

NINTH JUDICIAL DISTRICT
PLAN FOR JURY TRIALS DURING PANDEMIC
Attachment to Administrative Order 20-06

The 9th Judicial District (“the District”) seeks to resume jury trials in September 2020. The health and safety of the public, including but not limited to prospective jurors, empaneled jurors, other courthouse users, witnesses, parties, counsel, court staff, and judges are of paramount concern. With this concern in mind, the below Plan for Jury Trials During the COVID-19 Pandemic (“Plan”) was developed by the Chief Judge of the 9th Judicial District working together with other judges and judicial districts throughout the state, the jury commissioners, bailiffs, the court executive, the clerks of court, a representative from Garfield county public health, representatives from the district attorney’s office, the public defender’s office, the office of alternate defense counsel, and the county attorney’s office. This Plan is subject to revision upon changed circumstances and upon receipt of any information that might enhance the health and safety of all involved.

PRE-TRIAL PROCEDURES

Timeline

At least through September 2020, only one jury trial per courthouse shall be underway at any one time, and only trials that can be conducted with a six-person jury (plus any approved alternates) shall be approved. Whether or not jurors have been summoned, jury trials will be commenced only if local health conditions in the county where the trial is to proceed meet the health criteria set forth below.

Prospective jurors have been or will be summoned for trials presently scheduled as approved by the Chief Judge. After assessing the effectiveness of this plan in 6-person jury trials and revising the plan, if appropriate, the 9th Judicial District intends to begin trying additional cases, including felony trials, when reasonably feasible and intends to consider conducting more than one trial at a time in an individual courthouse when reasonably feasible.

Health Criteria

Jury trials will not resume in an individual county in this district until the county meets certain health criteria for the county where the trial is to be held. Initially, the criterion is a 2-week cumulative new case rate per 100,000 people that qualifies as moderate risk or better under CDPHE guidelines. Under CDPHE

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guidelines, moderate risk means fifty or fewer new cases per 100,000 people over a 2-week period. For Garfield County, this data point will be fixed by the “case rate” reported by Garfield County on its website. As of August 17, 2020, the “case rate” in Garfield County is 44.3. As of August 17, 2020, this case rate uses data through August 11, 2020. The short retrospective time frame is selected because data for the most recent seven days may miss new cases for which testing has not yet occurred or symptoms have not yet begun. The same or similar criterion will be identified for Pitkin and Rio Blanco cases based on the data available from the county’s health department or from CDPHE. Based on current population estimates, jury trials can resume in a 9th District County when the number of new cases over the 2-week period selected meets the number set forth for each county below.

Garfield County: 30 or fewer

Pitkin County: 9 or fewer

Rio Blanco County: 4 or fewer

The State of Colorado and individual counties continue to refine their approach to data collection and analysis and continue to incorporate developing scientific evidence into risk assessment and safety planning. For example, two of the District’s three counties are developing a coronameter tool that is anticipated to assess risk by a combination of several metrics, one of which will be a rolling 2-week count of new cases. The thresholds in this section may be updated or modified based on guidance from the governing county health departments and CDPHE and based on new tools as they become available.

Jury Summonses

The jury summonses and/or the court’s phone information line for trial status will include language directing jurors to a public service announcement about jury service during the pandemic. It can be accessed at the following link: <https://connect.courts.state.co.us/pw14iqh0onm1/>. The jury summons and/or the information line will also direct jurors to the 9th District’s website where a Notice Regarding COVID-19 and Jury Operations that will include:

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If any of the criteria below apply, call the jury commissioner listed in the blue shaded box or go online to request a postponement:

- (1) If you have been diagnosed with COVID-19 and either you have not received a subsequent test confirming you are currently virus-free or you have not completed the required public health mandated isolation;
- (2) If you have been in direct contact with someone who has been diagnosed with COVID-19 within the past fourteen days;
- (3) If you are experiencing symptoms such as fever of more than 100.4 degrees, cough, difficulty breathing or shortness of breath, muscle aches, sore throat, new loss of taste or smell, or chills;
- (4) If you have been in direct contact with another individual experiencing the symptoms listed in criteria (3), above, within the last fourteen days;
- (5) If you have been asked to self-quarantine by any doctor, hospital or health agency;
- (6) If you are a vulnerable individual as defined by CDPHE public health orders, namely
 - a. Individuals who are 65 years and older;
 - b. Individuals with chronic lung disease or moderate to severe asthma;
 - c. Individuals who have serious heart conditions;
 - d. Individuals who are immunocompromised;
 - e. Pregnant women; and
 - f. Individuals determined to be high risk by a licensed healthcare provider;

The jury summonses or jury questionnaires will request a cell phone number which will be used during jury selection to allow jurors to return to their cars or elsewhere nearby and to stay out of the courthouse until their presence is needed in a courtroom.

Press Release

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Prior to the first day of trials resuming, the District, working with the public information officer for the judicial branch, will issue a press release to provide information to the community about the resumption of jury trials. The press release will describe the vital role that jury trials play in society and that, given their vital role, trials need to be resumed with precautions in place. The press release will describe the process undertaken to implement social distancing and other procedures to limit the spread of COVID-19 at the courthouses.

Website

The District's website will be updated to include detailed information about social distancing measures that prospective jurors will experience during jury service, the requirement to wear masks, the availability of masks and hand sanitizer at the courthouse, information about where to assemble for jury duty, and a reminder to remain six (6) feet away from others whenever possible while at the courthouse. The information on the website will be pulled from County Public Health, CDC or CDPHE resources.

Example language: The court has taken aggressive steps to decrease the risk of infection for jurors and other court users. All prospective jurors will be required to wear facial coverings or masks. You are encouraged to bring your own mask to the courthouse. Those who report for jury duty without a mask will be provided one by court staff each day of jury service. Social distancing, including 6-foot spacing, will be required during jury service. The courthouse will be sanitized daily.

Do not enter the courthouse if you have been diagnosed with COVID-19 and you have not received a subsequent test confirming that you are currently virus-free; you have been in direct contact with someone who has been diagnosed with COVID-19 within the past fourteen days; you are experiencing a fever of more than 100.4 degrees, cough, difficulty breathing or shortness of breath, muscle aches, sore throat, new loss of taste or smell, or chills; or you have been in direct contact with someone who is experiencing the above symptoms within the last fourteen days. Some jurors are at higher risk for complications from COVID-19, including those defined as vulnerable individuals by CDPHE public health orders, namely individuals who are 65 years and older; individuals with chronic lung disease or moderate to severe asthma; individuals who have serious heart conditions;

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individuals who are immunocompromised; pregnant women; and individuals determined to be high risk by a licensed healthcare provider. If you are at higher risk or if you share a household with an individual at a higher risk, you may call the Jury Commissioner at (970)928-3066 (Glenwood Springs), (970)665-6093 (Rifle), (970)925-7635 (Aspen) or (970)878-5622 (Meeker) or (970)675-2342 (Rangely) to request a postponement.

Postponement/Disqualification

There will be a Chief Judge Administrative Order providing that prospective jurors who contact the jury commissioner prior to the date of their appearance and who fall into the following categories **shall be postponed** to a later appearance date and instructed not to appear:

1. Those who have been diagnosed with COVID-19 and either have not received a subsequent test confirming he or she is currently virus-free or have not completed the required public health mandated isolation;
2. Those who have been in direct contact with someone who has been diagnosed with COVID-19 within the past fourteen days;
3. Those who have a fever of more than 100.4 degrees, cough, difficulty breathing or shortness of breath, muscle aches, sore throat, new loss of taste or smell, or chills;
4. Those who have been in direct contact with another individual experiencing the symptoms listed in criteria (3), above, within the last fourteen days;
5. Those who have been asked to self-quarantine by any doctor, hospital, or health agency;
6. If requested by the prospective juror, those who are “vulnerable individuals” as defined by CDPHE public health orders or those who live in a household with a vulnerable individual. If the jury commissioner is advised or learns that a prospective juror meets this criterion number 6, the jury commissioner shall advise the prospective juror that his or her jury service will be postponed for this reason upon request.

Jurors who appear for service and indicate that they fall into any of the above categories upon check-in also **shall be postponed** to a later appearance date.

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Anyone denied permission to continue jury service on the above grounds may submit a form indicating his or her appearance and that he or she was denied entry.

The court, in consultation with counsel, **may excuse or reschedule** prior to voir dire jurors who appear for orientation and indicate upon check in that they have concerns due to COVID-19 with appearing for jury service or jurors who refuse to wear a mask upon check-in or during jury selection. If not resolved prior to voir dire, these issues may be addressed as part of voir dire.

Juror Questionnaire

Online, the court will remind prospective jurors to complete the questionnaire on the jury summons prior to appearing. The Court may also post an online jury questionnaire that would be done prior to the reporting date to reduce the number of jurors appearing in-person for any trial, to reduce the number of appearing jurors who enter the courthouse and to expedite jury selection. A link to any questionnaire will be placed on the website; any juror who calls the jury commissioner would be directed to the link; and the link would appear on the summons and/or be referenced on the jury information line. Copies of the juror questionnaires will be provided to counsel prior to the start of voir dire.

FACILITIES/COURTHOUSE PREPARATIONS

Check-In

Check-in will occur in a covered area outside the courthouse. It will be conducted by court staff wearing surgical 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.

There will be signs stating the mask requirement and stating jurors should check in to be given the health screen.

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The check-in will include a health screening including asking whether the jurors have experienced within the past 24 hours a fever of more than 100.4 degrees, cough, difficulty breathing or shortness of breath, muscle aches, sore throat, new loss of taste or smell, or chills. Jurors will also be asked whether they have been diagnosed with COVID, been in contact with anyone diagnosed with COVID or experiencing symptoms of COVID, or whether they are in a high-risk group.

Court staff will obtain the cell phone numbers (which should be on the jury summons or questionnaires) of those jurors who pass the health screening. Jurors who are not excused based on the health screening will be instructed to return to their cars or to wait somewhere in close proximity to the courthouse. There will be two or three waves of jurors, with groups appearing at 8:30, 11:00 and 2:00 or such other staggered times determined by the judge presiding over a trial. Those in the later groups will be permitted to leave until their assigned time, and they will be told to come back to the area of the courthouse but not to come into the courthouse until called.

Orientation – jurors may be given a link to a video to watch for orientation to their jury service.

Selection of Trial(s) Going Forward

As required by order of the Chief Justice of the Colorado Supreme Court, a jury cannot be summoned and a jury trial cannot proceed without the approval of the Chief Judge. Since more cases are in need of a jury trial than can safely go forward at this time, the determination of which trials can go forward will be determined by the Chief Judge in consultation with members of the Bench. Criminal jury trials will have the first priority. Adjudicatory jury trials in dependency and neglect cases will have the second priority. Within a priority, when more than one case is set for trial in a particular courthouse, appropriate factors will be considered to select a particular case to go forward including the age of the case, speedy trial calculations, the custodial status of a defendant, the seriousness of the charges, the magnitude of costs and resources that would be lost or need duplication for a postponed trial, or any circumstances of a particular case that affect the ability to satisfy the requirements of this plan and the efficient and fair allocation of resources to optimize some

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balance in disposing of cases on the docket of each judge and the corresponding team of staff, counsel and others typically associated with each judge's docket.

Entry

Voir dire may be conducted in two rounds, if necessary. This will allow for staggered entry of jurors into the courthouse in groups no larger than can be seated within the courtroom capacity limits below. Jurors called back to the courthouse will proceed through security. If the weather allows, the exterior doors will be propped open to ensure air flow. The floor will be marked at six-foot intervals to maintain distance. Jurors shall proceed up to the jury assembly room and shall be instructed by security to go one by one up the elevator or six feet apart up the stairs.

Depending on the needs of the particular case and the space available, jury selection will be conducted in one or two rooms. If two rooms are used, they will be connected with an audio/visual link.

After excusing any jurors based on the questionnaires or other proceedings outside the presence of jurors using the random jury list, the first group of jurors subject to inquiry will be instructed to go directly to the courtroom where the inquiry will occur. The second group will be instructed to go to the second room.

Jury Assembly Room

In the initial implementation phase, the jury assembly room will not be used for the traditional purpose of assembly. If joined to the main courtroom by audio/visual link, the jury assembly room may be used as the second "courtroom" for jury selection.

If the jury assembly room is used, the chairs in the jury assembly room will be spaced such that there is at least six feet of distance at all times. In Glenwood Springs, the maximum number of people that may assemble while maintaining six-foot spacing in the jury assembly room is **26**, so there shall be no more than **23** jurors plus 3 court staff/bailiff/jury commissioner in the assembly room at one time. In Rifle, the maximum number of people that may assemble is **18**, so there shall be no more than **15** jurors plus 3 court staff/bailiff/jury commissioner.

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The jurors will be oriented to their jury service. Anxiety will undoubtedly exist for many jurors at this point, so the jury commissioner and court staff will have been trained thoroughly on the expected procedure and the protocols implemented by the court to minimize risk to all involved.

Restrooms

Restrooms will be measured and marked on the floor to encourage social distancing. Certain stalls will be taped off. The restrooms will be cleaned no less frequently than nightly. Signs will encourage frequent and thorough hand-washing.

Courtrooms

When notified by the court, jurors will be brought into the courtroom or courtrooms. Jurors will maintain six-foot spacing when moving about and entering courtrooms. Permissible seating locations will be marked to maintain six-foot spacing.

The courtroom capacities have been measured and the respective numbers are below. The capacities below must include the judge (1), court staff/bailiff (1-2), parties (1) and counsel (2-4), and, may also include jail staff (1) if the defendant is in custody, interpreters (1-2), defense or D.A. investigators and/or paralegals (1-2) and victim representatives (1), which reduces the number of jurors that may be present by upwards of 10:

Glenwood courtroom A: 28 (i.e., approx. 18 jurors if all above are also present)

Glenwood courtroom B: 19

Glenwood courtroom C: 18

Glenwood courtroom D: 24

Glenwood county courtroom: 21

Aspen District: 17

Aspen County: 11

Aspen Garden level courtroom: 13

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Meeker courtroom A: 25

Meeker courtroom B: 25

Rifle: 24

Rangely: 17

Jury Selection Procedure

Unless the presiding judge decides otherwise for a particular case, the court will use the modified civil procedure. The court may have an initial group of 25 for 12-person juries with one alternate or an initial group of 15 for 6-person juries with one alternate.

If a second courtroom is used, when a juror in the primary courtroom is excused and a substitute is required, the next person on the random list will be instructed to go from the second courtroom to the primary courtroom and to take the seat of the excused juror. Before the replacement juror is seated, court staff will clean the vacated seat in the same manner that the witness stand is to be cleaned between witnesses.

Court staff will send via email, to the greatest extent possible, any juror lists or any other information that formerly would have been provided in paper to the judge and the attorneys.

It is expected that jury selection will require more time than it has traditionally taken.

During jury selection, jurors will be permitted, if they choose, to remove their masks when speaking but must keep their masks on at all other times. Counsel may remove masks when speaking but must wear them when not speaking.

A court reporter may be utilized to minimize the need for microphone use. If microphones are used, replaceable microphone caps will be used. Microphone covers are on order as is plexiglass.

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The court is planning the use of plexiglass around the witness stand.

Trial Procedure

Except as modified below, the section of Administrative Order 20-05 entitled “Safety Protocols for Persons in the Courtroom” shall apply throughout all jury trials.

Once the jury is selected, jurors will be shown to a separate courtroom or other large room which will serve as the jury deliberation room, as the existing jury deliberation rooms are too small to permit ongoing social distancing. It will be called the “Jury Deliberation Courtroom” and so marked on all entry doors. They will be oriented to the protocol for accessing the bathroom, going outside, etc. They will be provided a writing utensil and their jury notebooks, which will stay either in a designated place in the courtroom or with the juror during the trial.

Jurors will pick up a disposable sticker each morning upon arrival.

When the trial convenes, the jurors will sit at six-foot distances throughout the courtroom. The permissible locations to sit will be marked.

Any person who enters the courtroom shall wear a mask. Jurors shall continue to wear their masks. The judge shall wear a mask except to the extent the presiding judge determines the mask is unreasonably impairing his or her ability to perform the judicial function. The presiding judge shall determine if and when a stationary testifying witness or speaking attorney may remove a mask and if and when a defendant or other person should briefly remove a mask for purposes of identification. No mask shall be removed at any time without ensuring the six-foot spacing requirement is met.

The witness stand will be sanitized between each witness, with a court staff person or the witness him or herself using a spray and a disposable wipe to wipe the microphone, desk, chair handles and any other appropriate surface.

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Each morning subsequent morning, jurors and all other participants, including the judge, will be asked the same health screening questions that were posed upon arrival at jury service.

To the greatest extent possible, evidence will be presented without the need for the handling of paper exhibits, i.e., photographs displayed on a screen, written documents blown up and displayed on a screen, and/or the use of an ELMO projector.

Bench conferences will be conducted either by email, by departing to a nearby courtroom or other room, or by excusing the jury.

Jury questions will not be permitted.

One or both of two options will provide for public access to a trial. One option: A laptop computer with a camera will be placed on the judge's bench and facing the courtroom. The courtroom will be accessible via WebEx and the view will be of the courtroom from the judge's bench. The link will be available on the door of the courtroom. The second option: A video link to another courtroom in the courthouse will be utilized and the public may go into the other courtroom to view the video, with the 6-foot spacing maintained (and therefore limiting the total number of people in the other courtroom as well).

Once the jury has been given the case to deliberate, they will go to the Jury Deliberation Courtroom, which will be locked and accessible by the bailiff. Each juror will be given his or her own copy of the Jury Instructions and will be instructed not to share his or her copy. The jury will be provided a supply of gloves and hand sanitizer and instructed to use them to avoid touching of common surfaces, including exhibits.

If participants need to use an interpreter, remote interpreting is the best practice using Webex and Uber Conference Line. Remote interpreting may not be feasible during jury trials. If in-person interpreters are required, the following protocol will apply:

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- Interpreters must maintain 6-foot spacing from all others, including parties their counsel and from other interpreters.
- Interpreters shall be placed where they can hear the proceedings clearly (back of the Courtroom is not an ideal place for interpreters to hear clearly).
- Interpreters will be provided gloves, sanitizer or wipes, should they be needed.
- Interpreters cannot sit at the table with parties.
- Interpreters cannot stand next to parties at the podium or witness stand.
- Interpreters cannot go to the conference rooms or holding cells. If parties need to speak privately with interpreters, they will have to do so in the hallway or a large room or by remote interpreting.
- Interpreters will not assist parties to put on equipment or to remove it. Parties will be encouraged to bring their own headsets (most common headsets ¼ inch will work). Parties will directed to clean equipment receivers with wipes or disinfectant when done and before interpreters or Court staff retrieve them.
- Each interpreter will have their own transmitter and microphone. Interpreters will not switch microphones or transmitter units.
- If there is a testimony interpreter, the interpreter will use the Court's wireless microphone from their assigned seat to render interpretation. If testimony is long and interpreters need to switch, two wireless microphones will be needed.
- If possible, interpreters will wear face masks, face shield mask, or both while interpreting. If the presiding judge determines an interpreter's mask should be removed to allow effective interpretation, the mask may only be removed when all persons are stationary, when six-foot spacing is maintained and when a court microphone allows amplified interpreting.

Mid-Trial Health Event

If any participant in the trial reports or is discovered to have any of the conditions numbered one through five that would mandate postponement of jury service as set forth in the Postponement/Disqualification section above, the presiding judge shall immediately recess the trial for the time necessary to confer with the appropriate officials (county health department, counsel, chief judge or others) to

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determine how to proceed in a manner consistent with applicable health orders, directives and protocols.