SIXTH JUDICIAL DISTRICT
ARCHULETA, LA PLATA, AND SAN JUAN COUNTIES

THIRD AMENDED ADMINISTRATIVE ORDER 2020-9

ORDER REGARDING THE PROCEDURES TO BE USED FOR JURY TRIALS IN THE SIXTH JUDICIAL DISTRICT DURING THE COVID-19 PANDEMIC

Pursuant to the authority granted to the Chief Judge of the Sixth Judicial District by the Chief Justice of the Colorado Supreme Court in his Updated Order Regarding COVID-19 and the Operation of Colorado State Courts dated July 24, 2020, and considering all applicable executive and public health orders, the Chief Judge of the Sixth Judicial District has determined that the Sixth Judicial District can safely hold a limited number of jury trials during the COVID-19 Pandemic by following the restrictions and procedures contained in this order. This order has been promulgated after consultation with the San Juan Basin Health Department, the District Attorney's Office of the Sixth Judicial District, and the Durango Regional Office of the Colorado State Public Defender. This order is subject to modification depending upon the level of COVID-19 contagion within the Sixth Judicial District and surrounding areas and will also be modified to comply with future executive and public health orders.

For so long as the COVID-19 Pandemic endangers the health of persons located within the Sixth Judicial District, the following procedures shall be used for jury trials:

Prior to entering the courthouse, courthouse security shall take the temperature of all prospective jurors with a touchless thermometer and ask the jurors the COVID-19 screening questions as required by Administrative Order 2020-3. Any juror who is exhibiting COVID-19 symptoms or who has a temperature of 100.4 degrees F or higher will not be allowed to enter the courthouse unless they inform security that they have a disability causing their temperature to be elevated. Courthouse security will ensure that potential jurors coming through security maintain appropriate social distancing.

Upon passing through courthouse security, the venire will be met by court staff and asked if any of the following apply to them:

JUROR HEALTH ASSESSMENT

Pursuant to Public Health Order 20-28, the Sixth Judicial District has implemented a COVID-19 symptoms check list. To serve as a juror, you CANNOT be currently experiencing:

1. Body temperature of 100.4 degrees F or higher, or any sense of having a fever;
2. New muscle aches/fatigue that cannot be attributed to a specific activity like physical exercise;

3. A cough or shortness of breath;
4. Chills;
5. Bouts of diarrhea, nausea, or vomiting;
6. Loss of sense of smell or taste;
7. Congestion or runny nose; or a
8. Headache.

ARE YOU CURRENTLY EXPERIENCING ANY OF THE ABOVE SYMPTOMS OR HAVE YOU EXPERIENCED ANY OF THESE SYMPTOMS WITHIN THE LAST 14 DAYS?

YES☐ NO☐

DO YOU LIVE WITH ANYONE WHO IS CURRENTLY EXPERIENCING ANY OF THE ABOVE SYMPTOMS OR HAS EXPERIENCED ANY OF THESE SYMPTOMS WITHIN THE LAST 14 DAYS?

YES☐ NO☐

ARE YOU AWARE OF WHETHER YOU HAVE BEEN EXPOSED TO SOMEONE WITH COVID-19 IN THE PAST 14 DAYS?

YES☐ NO☐

Additionally, a "vulnerable individual" or anyone living with a "vulnerable individual" may serve as a juror but will not be required to do so. "Vulnerable individuals" are:

1. Individuals who are 65 years old or older;
2. Individuals with chronic lung disease or moderate to severe asthma;
3. Individuals who have a serious heart condition(s);
4. Individuals who are immunocompromised;
5. Individuals who are pregnant;
6. Individuals who live in a nursing home or long-term care facility;
7. Individuals with severe obesity (body mass index of 30 or higher);
8. Individuals with diabetes;
9. Individuals with chronic kidney disease;
10. Individuals with liver disease;
11. Individuals determined to be high risk by a licensed healthcare provider;
12. Individuals caring for a "vulnerable individual."

Are you or do you reside with a vulnerable individual? YES ☐ NO ☐

Members of the venire who pass the health assessment shall be randomly assigned to and escorted to either the courtroom or the training room.

Prior to coming to court, the jury, counsel, and their staff and witnesses shall self-screen to determine if they have symptoms of COVID-19. All parties coming to court shall evaluate whether they or anybody with whom they live have the COVID-19 symptoms listed on the questionnaire above. If any persons involved in the trial or any persons who are not fully vaccinated reside with anyone who exhibits one or more of these symptoms, such person shall not come to court. Instead, such person shall call and inform the Court, bailiff, or appropriate attorney that they did not pass their self-screening protocol. Such person need not disclose their specific symptom(s) and the party that such individual has called shall not ask them to do so.

Administrative Order 2020-7 regarding the wearing of masks will be in effect. Everyone, including jurors, witnesses, attorneys, security, judges, and staff will wear masks when in the courtrooms unless they are speaking on the record and cannot be heard or understood while wearing a mask. The Court shall provide clear masks for criminal defendants (and their counsel if desired) and all witnesses. Masks shall also be worn by all parties in the hallways and jury rooms during the trial.

When publishing exhibits, instead of handing exhibits directly to the jury, the standard practice in the Sixth Judicial District shall be to have such exhibits displayed using existing courtroom technology, including digital display of exhibits through laptops to the projector screen and display of exhibits on the Elmo. Additionally, hard copies of the exhibits and media must be tendered to the Court. The presiding judge shall direct counsel how to display any exhibits that cannot be displayed electronically. In criminal trials, the party offering an exhibit that can be copied and placed in the jury notebooks, shall provide the Court sufficient copies of the exhibit that are three hole punched. The bailiff will, at the appropriate time, place such copies in the juror notebooks.

Due to social distancing requirements, the size and layout of the courtroom, and locations that the jurors and parties will be seated, it will be very difficult to allow jurors to ask questions of witnesses in an efficient and safe manner. Each presiding judge shall consider whether good cause exists in the particular case being tried to exempt that case from the provisions of C. R. Crim. P. 24 (g) which authorizes the jury to submit written questions of witnesses during the trial. In addition, in case of unusual circumstances, the presiding judge may modify the provisions of this order so long as the health and safety of the participants and spectators at the trial is not endangered.

Priority of Trials

Because there is only one district court courtroom in the La Plata County Courthouse that is large enough to select juries in district court civil cases and to conduct trials with juries of twelve (12), all Archuleta and La Plata County district court jury trials shall be heard in the Division 4 courtroom. Because the four district court divisions of the Sixth Judicial District will be scheduling trials in one courtroom, it is expected that multiple trials will be scheduled for Division 4 at the same time. Due to the large number of trials that will need to be heard, the

need to protect the constitutional rights of criminal defendants, the need to protect the health and safety of the public, and the lack of available courtrooms, with the exception of adjudicatory trials in dependency and neglect cases, there will be no civil jury trials held in the Sixth Judicial District without the permission of the Chief Judge. At least two weeks prior to the start of any jury trial, the presiding district court judge shall consult with the jury commissioner and all other judges with jury trials scheduled for the same time to determine which case shall have priority to be tried. In making this determination, the presiding judges shall consider:

1. Whether the conflicting trials are civil or criminal cases;
2. Whether any criminal defendant is in custody or is free on bond;
3. The nature of the conflicting cases, including community safety issues, age of the case, and, in the case of criminal offenses, speedy trial considerations, the level of offense(s) charged, as well as potential penalties in each case; and,
4. Any other public interest in completing one case prior to another.

If more than one trial is scheduled at the same time, the presiding judges shall create a priority list as to the priority of each trial. The jury commissioner shall consult with the presiding judges two business days before the trials are scheduled to designate which trial will be heard. If the presiding judges of the conflicting cases are unable to determine which case should have priority to be tried as scheduled, the chief judge shall make that determination. Any motion to continue the trial or otherwise dispose of a case set for trial shall be filed by 5:00 PM three business days before the trial is to start. The court shall then notify all the parties set for trial as to which case will actually proceed to jury trial.

In order to minimize the chance of community transmission of COVID-19, this plan for jury trials is designed to reduce the amount of time the courtroom is filled to its maximum capacity and to minimize the time that individuals in the courtroom are unable to maintain appropriate social distancing. Due to the need to limit the total number of individuals in the courtroom at any one time, as well as the need to pick a jury as quickly as possible to reduce the length of time that the courtroom is at its maximum capacity under this order, this plan does not allow space for members of the public to enter the courtroom to observe some portions of jury selection. The questions asked of the venire by the court and counsel and some of the answers given by the venire to those questions will be audible and available for the public to hear either by telephone or on the Internet via Webex. The size and layout of the Division 3 and 4 courtrooms will not allow all of the responses of potential jurors to voir dire questions to be audible to the public via telephone or Webex unless social distancing rules are violated and a microphone is passed between members of the venire, both of which would increase the chance of community transmission of COVID-19. If a party to a jury trial objects to the lack of public access during the portions of voir dire when all the marked seating is occupied by trial participants and the venire, that party shall inform the presiding judge prior to voir dire. The presiding judge shall allow for public seating in the courtroom by eliminating two or more individuals from the venire. In district court cases, the judge may, in lieu of or in addition to limiting individuals from the venire, eliminate the ability of counsel to have support staff or an additional attorney sitting in the two spaces reserved for such individuals.

La Plata County District Court Juries of 12

The training room in the basement shall be used as the jury room. Each night before or the morning prior to commencement of the day's jury trials, maintenance personnel shall appropriately disinfect all areas that the jurors, potential jurors, witnesses, and litigants will be occupying in the courtroom. The bailiff shall sanitize the jury room each night after the jury has left the courthouse or in the morning prior to the jury arriving for the day. The jury room shall be provided with antiseptic spray and hand sanitizer throughout the trial.

The reporter's station, counsel tables, and seating for jurors shall be rearranged to provide room to seat jurors both in the jury box and in the well of the courtroom to allow at least six (6) feet of separation between other jurors, counsel tables, the reporter station, and everyone else in the courtroom. Counsel tables and the reporter station shall also be placed such that they are at least six (6) feet from the witness stand and all other persons in the courtroom.

The jury commissioner shall call at least two waves of potential jurors such that a sufficient number of potential jurors is called to ensure that at least 36 individuals respond to the jury summonses in each wave. Unless directed otherwise by the presiding judge, the first wave shall be called at 8:00 AM and the second wave at 2:30 PM on each day of jury selection. The bailiff shall randomly designate and seat 22 potential jurors in Division 4 after the juror screening process. The bailiff shall randomly designate 12 jurors to be seated in the downstairs training/jury room. The proceedings in Division 4 shall be broadcast via Webex to the downstairs training/jury room. Because of limitations on where the venire will sit in both Division 4 and the training/jury room, portions of the downstairs venire will not be able to see the proceedings in Division 4. The downstairs venire will, however, be able to hear the voir dire questions asked by the court and counsel and some of the answers given to such questions by the upstairs venire. The Court and counsel shall conduct a complete voir dire in Division 4. The remaining venire in Division 4 shall then be excused and ordered to return at the time chosen by the presiding judge. The members of the venire that have been in the training room shall then be brought to Division 4 and randomly assigned seats by the bailiff. The Court and counsel shall conduct a complete voir dire of the remaining venire. The second venire shall be excused and ordered to return at the time chosen by the presiding judge. Counsel shall then exercise preemptory challenges in order to pick the jury.

If a jury cannot be picked from the first wave of jurors called, the process described above shall be repeated with the second wave and subsequent waves of potential jurors until a jury is selected.

After the jury is selected, instead of being seated in the jury box, jurors shall be seated in the designated areas in the jury box, in front of the jury box, and in the gallery of the courtroom on the west side of the aisle. The first gallery pew behind the bar on the east side of the aisle shall be reserved for additional counsel or trial support personnel. The remaining four gallery pews behind the bar on the east side of the aisle shall be available for public seating. Members of the public who observe the trial shall sit only in the marked portion of the public pews that provide for appropriate social distancing.

At the time jurors are to report, courthouse security shall provide masks for potential jurors who did not bring their own mask. Because the number of litigants, attorneys, staff for attorneys, and security officers will vary by trial, the bailiff will limit the number of prospective jurors so that no more than 33 people will be in the courtroom at one time. Depending upon the nature of the trial, the judge presiding over the trial may have the bailiff inform any prospective jurors not allowed into the courtroom to return at a specific time. The presiding judge may also order additional panels of prospective jurors to be called at appropriate times in cases that the judge believes appropriate. When additional waves of potential jurors are required or when changing the time that each wave of potential jurors is scheduled, the presiding judge and jury commissioner shall ensure that the waves are timed such that the preceding wave of jurors has left the courthouse prior to the scheduled arrival of the next wave.

At all times, counsel shall conduct the trial from counsel tables. Bench conferences are discouraged. If a party desires a bench conference, they shall notify the presiding judge and, with court approval, email the presiding judge and opposing counsel stating the reason they desire a bench conference. The presiding judge shall determine if a bench conference is warranted and decide if the matter can be resolved via email or whether the case should be recessed to conduct a bench conference in the Division 1 jury room. At the end of the trial, the presiding judge shall redact email addresses and print the email chain regarding bench conferences to complete the record. In between witnesses, the witness stand shall be sprayed with disinfectant by court staff. Gloves and paper towels shall be available for witnesses on the witness stand if necessary. Hand sanitizer and antiseptic spray or antiseptic wipes shall be available in the courtroom. During the trial, the presiding judge and courthouse security staff shall be authorized to enforce all applicable public health orders.

The presiding judge shall allow clients to use cell phones (set on silent), laptops, tablet computers, or other electronic devices to communicate privately and securely with counsel if counsel desires to remain a distance of six (6) feet or more from their client. The client shall also be allowed to pass written notes to their counsel. Counsel shall be responsible to provide the paper or electronic equipment necessary for counsel to communicate with their client. At appropriate times, counsel may request a short recess to talk to their client in the Division 1 jury room.

La Plata County District Court Juries of 6

The procedures listed for juries of twelve (12) above shall apply to district court juries of six (6) with the following modifications:

1. The number of jurors called for jury duty shall be modified by the presiding judge depending upon the nature of the case;
2. After jury selection, the remainder of the trial may be conducted in the courtroom assigned to the presiding judge; and,
3. The jury room assigned to the presiding judge may be used by the jury after voir dire. The presiding judge shall ensure that their jury room is marked to designate where jurors can remain six (6) feet from one another.

Archuleta and San Juan County District Court Trials

The Court finds that, due to the lack of a safe and functional courthouse in Archuleta County and due to the limited size of the meeting room at the Pagosa Springs Community Center where the courts for the Sixth Judicial District had been picking juries prior to the pandemic, it is impossible to safely select juries of twelve (12) in Archuleta County during the time that COVID-19 social distancing requirements are in effect. While it might be theoretically possible to pick a jury of six (6) persons in the meeting room, as a practical matter, doing so will not allow appropriate social distancing unless the meet room is set up in a very inefficient and impractical manner. Additionally, the room used as a jury room in the Community Center is too small to allow for the required social distancing for county court or district court juries. For those reasons, no jury trials will be held in Archuleta County until after the social distancing requirements contained in applicable public health orders have expired.

For any Archuleta County District or County Court trials that need to be tried during the pandemic, the presiding judge shall determine whether venue should be changed to La Plata County pursuant to C. R. Crim. P. 21(a)(1). If venue is changed in a county court case, the Archuleta County Court Judge will be, without further order, appointed as Acting County Court Judge for La Plata County to hear the transferred case. See Chief Justice Directive 95-01(4)(ii), CRS 13-3-110, and Article VI, Sections 5(3) and (4) of the Colorado Constitution. The transferred cases will be heard in either Division 3 or Division 4, using the procedures listed for District Court Juries of 6 above or the procedures for La Plata County Court Jury Trials below.

In the unlikely event of jury trials being requested in San Juan County during the COVID-19 Pandemic, the San Juan County Courthouse is large enough to accommodate such requests with social distancing. The Court will issue appropriate orders regarding the conduct of such trials, if any are scheduled while the social distancing restrictions contained in the various public health orders issued remain in place.

La Plata County Court Jury Trials

The procedures listed for juries of twelve (12) above shall apply to county court juries with the following modifications:

All Division 3 jury trials will take place in the Division 3 courtroom. The courtroom shall be arranged to provide room to seat jurors in the jury box, in the well of the court, and on the benches in the gallery, and to allow at least six (6) feet of separation from one person to another. The presiding judge shall limit the number of individuals within the Division 3 courtroom to no more than 27 individuals at any one time.

The jury commissioner shall call a sufficient number of prospective jurors so that at least thirty (30) jurors respond to the jury summons. At the time jurors are to report, court staff and/or security shall provide masks for potential jurors who did not bring their own mask.

The first thirty (30) jurors who arrive will be directed to Division 3 where they will be checked in and randomly seated by the bailiff and jury commissioner in areas specifically marked to maintain appropriate social distancing. Depending on the number of counsel and co-counsel present, fifteen to eighteen (15-18) jurors will be seated in the courtroom and up to twelve (12) jurors will be seated in the downstairs training/jury room. The jury commissioner will release the remaining jurors. Jurors who are seated in the training/jury room will be permitted to hear what is happening in the courtroom via Webex. If the training room is being utilized as a jury room for a district court trial, the court will seek alternative space for prospective jurors.

Due to social distancing requirements, bench conferences are discouraged and shall follow the same procedure as district court trials. Objections must be made succinctly, with counsel citing the applicable rule and only a brief description of the nature of any objection. In the event counsel believes his or her objection requires elaboration and the need to be heard outside the presence of the jury, he or she may make such request of the court. These instances should be infrequent, and the court will exercise discretion regarding whether to permit leave of the jury or retirement to chambers to resolve any objection(s). If appropriate, and after consulting with security, if applicable, the court may allow an attorney and the attorney's client to leave the courtroom for a short period of time to discuss the case.

The presiding judge shall allow clients to use cell phones (set on silent), laptops, tablets, computers, or other electronic devices to communicate privately and securely with counsel if counsel desires to remain a distance of six (6) feet or more from their client. The client shall also be allowed to pass written notes to counsel. Counsel shall be responsible for providing any paper or electronic equipment necessary for counsel to communicate with their client.

The clerk shall file a copy of this administrative order in all cases that are set for jury trial during the COVID-19 Pandemic.

APPROVED AND SIGNED this 17th day of March, 2021.

Jeffrey R. Wilson
Chief Judge
Sixth Judicial District of Colorado