

<p>NINTH JUDICIAL DISTRICT, COLORADO Court Address: Garfield County Courthouse 109 Eighth St., Suite 104 Glenwood Springs, Colorado 81601</p> <p>Phone Number: 970-928-3065</p> <hr/> <p>ADMINISTRATIVE ORDER</p>	<p><input type="checkbox"/> COURT USE ONLY <input type="checkbox"/></p>
<p>The Honorable James B. Boyd</p>	<p>Administrative Order 21-05</p>
<p style="text-align: center;">AMENDED JUDICIAL OPERATIONS AND JURY TRIAL PLAN DURING PANDEMIC NINTH JUDICIAL DISTRICT</p>	

Since the beginning of the worldwide COVID-19 pandemic, the courts and courthouses in the 9th Judicial District (“the District”) have remained steadfast in our commitment and responsibility to protect constitutional rights and to provide a forum to address matters essential to the safety and well-being of all. In pursuit of this objective, the District has adopted health-safety protocols for all operations as most recently set forth in Administrative Order 20-05. Additional protocols for jury trials are set forth in the District’s Jury Plan as adopted by Administrative Order 20-06, as amended by Administrative Order 20-07.01, and as further amended by Administrative order 21-02.

The health and safety of the public, including but not limited to prospective jurors, empaneled jurors, other courthouse users, witnesses, parties, counsel, court

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staff, and judges continue to be of paramount concern. The original operational plan and jury plans confirmed they were subject to revision upon changed circumstances and upon receipt of any information that might enhance the health and safety of all involved as well as promote the administration of justice. The District has monitored changing health regulations and guidance, evolving health conditions, and operations and jury trials around the State of Colorado. Consultation has been ongoing with other judges and judicial districts throughout the state, jury commissioners, the court executive, clerks of court and representatives of the District Attorney's office, the Public Defender's office, the Office of Alternative Defense Counsel, the Garfield County Public Health department and the Garfield County Attorney's office. Circumstances have changed to some degree and guide the amendments adopted here.

RULES AND GUIDELINES

Many state and local rules have been relaxed or eliminated. The Colorado Governor's declaration of a disaster emergency has expired. Nevertheless, some rules and many health safety recommendations continue. In its most recent public health order (Fourth Amended PHO 20-38, adopted June 30, 2021), the CDPHE stated and recommended as follows:

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With . . . the pandemic ongoing, it remains critical for individuals, communities, businesses, and governments to remain vigilant regarding the spread of COVID-19. Individuals are encouraged to remain at least 6 feet away from non-household contacts, wash their hands, and wear a face covering to reduce the likelihood of disease transmission.

Recognizing the significance of vaccines, PHO 20-38 preserves a mandatory mask requirement in some settings for persons not fully vaccinated. Recognizing the significance of hospital capacity, PHO 20-38 confirms the CDPHE can impose additional restrictions (the so-called “snapback”) if “resident hospitalizations threaten to exceed 85% of . . . hospital system capacity.”

In the ten days following the data reported in PHO 20-38, the number of COVID-19 cases in Colorado increased by 5,054, and the number of deaths increased by 61.

On June 15, 2021, the Chief Justice of the Colorado Supreme Court allowed his statewide order about masks to expire and further ordered as follows:

I am authorizing the chief judge of each judicial district to determine facial covering and physical distancing requirements in courthouses and probation offices in the judicial district. Chief judges must make these decisions in consultation with local public health officials when possible, and after consideration of local circumstances including vaccination rates,

COVID positivity rates and other metrics, courthouse layout, and staffing needs. Chief judges must prioritize safety for the public and the staff in making these decisions and must strive to ensure that individuals interacting with our court system feel safe.

On May 6, 2021, the Chief Justice confirmed the chief judge of each judicial district was empowered to determine how and when to expand in-person services in consultation with appropriate stakeholders.

VACCINATION

As widely reported and scientifically confirmed, vaccines provide dramatic protection against infection by COVID-19 and dramatic mitigation of the consequences for those who contract COVID-19. For eligible persons, vaccines are nearly universally available at no cost. Any eligible person who desires to be vaccinated has had the opportunity to be vaccinated and has the continuing opportunity to be so.

Children under 12 are not eligible for vaccination.

Persons not vaccinated present a higher risk not only of contracting the disease themselves but also of transmitting COVID-19 to others. The percentage of persons vaccinated has some correlation to the degree of risk of the ongoing spread of COVID-19 in a community. According to the CDPHE, community immunity is achieved only

when enough people have developed immunity naturally or through vaccination to stop the risk of community transmission or outbreaks. Health science and professionals have not developed a universally accepted metric to achieve community immunity. Seventy percent is a minimum threshold presented to the District's jury planning group as significant. Pitkin County reports the threshold is in the range of 70-85%. As of July 10, 2021, Garfield County reports 54% of its population is fully vaccinated, and Pitkin County reports 58% of its population is fully vaccinated. Garfield County continues to report a color-based overall COVID-19 score. The score is yellow ("concerned"). Pitkin County reports its overall risk is low.

VARIANTS

In a Garfield County public health presentation on June 21, 2021, public health officials and providers reported Colorado has the second highest rate of the Delta variant in the nation. On July 6, 2021, the CU Anschutz Medical Campus reported the Delta variant is accounting for about 75% of new infections in Colorado. The Delta variant transmits more easily. The Delta variant has a higher rate of severe consequences such as ICU admission and ventilator use. Until the disease is controlled by community immunity, the risk of new variants will continue, including a risk of

variants more resistant to, or beyond the efficacy of, present vaccines.

DISEASE STATUS

CDPHE data indicates the current increases in the spread of COVID-19 are more pronounced on the Western Slope. Ten counties have case rates more than four times higher than the Denver area. These include Rio Blanco county and Garfield county. Fifteen counties have test positivity rates that exceed the 5% target. These include Rio Blanco county and Garfield county.

HOSPITAL USE

The CDPHE continues to report on its “Dial” a color-coded level of concern based on hospitalizations—in increasing order of concern, blue, yellow and orange. On July 10, 2021, CDPHE identified Pitkin County as blue, Garfield County as yellow and Rio Blanco County as orange. In the public health presentation mentioned above, public health officials and providers expressed a concern that upticks in local hospitalizations in the midst of spread of the Delta variant and insufficient vaccination rates have the potential to overwhelm local health care resources. One foundation of this concern is hospital status in Mesa County because Mesa County hospitals are normally part of the back-up plan to meet any hospital crisis in at least parts of the 9th

District. That back-up is not currently available. On July 14, 2021, Mesa County reported 95% of its hospital beds were in use; 90.9% of its ICU beds were in use; and 51.4% of its ventilators were in use.

COURT CAPACITY

The District's current jury trial plan generally requires the continuous use of two rooms (two courtrooms or one courtroom plus a jury assembly room) until the jury is selected. Jury trials, including jury selection most particularly, require the support of several multiples of staff compared to pre-COVID procedures. The combination of staff and space limitations preclude jury selection going forward for more than one jury trial per courthouse at a time. The use of extra staff reduces the court's capacity to serve other judicial needs of the public. In some cases, the District's courts have sufficient capacity to have a 12-person jury and a 6-person jury underway simultaneously so long as jury selection is not simultaneous.

For non-jury proceedings, the District has gained significant experience and knowledge about remote proceedings as well as safety protocols for in-person proceedings.

GOING FORWARD

In combination, the present circumstances underscore the benefits of proceeding with caution. Continuing with many present protocols in place will promote our communities' advancement towards community immunity, will mitigate the risk of setbacks or an involuntary snapback within the District and will continue to mitigate health risk to all court users. Some adjustments are warranted to add some ease and options to the administration of justice in the changing health environment.

The Ninth District now adopts these amendments to the District's operational plan and jury trial plan. Except as amended, the prior orders listed above will remain in full force and effect.

Remote and In-Person Proceedings

Virtual or other electronic proceedings remain the preferred protocol and are encouraged. In-person appearances shall be managed as the exception, not the rule.

All in-person hearings and appearances must comply with the safety protocols for persons in the courthouse.

Some virtual and electronic proceedings are impaired or likely will be impaired because of equipment limitations, connectivity problems, skills

limitations, people management needs, document management needs or other challenges specific to a particular case. So long as a proceeding is not scheduled for a day when a jury selection is scheduled for the same floor in the same courthouse, if a presiding judicial officer determines in-person proceedings are necessary to allow a particular proceeding to go forward or would materially improve the fairness, efficiency or both of a particular proceeding, the presiding judicial officer may authorize a particular hearing, trial or other proceeding to go forward as an in-person proceeding. In-person proceedings shall comply with all mask, spacing and other health protocols in place in the District.

Masks

Masks remain mandatory to enter the courthouse, in all public areas of the courthouse, in all courtrooms and when interacting with members of the public except as set forth here. Masks remain mandatory for all persons when moving about within the public areas of the courthouse. Mask requirements for non-public areas are addressed by separate instructions.

When stationary at counsel table, unless otherwise ordered by the presiding judge, counsel and their clients, co-counsel and advisors may remove their masks when

conferring as they deem necessary to effectively confer among themselves. When not conferring, these persons shall continue to wear masks.

In any court proceeding, the presiding judge may authorize any person to remove their mask while they are speaking so long as the person remains stationary and spaced. If a courtroom is occupied only by the case participants and court staff, if a presiding judge elects to verify all occupants are vaccinated, the presiding judge may authorize the removal of masks so long as persons remain stationary and spaced.

Spacing

Best efforts shall be applied to maintain six-foot spacing. Notwithstanding this requirement, a presiding judge may allow closer proximity by masked persons for the moments necessary for a delivery or exchange of items such as exhibits, orders and instructions. Unless otherwise ordered by the presiding judge, counsel and their clients, co-counsel and advisors when assembled at counsel table may space as they deem appropriate.

Number of Jury of Trials Going Forward

When the 6-foot spacing requirement can be maintained, in an individual courthouse, one 12-person jury trial and one 6-person jury trial may proceed

simultaneously. However, only one jury selection process per courthouse may be underway at any one time. Except for the simultaneous trials allowed by the above, when multiple jury trials are scheduled on the same day in an individual courthouse, the highest priority trial for that day shall proceed. The procedure for prioritizing trials shall remain as established in prior orders. If a jury trial is underway and continuing on a day when another trial is scheduled to begin, the trial already underway shall have priority and the later-scheduled trial cannot safely proceed.

Health Criteria for Jury Trials

As health circumstances have improved, the health metrics applied in the District's jury plan have been eliminated by state and local governments. In view of the improved circumstances, jury trials may proceed in all courthouses in the District so long as the requirements of the Jury Plan are followed.

Nothing in this order limits the authority of the presiding judge in individual cases from ruling in a particular case, based on motions or otherwise and based on facts particular to the case, that a particular jury trial should not proceed as scheduled for health-safety reasons.

Health criteria thresholds may be reinstated in the future if warranted based on

guidance from the governing county health departments and CDPHE.

Jury Selection

When weather permits, check-in will occur in a covered area outside the courthouse. It will be conducted by court staff wearing appropriate masks and any other appropriate personal protective equipment. Hand sanitizer will be available for the jurors and court staff. Jurors will be required to wear masks.

When weather does not permit an outside check-in as determined by the jury commissioner and court staff or by the presiding judge, an inside check-in station may be used. The inside station shall be managed to preserve the mask and spacing requirements in this order.

The first wave of jurors shall not exceed the number of jurors who can be seated in the courtrooms and other rooms designated for jury selection for a particular trial. When jurors are instructed to enter the applicable rooms, they shall be directed to a particular seat and instructed to use that seat only until otherwise directed by court staff or the presiding judge. The jury commissioner, bailiff and assisting staff shall use the random juror list to seat in order the initial group of proposed jurors to be examined. The random list shall also be used to fill the remainder of the assigned courtroom with

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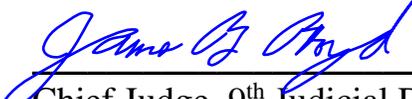
the prospective jurors next highest on the list. The remaining jurors in the first wave shall be seated in the second jury selection room. The presiding judge shall determine the time for any subsequent wave(s) of jurors to be available.

Jury selection will be performed in a manner that has the prospective jurors and alternate(s) then being examined present in the assigned courtroom. In light of spacing requirements, this will require jury selection for 12-person juries to continue to follow traditional criminal jury selection procedures. For 6-person juries, the presiding judge may determine the selection procedure, including the modified civil selection process, so long as the required spacing is maintained.

Jury selection procedures shall otherwise remain as set forth in prior orders.

Done on July 15, 2021.

BY THE COURT



Chief Judge, 9th Judicial District