

Procedures for conducting jury trials in Chaffee County during the COVID-19 pandemic.

Amended 10/9/20 (see end)

1. Overview

As of September 10, 2020, Chaffee County has had 320 Covid-19 cases confirmed by testing. The vast majority of these cases are from the D.O.C. facility in Buena Vista (198) and the Columbine Manor nursing home (44). There have been 11 community cases diagnosed in the past month.¹

Judges and Court Staff in Chaffee County met with Chaffee County Public Health director Andrea Carlstrom on June 18, 2020. Also present were members of the Sheriff's office, Public Defender's Office, and District Attorney's office. A walk-through of the courthouse and courtrooms was conducted. At that time, all parties were able to provide feedback to the proposed plan, and that feedback is incorporated into this request. With the exception of jury selection, there was general agreement that jury trials could be held in the Chaffee County Courthouse in a manner that still complied with public health orders.

On August 4, 2020, Court staff met with stakeholders at the Chaffee County Fairgrounds building in Poncha Springs. The purpose of the meeting was to determine the viability of conducting jury selection at the Fairgrounds building as the Chaffee County Courthouse does not have a room large enough to conduct jury selection while also maintaining social distancing.

Present were Judge Murphy, Clerk of Court Dana Petri, Court Executive Lisa Rowe, CCDPHE director Andrea Carlstrom, Chaffee County Commissioner Greg Felt, Fairgrounds Manager Randy Mosby, D.D.A. Ashley McCuaig, D.D.A. Ryan Kornegay, D.P.D. Emily Woodfin and Chaffee County Sheriff Deputy Damon Harris.

There was general agreement that the Fairgrounds building could safely accommodate jury selection.

Further discussions have ensued since then regarding the compatibility of the recording system at the Fairgrounds with Court systems and regarding the overall availability of the Fairgrounds for jury selection.

At this point, the Chief Judge finds that jury selection can occur at the Fairgrounds building in a manner that complies with public health orders while also ensuring an adequate record is maintained and security is not compromised.

In order to comply with public health orders, the following rules apply to all phases of all jury trials conducted in Chaffee County until further order of the Chief Judge:

- Masks will be worn at all times by everyone in the courtroom and in all public areas of the courthouse. Masks will be worn by jurors in the jury room and during deliberations.
- Social distancing will be maintained at all times.
- Court staff will disinfect the courtroom as often as possible.
- Hand sanitizer will be provided .

¹ Per the Chaffee County Department of Health dashboard

- Temperatures will be taken for all potential jurors before jury selection and daily for all participants, including jurors, during the trial.

Prior to any trials being conducted, the Courts will conduct a trial-run of the jury check-in and Voir Dire process, the trial process and the deliberation process utilizing members of court staff. The final process will be adjusted in order to accommodate any issues that arise.

Prior to any case proceeding to trial, a hearing will be held regarding logistics and procedure for the trial to move ahead safely and in accordance with this plan.

The Court's website will be updated regularly to include instructions regarding jury trials and will explain to any prospective jurors their options regarding postponement of jury service.

2. Juror Summons

The Juror summons will contain language explaining that social distancing will be maintained at all times during the trial, that masks are mandatory and that jury selection will be held off-site at the Chaffee County Fairgrounds.

The summons will also direct jurors to the Court's website.

3. Jury Selection

Jury selection will take place at the Chaffee County Fairgrounds south building.

This building is large, open and has a high ceiling. The open section of the building is approximately 6,000 square feet (60 feet by 100 feet). The building can safely accommodate up to 64 potential jurors (8 rows of 8 jurors) as well as court staff, the parties and attorneys. All jurors will be seated at least 6 feet away from any other juror.

Jurors will be summonsed directly to the Fairgrounds building.

The Jury Commissioner and her staff will have a station set up near the entrance to welcome those reporting for jury duty. Outside, Xs will be marked at six-foot intervals for those waiting in line to maintain social distance. The Jury Commissioner, her deputies, or courtroom division staff will confirm that each juror has brought his/her filled-out standard statewide summons questionnaire.

Court staff will identify any individuals who are vulnerable to Covid-19 (as defined by the Governor in his general Covid-19 order) and offer them the opportunity to reschedule their jury service. They will also identify anyone who is living with or caring for any individuals who are vulnerable to Covid-19 and offer them the opportunity to reschedule their jury service. Those in the vulnerable population will not automatically be excused from jury duty, but they will be allowed to reschedule if they choose. A poster-board will be set up with a questionnaire to assist staff in identifying those that need a postponement.

The Jury Commissioner will also ensure that every summoned citizen has a mask or face shield. She will provide masks for those without one. She will explain that all summoned citizens must wear their masks

or face shields whenever they are inside the courthouse and must maintain six feet of distance between themselves and any other person. If a potential juror is unable or unwilling to wear a mask, their jury service will be postponed.

Temperature will be taken for all persons entering the fairgrounds building.

Upon entry into the main room, jurors will be seated from front to back.

The judge will spend approximately 20-30 minutes conducting the initial introduction and jury qualification process. The judge will not be required to wear a mask during this process, as long as he/she is at least six feet away from everyone else.

From their tables, the attorneys will conduct their questioning of the panel. The judge and attorneys will use a microphone to amplify their voices. Parties each have their own microphones at counsel's table.

Pursuant to guidance received from the Public Health Officials, attorneys speaking during voir dire will not be required to wear their mask, nor will jury panel members when answering any questions, as long as all are six feet from everyone else while speaking. Masks will need to be replaced when not speaking.

To minimize movement, jurors will remain seated during jury selection. Court staff will move amongst the jurors with a microphone on a boom in order to record their answers.

For-cause challenges and rulings shall be conducted via email. The Court will allow counsel to supplement any record, and the Court may supplement the record, once the trial returns to the Courthouse.

A shared Google Docs will be utilized by the Court and the attorney to create a virtual jury box.

An auxiliary room off of the main room will be utilized in the event counsel need to consult privately with their client.

Once a jury is selected, excess jurors will be excused. The Court, court staff, attorneys, litigants and jurors will then return, in their own vehicles, to the Chaffee County Courthouse for resumption of the trial.

4. Trial

All trials will be held in the district courtroom to take advantage of open windows—weather permitting.

WebEx will be utilized to supplement public access to the trial as it is anticipated that there will be little room left in the gallery for public participation—especially for district court trials.

Everyone in the courtroom shall always maintain six-foot distancing and wear masks, except when speaking where there is a six-foot distance.

Attorneys will sit at opposite ends of counsel table from their client or advisory witness. The attorney and client may “lean in” from time to time for brief, private conversations. The Court encourages

counsel to communicate with their client through writing or any other solution that does not disturb the trial proceedings.

In order to allow for identification of the defendant, at the appropriate time, all persons in the courtroom will remove their face masks for a period of 10 seconds. Then masks will be replaced. This process will be used unless the parties stipulate to identification or agree to an alternate procedure.

The witnesses shall enter the courtroom and exit the courtroom wearing a mask. The witness will not wear a mask while on the stand unless all parties agree to the witness wearing a mask and he/she is six feet from anyone else. Between witnesses, the witness stand and microphone will be disinfected.

The attorney asking questions may remove his/her mask during questioning, with proper six-foot distancing. Attorneys will remain seated at counsel table while questioning witnesses.

Any item of evidence, whether it is formally admitted or not, shall only be handled by a person wearing rubber gloves. Jurors will be provided with gloves if receiving evidence.

Sidebars will be discouraged. Any sidebar will be conducted with the white noise machine on and the parties at a six-foot distance, or via email, as agreed upon by the parties. The Court will be liberal with requests to supplement the record once the jury is no longer present.

During recesses, the jurors will remain in the courtroom and be escorted to the restroom by the bailiff as necessary. Outdoor breaks will be coordinated with the bailiff so as to avoid congestion in the halls or doorways. The Court and parties will leave the courtroom and may convene in the jury room if necessary. The jury room would support that reduced number of persons at a six-foot distance.

The courtroom will be fully cleaned during each lunch break and every evening, including the cleaning of every surface or thing touched that is not someone's personal possession. Restrooms will be cleaned frequently.

The water fountain will be taped off, but bottled water will be provided.

5. Deliberations

When closing arguments are completed and all jury instructions read by the judge, the jurors will remain in the courtroom for their deliberations. Everyone else will leave the courtroom, and the division CJA/bailiff will ensure no one enters the courtroom while the jury is deliberating. Signs will also be placed on the courtroom door and hallway doors to the courtroom indicating the jury is deliberating.

If the defendant is in custody, s/he will be escorted into and out of the courtroom by the secured door leading to the jail.

The jurors will be admonished that they must maintain six-foot social distancing at all times during deliberation, that they must keep their masks on when not speaking, and that no piece of evidence may be handled without that juror wearing rubber gloves, which will be available in the courtroom during deliberations.

The bailiff will be available outside the doors to assist the jury. The court will order the bailiff to periodically, but at least once an hour, knock on the door and remind the jurors of the court's order that they comply with CDC guidelines, including mask-wearing and social distancing.

Any food provided to the jury during deliberations shall be individually packaged for each juror.

In the event of jury questions, the parties can assemble safely at a six-foot distance in the jury room. The system microphone would be utilized in order to make a record.

Any post-verdict discussions between the judge, jury, and attorneys shall occur in the courtroom with proper social distancing and mask-wearing when not speaking.

Amended 10/9/20: No juries will be summonsed and no jury trials will be conducted while Chaffee County is at level 3 or above on the "COVID dial" as determined by the State of Colorado Department of Health and Environment.

Approved by Judges Alderton and Murphy.

William P. Alderton, Chaffee County Judge

/s/Patrick W. Murphy 9/14/20 _____

Patrick W. Murphy, Chief Judge