

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St. Denver, Colorado 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case No: 2020-04 Courtroom: 259
ADMINISTRATIVE ORDER NO. 2020-04	
<p style="text-align: center;">CHIEF JUDGE ORDER 2020-04 FINDING PUBLIC HEALTH CONCERNS DUE TO COVID-19 PRECLUDE THE CALLING OF JURORS FOR JURY TRIALS SCHEDULED BETWEEN NOW AND MAY 31, 2020</p>	

This order is issued to provide guidance to summoned jurors, attorneys, litigants, and all others associated with any jury trials in the Second Judicial District in light of the public health risk posed by the Novel Coronavirus (“COVID-19”).

This Order is issued in full cognizance of the unique responsibility of the courts to continue operations, ensuring equal access to our citizens to the essential functions of the third co-equal branch of their government, even in times of crisis. Rather, especially in times of crisis. Indeed, each judicial officer undertakes an oath or affirmation to uphold and support the constitution of the United States and the Constitution and laws of the state of Colorado. It is a solemn obligation that every judge takes when they accept the position. It is with these guiding principles in mind that this Order is entered.

The Court’s overarching challenge throughout the COVID-19 pandemic has been to balance the constitutional obligation to provide access to the courts while protecting the health and safety of every individual who enters a Second Judicial District courthouse. With each passing day, however, the pervasive impact of COVID-19 in our community grows. It is imperative that active steps be taken to slow the spread of COVID-19 and appropriate precautions be strictly followed to reduce exposure to COVID-19. Given the serious threat the pandemic presents to persons participating in jury trials in the Second Judicial District courthouses, the Court will no longer summon jurors for jury trials set through **May 31, 2020**. Further, **no person with a summons to report for jury duty shall be required to report for jury service in this court before June 1, 2020**.

The Court does not make this decision lightly, given its duty to protect the rights and liberties of all Coloradans, which includes every party’s right to a fair and impartial jury.

Nonetheless, the Court cannot conduct jury trials in these courthouses without unnecessarily risking the spread of COVID-19 to persons compelled by summons to report for jury duty. The undersigned hereby finds that calling a jury to any courthouse in the Second Judicial District would potentially endanger the health of all involved in a jury trial, as well as the community at large, given the significant risk of spreading COVID-19.

FINDING OF FACTS

The gravity of the pandemic and basis upon which this Order is issued is reflected by the following non-exhaustive list of facts and events:

- The World Health Organization has pronounced that COVID-19 is a world-wide pandemic.
- On March 13, 2020, President Donald J. Trump entered a proclamation declaring a national emergency concerning COVID-19. Five days later, he issued an executive order prioritizing and allocating health and medical resources to respond to the spread of COVID-19.
- All major professional sports leagues have suspended their seasons to reduce the spread of COVID-19. The NCAA cancelled the college basketball tournament. Most concerts and large events have been cancelled. Colorado's ski areas have been closed.
- In-person learning has been suspended across the United States.
- Governors and mayors in communities across the country have issued "stay-at-home" orders or recommendations, except for persons whose jobs are determined to be "essential." Nearly 200 million Americans are now subject to these mandatory measures, roughly two-thirds of our country.
- On March 12, 2020, the CDPHE issued Public Health Order 20-20 restricting visitors at all Colorado skilled nursing facilities, assisted living residences, and intermediate care facilities.
- In a letter sent to Governor Polis, Chief Justice Coats, the State Court Administrator and others, dated March 13, 2020, Colorado State Public Defender Megan Ring recognized the urgency to reduce the spread of COVID-19 and one of her recommendations was to close or limit access to courthouses by the public, and find accommodations to conduct court business without the presence of large numbers of the public, as is currently occurring. Ms. Ring acknowledged that an attorney

employed by the Colorado Public Defender's Office tested positive for COVID-19.

- On March 15, 2020, the CDPHE recommended limiting all social gatherings to 50 persons or less, based on recommendations of the CDC, and that all events involving more than 50 persons be postponed. Prior to March 15, 2020, CDPHE had recommended gatherings of no more than 250 persons in a single location to reduce the spread of COVID-19.
- On March 16, 2020, the CDPHE issued a Public Health Order 20-22 closing all restaurants, bars, gyms, theaters, and casinos through April 30, 2020.
- On March 16, 2020, Chief Justice Coats suspended all jury calls through April 3, 2020. In an order issued on March 20, 2020, Chief Justice Coats extended the suspension of jury calls through May 15, 2020 citing the same exception and ordered courts to limit operations to essential judicial functions.
- On March 18, 2020, Governor Polis issued Executive Order D 2020 007 suspending all normal in-person instruction at all Colorado public and private schools from March 23, 2020 through April 17, 2020.
- On March 18, 2020, and as amended on March 20, 2020, the CDPHE issued Public Health Order 20-23 limiting all mass gatherings to 10 persons or less. The 10-person limitation on gatherings in one place went into effect on March 19, 2020. The ten-person limitation gathering Public Health Order 20-23 does not apply to certain entities, including Colorado state courts. *See* CDPHE Public Health Order 20-23(II)(A).
- On Saturday, March 21, 2020, an attorney who appeared in multiple courtrooms at the Lindsey-Flanigan Courthouse the previous week, was diagnosed with COVID-19, causing the attorney and all judges and courtroom staff in contact with the attorney to be quarantined, where they remain at this time. As of this writing, two additional attorneys who regularly appear in our criminal courts have also tested positive.
- Over the last few weeks, some courts have been temporarily closed because of the pandemic. On Sunday, March 22, 2020, the Lindsey-Flanigan Courthouse was closed for two days and all district court criminal dockets were canceled that week.
- On March 23, 2020, Mayor Michael Hancock, the City and County of Denver issued a stay-at-home order which required all persons to shelter in place with exceptions. This Order has since been extended to April 30, 2020.

- On March 25, 2020, Governor Polis issued a mandatory stay-at-home order for all residents of Colorado effective March 26, 2020 and lasting through April 11, 2020. This Order has now been extended through April 26, 2020.
- On March 29, 2020, President Donald Trump announced that he would extend federal social distancing guidelines to April 30, 2020.
- On April 3, 2020, Governor Polis issued a statement urging all Coloradoans to wear a cloth mask while in public.
- 42 states now have now issued stay-at-home orders.
- On April 16, 2020, Chief Justice Coats extended the suspension of all jury calls through May 31, 2020, eliminating the exception previously authorized for criminal trials with imminent speedy trial concerns.

The CDPHE Public Health Order 20-23 limiting gatherings to 10 persons or less does not apply to state courts. However, there are strong recommendations by state and federal health experts and executive authorities to limit gatherings to 10 persons or less, unless a distance of at least 6 feet could be maintained between persons at all times if more than 10 persons are in the same location at the same time. Given the facts described above, the strong recommendations regarding social distancing, combined with the very manner by which jury trials are completed in the courthouses of this district, the Court has no option but to issue this Order.

The number of persons needed for jury selection for a felony jury trial can range from 50 to 150 per case, depending on the charges, length of trial, pretrial publicity, and other factors. The number of persons needed for jury selection for a single civil court jury trial can range from 20 to 40, again depending on several factors. In order to select a jury in the Second Judicial District, members of the public called for jury duty must be seated in close proximity to one another due to space constraints in our facilities. While it might be possible to maintain social distancing of 6 feet between persons if there are less than 40 people in the assembly room, even limiting the number of prospective jurors to 40 people would make it difficult to monitor for proper social distancing. Presuming if jury selection occurred with one juror in the courtroom at a time, for a felony trial a minimum of 12 jurors presiding is required, plus alternate jurors, a number that already exceeds the recommended limitation on public gatherings of 10 persons before introducing the judge, attorneys and the accused. Further, once the jurors are impaneled it would be impossible to separate the jurors spatially by 6 feet without having some members of the jury seated away from the jury box, such as in the gallery section or in the well area of the courtroom. This would make it difficult for some of the jurors to hear the testimony and/or observe the witnesses and/or attorneys, calling into question the fairness of the proceedings. Once deliberations begin, the jurors would be

required to deliberate in small, closed jury rooms where they also cannot maintain social distancing. In sum, the district's facilities are not configured to safely complete a jury trial during this pandemic.

Trials are required to be open and public. Under these circumstances, however, it would be extremely difficult for the Court, through the command of a jury summons, to bring more than 10 people at a time to the courthouse for jury service. Even if the jury commissioner summoned 10 people at a time over the course of several days for jury service, it is unrealistic to believe that a jury could be selected considering the heightened public concern over the spread of COVID-19. Indeed, the Court has received numerous complaints from those potential jurors with active summonses voicing concerns for their own health and safety and for that of the public. The Court has already postponed a significant number of potential jurors' jury service, leaving a smaller pool of jurors to draw from. This pool is further limited by the mandatory postponement or disqualification of anyone over the age sixty who requests deferral of their jury service. These and other developments with regard to COVID-19 in the geographic area comprising this district adversely affect the Court's ability to obtain an adequate complement of jurors from a fair cross-section of the community. Moreover, given the mandatory stay-at-home orders issued by Governor Polis and Mayor Hancock, the command of a jury summons would place potential jurors in the untenable position of being unable to comply with both the stay-at-home orders and a jury summons.

ORDER

For all of the above-stated reasons, the court orders that: (1) the Second Judicial District shall not summon jurors for jury trials set through May 31, 2020; and (2) **no person with a summons to report for jury duty shall be required to report for jury service in this court before June 1, 2020.** The judicial officers in the district will individually determine the status of all cases set for trial during this time period.

Dated this 17th day of April, 2020.

BY THE COURT:



MICHAEL A. MARTINEZ
District Court Chief Judge