

Effects of Social Distancing and COVID-19 on Government Investigations & Proceedings Still Developing

March 20, 2020 | Blog | By [Samantha P. Kingsbury](#)

VIEWPOINT TOPICS

- Health Care
- Health Care Enforcement & Investigations
- COVID-19

In the midst of the upheaval caused by social distancing and related efforts to minimize and contain COVID-19-related risks, we have been monitoring steps taken by the Department of Justice (DOJ), the U.S. Attorneys' Offices (USAOs), and federal courts to adapt to these circumstances. Any steps taken are sure to affect ongoing government investigations and related proceedings and how we, as defense counsel, approach them.

RELATED PRACTICES

Below is what we have learned to date both from experience within Mintz and from monitoring industry press and official announcements. This list is not exhaustive and is subject to change.

RELATED INDUSTRIES

- **The Federal Circuit Court of Appeals** has announced that all cases scheduled for argument during the April 2020 sitting will be conducted remotely. No in-person hearings will be held.
- **The First Circuit Court of Appeals** has canceled oral arguments scheduled for April 2020.
- **The Second Circuit Court of Appeals** has issued an order extending by 21 days all filing dates and other deadlines currently set between March 16, 2020 and May 17, 2020.
- **The Third Circuit Court of Appeals** will hold oral arguments as scheduled pending further order of the court. The merits panel will decide the manner of argument. Parties may file a motion to appear by audio conference. The Court has also relaxed the three-day time limit for requesting extensions until the clerk's office resumes regular operations.
- **The Fourth Circuit Court of Appeals** has announced that cases previously scheduled for argument during the March 17-20th and April 7th argument sessions will either be heard at a later session, heard remotely, or submitted on the briefs. (The assigned panels will decide.)
- **The Fifth Circuit Court of Appeals** has not modified filing deadlines or granted automatic extensions but will accept requests for extensions from counsel affected by the coronavirus "based upon justification."
- **The Sixth Circuit Court of Appeals** has not made any announcements about filings deadlines, hearings, etc.
- **The Seventh Circuit Court of Appeals** has announced that all cases scheduled for oral argument between March 30th and the end of April will be argued telephonically.
- **The Eighth Circuit Court of Appeals** has not announced any changes to deadlines, hearings, etc.
- **The Ninth Circuit Court of Appeals** is evaluating arguments currently scheduled for March, April, and May and will give orders to these cases individually.
- **The Tenth Circuit Court of Appeals** has closed its courthouse to the public until further notice and directed that all filings be made electronically or by mail until further notice.
- **The Eleventh Circuit Court of Appeals** has announced that all paper filing requirements have been temporarily waived and that only judges, court staff, members of the media and visitors with official business before the Court will be allowed into its buildings.
- **The D.C. Circuit Court of Appeals** has suspended all in-person onsite oral arguments until further notice.
- **Federal district courts in California** have made the following modifications to their schedules:
 - *Central District of California*: Civil and criminal jury trials are postponed until April 13th.
 - *Eastern District of California*: Civil and criminal jury trials are postponed until May 1st. All courtroom proceedings and filing deadlines will remain in place unless otherwise ordered by the presiding judge.
 - *Northern District of California*: Civil and criminal jury trials are postponed until May 1st, and the courts are closed to the public.
 - *Southern District of California*: Civil and criminal jury trials are postponed until April 16th. Bankruptcy court hearings will be conducted by telephone through April 16th.
- **The Massachusetts District Court** has announced that all jury trials scheduled to begin before April 27, 2020, are postponed until further notice. Trial-specific deadlines in criminal cases before April 27th

are also postponed. Judges can delay trial-specific deadlines in civil cases at their own discretion. Magistrate judges will continue to hear criminal matters and grand juries will continue to meet until further notice.

- **The Southern and Eastern Districts of New York** have postponed until further notice all criminal and civil jury trials currently scheduled to begin before April 27, 2020.
- **Federal district courts in the District of Columbia** have postponed all civil and criminal jury trials until at least May 11, 2020.

With respect to ongoing investigations, based on our anecdotal experience, USAOs across the country do not seem to be acting under uniform directives from DOJ regarding extension of deadlines or rescheduling of meetings or presentations. Many Assistant U.S. Attorneys (AUSAs) appear to be teleworking and continuing to attend to their open investigations and are taking somewhat of a case-by-case approach as to whether and how to adjust existing deadlines and case work to current circumstances.

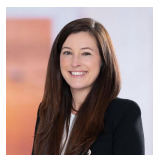
We have, however, observed a few emerging potential trends:

- Some AUSAs (across offices) are suggesting that previously scheduled in-person meetings, presentations, and depositions be conducted via videoconference. These suggestions raise interesting challenges for defense counsel because there are of course benefits to keeping a case on schedule, but there are also significant drawbacks to forgoing an in-person encounter with the government. Likewise, it is very difficult to effectively prepare witnesses to be deposed and to consult with co-counsel on an upcoming presentation via videoconference (as opposed to an in-person meeting).
- There may be some relaxing of subpoena and Civil Investigative Demand production deadlines, particularly with respect to e-discovery, as AUSAs adapt to teleworking. Because such productions are often (but not always) made by delivery of a physical disc or drive, the fact that defense counsel (and their litigation technology teams) are not physically in the office to send out productions – and the fact that USAO employees are not in the office to receive and process productions – creates some challenges for parties dealing with a previously determined production schedule. There are of course technological solutions to some of these problems (e.g., we understand that some AUSAs are now asking defense counsel to submit productions electronically instead of via disc or drive), but developing mutually agreeable solutions may result in changes to deadlines and/or production procedures.

Finally, we understand that COVID-19-related risks have also served as the basis for recommendations to DOJ as to where its enforcement and investigative attention should focus next. **Attorney General William Barr has received a request** from the National Whistleblower Center that DOJ create a task force to monitor and investigate violations of the False Claims Act related to the coronavirus crisis. In particular, this recommendation directed DOJ's attention to nursing homes (where many at-risk patients reside) and suggested that cases involving allegations of fraud related to the coronavirus be prioritized and receive a prompt and aggressive federal response. It remains to be seen whether DOJ will adopt or respond to this recommendation, but it is clear that COVID-19 is already starting to have an impact across the enforcement landscape.

Over the coming weeks and perhaps months, we expect that the government's approach to ongoing investigations (and other proceedings) will continue to adapt and change. We will monitor these developments and update this report as needed.

Authors



Samantha P. Kingsbury, Of Counsel

Samantha advises clients on regulatory and enforcement matters. She has deep experience handling violations of the federal ant-kickback statute and FCA investigations for clinical laboratories and hospitals.