules emergency for a period that totals 14 days or less when the Chief Judge finds that:

____ (A) extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to the court, substantially impair the court's ability to perform its functions in compliance with the other criminal rules; and

____ (B) no feasible alternative measures would eliminate the impairment within a reasonable time.

(2) *Extended Time Period.* The Chief Judge may declare a rules emergency for a period of more than 14 days, or an extension of a rules emergency past the 14th day after the start of the rules emergency, if:

____ (A) the Chief Judge makes the findings required by Rule 62(a)(1)(A) and (B); and

____ (B) the Joint Committee consents.

(b) DECLARING A RULES EMERGENCY.

(1) *Content.* The declaration of a rules emergency or an extension of that rules emergency must state:

____ (A) which provisions in Rule 62(c) and (d) are effective during the particular rules emergency; and

____ (B) a date, no later than 90 days from the date of the declaration, on which the declaration will terminate.

(2) *Additional Declarations; Early Termination.* The Chief Judge:

____ (A) may issue additional declarations, consistent with Rule 62(a), if emergency conditions change or persist; and

____ (B) must terminate a declaration before its stated termination date when the Chief Judge finds that a rules emergency no longer exists.

(c) AUTHORITY TO DEPART FROM THESE RULES AFTER A DECLARATION.

(1) *Public Access to Proceedings.* If emergency conditions preclude in-person attendance by the public at a public proceeding, the court must provide reasonable alternative access to that proceeding.

(2) *Signing or Consenting for a Defendant.* If these rules require a defendant's signature, written consent, or written waiver, and emergency conditions limit a defendant's ability to sign, the court may sign for the defendant if the defendant, after consultation with counsel, consents on the record. If the defendant is pro se, the court may sign for the defendant if the defendant consents on the record.

(3) *Issuing a summons.* When these rules require the court to issue an arrest warrant on misdemeanor charges only, the court may issue a summons instead if it finds that:

____ (A) because of the emergency conditions, the use of a warrant would create a significant risk to health or safety that outweighs the risk of dangerousness to any other person or the community; and

____ (B) the government has not demonstrated good cause for issuing a warrant instead of the summons.

(4) *Alternate Jurors.* The court may impanel more than 6 alternate jurors and, consistent with Rule 24(c)(4), may allow additional preemptory challenges proportionate to the number of additional alternates.

(d) AUTHORITY TO USE VIDEOCONFERENCING AND TELECONFERENCING AFTER

A DECLARATION.

(1) Videoconferencing for Plea, Trial, and Sentencing Proceedings Under Rule 43(b)(2). This rule does not modify the court's authority to use videoconferencing for a proceeding under Rule 43(b)(2). But if emergency conditions significantly impair the defendant's opportunity to consult with counsel, the court must ensure that the defendant will have an adequate opportunity to do so confidentially immediately before, during, and at the conclusion of that proceeding.

(2) Videoconferencing for Certain Proceedings at Which the Defendant Has a Right to Be Present. Except for felony trials and as otherwise provided under Rule 62(d)(1) and (3), for a proceeding at which a defendant has a right to be present, the court may use videoconferencing if:

(A) the Chief Judge finds that emergency conditions substantially impair the court's ability to hold an in-person proceeding within a reasonable time;

(B) the court finds that the defendant will have an adequate opportunity to consult confidentially with counsel immediately before, during, and at the conclusion of the proceeding; and

(C) the defendant consents on the record after consulting with counsel.

(3) Videoconferencing for Felony Pleas and Sentencings. For a felony proceeding under Rule 11 or 32, the court may use videoconferencing only if, in addition to the requirements in Rule 62(d)(2)(A) and (B):

(A) the Chief Judge finds that emergency conditions substantially impair the court's ability to hold felony pleas and sentencings in person; and

(B) the defendant consents on the record after consulting with counsel.

(4) Teleconferencing. When videoconferencing is authorized under Rule 5 or 10, or when the requirements for videoconferencing in this rule have been met, the court may conduct the proceeding by teleconferencing if:

(A) the court finds that videoconferencing cannot be provided for the proceeding within a reasonable time; and

(B) the defendant consents on the record after consulting with counsel.

(e) EFFECT OF A TERMINATION. Terminating a declaration ends the court's authority under Rule 62(c) and (d) to depart from the criminal rules. But if a particular proceeding is already underway and complying with these rules for the rest of the proceeding would be infeasible or work an injustice, it may be completed as if the declaration had not terminated.

COMMENT TO 2021 AMENDMENTS

This new rule gives the Chief Judge the ability to declare a rules emergency and authorize the court to depart from certain provisions in other criminal rules. The Joint Committee must consent if the Chief Judge declares a rules emergency for a period of more than 14 days or an extension of a rules emergency past the 14th day after the start of the rules emergency. The Chief Judge's declaration must specify which provisions in sections (c) and (d) are effective during the rules emergency. The provisions in section (d), if included in the declaration, are not intended to modify the court's authority to use videoconferencing for a proceeding under Rules 5 and 10.

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By the Court:

Date: May 17, 2021



Anita M. Josey-Herring
Chief Judge

Copies to:

All Judges

All Magistrate Judges

All Senior Judges

William Agosto, Director, Criminal Division

Rita Blandino, Director, Domestic Violence Division

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Daily Washington Law Reporter

Laura Wait, Associate General Counsel