



ELEVENTH JUDICIAL DISTRICT

Chief Judge Order 20-07

Suspension of All Jury Calls

The Chief Judge in the Eleventh Judicial District is presented with an issue plaguing all of the judicial districts across the state of Colorado—whether the Chief Judge should authorize the jury commissioner to call a jury to hear cases while also considering the likelihood that calling a jury would endanger the health of the jury as well as the community at large because of the risk of spreading the COVID-19 virus if citizens are summoned to report for jury duty. Weighing heavily into this analysis are the Public Health Orders issued by the Colorado Department of Public Health and Environment (“CDPHE”), Public Health Orders issued by the various counties in the Eleventh Judicial District, recommendations of national health organizations for limiting large gatherings of people and maintaining social distancing, Executive Orders issued by Governor Jared Polis, and Orders issued by Colorado Supreme Court Chief Justice Nathan Coats. This order has been discussed and agreed upon by all judges in the Eleventh Judicial District.

For the reasons articulated in this order, the Chief Judge finds that calling a jury between the date of this Order and May 18, 2020, creates an unacceptable health risk. The Chief Judge finds that the potential health risk of spreading COVID-19 to persons compelled to report for jury duty, the parties and attorneys to this action, witnesses, court personnel, and members of the public is greatly increased when more than 10 persons gather in one place at a time. Additionally, it is impossible that the trial court would be able to maintain the recommended minimum of 6 feet of physical social distancing between each juror during jury selection and after the jury is impaneled.

For cases set during the time period at issue, several important events related to the spread of COVID-19 and limitations on public gatherings have occurred since the case was set for trial. The Chief Judge has taken judicial notice of certain facts that are not subject to reasonable dispute pertaining to actions taken by governmental agencies and recommendations of health organizations to reduce the spread of COVID-19.

According to information on the Centers for Disease Control (“CDC”) webpage, COVID-19 is caused by a new type of coronavirus, named SARS-CoV-2, and it appears to have originated in Wuhan, Hubei Province, China. Although thought to have originally infected humans through ingesting food contaminated with the virus, it is now clear to health officials that this virus is easily spread through person-to-person contact, as well as touching a surface containing the virus and transferring the virus through touching one’s face. Because there is little to no preexisting immunity from this new virus, the CDC reports that it can readily spread throughout a community. Illness caused by this virus can range from mild (with little or no symptoms) to severe, including resulting in death. Persons over the age of 60 and those with certain preexisting or chronic medical conditions are at a higher risk of developing severe COVID-19 illness.

On March 13, 2020, President Donald Trump entered a proclamation declaring a national emergency concerning COVID-19, and on March 18, 2020, President Trump issued an executive order prioritizing and allocating health and medical resources to respond to the spread of COVID-19. The World Health Organization (“WHO”) has characterized COVID-19 as a pandemic. All major professional sports leagues have suspended their seasons to reduce the spread of COVID-19. The NCAA cancelled the national college basketball tournament. The governors in several states, including Colorado, have issued “stay-at-home” orders or recommendations, except for persons whose jobs are determined to be “critical.”



ELEVENTH JUDICIAL DISTRICT

On March 5, 2020, the CDPHE and Governor Polis announced the first presumptive positive case of COVID-19 in Colorado. As of March 26, 2020, the CDPHE reported 1,430 cases of COVID-19 across 39 Colorado counties, 184 persons have been or are hospitalized, and 24 persons have died. Because of the lack of wide spread testing, the actual number for all of these is likely to be higher.

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.

On March 12, 2020, the Chief Judge Council received a briefing from Dr. David France, medical director of the CDPHE. During that call, Dr. France indicated that based on data from China and South Korea, spread of COVID-19 seems to peak and reduce within a 60 day time frame.

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 Public Health Order 20-22 closing all restaurants, bars, gyms, theaters, and casinos through April 30, 2020.

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 10-person limitation gathering in Public Health Order 20-23 does not apply to certain entities, including Colorado state courts.

On March 16, 2020, Chief Justice Coats issued *Order Regarding COVID-19 and Operation of State Courts* suspending all jury calls, with the exception of jury calls for criminal cases facing imminent speedy trial deadlines, 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, again with the exception of criminal cases facing imminent speedy trial deadlines.

Information was circulated by 2nd Judicial District Chief Judge Michael Martinez on Sunday, March 22, 2020, to the Chief Judges Council that an attorney working in Denver was recently diagnosed with COVID-19. Because this attorney appeared in several courtrooms during the week of March 16-20, 2020, the entire Lindsey-Flanigan Courthouse was closed on March 23 and 24, 2020, by order of Chief Judge Martinez to allow for thorough cleaning and sanitizing of the building.

On March 25, 2020, Colorado Governor Jared Polis issued a “Stay at Home” executive order for the entire state.



ELEVENTH JUDICIAL DISTRICT

Although CDPHE Public Health Order 20-23 limiting gatherings to 10 persons or less does not apply to state courts, and there is an exception in Chief Justice Coats' order suspending jury calls for criminal cases facing imminent speedy trial deadlines, Eleventh Judicial District Chief Judge Patrick W. Murphy has determined that a sufficient number of persons cannot be summoned for jury service without risk of spreading COVID-19, and therefore, prospective jurors will not be summoned between now and May 18, 2020.

This decision was made after considering the strong and unambiguous 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.

Jury Calls, Jury Instruction, Jury Selection, Jury Deliberations by county:

Fremont County

For misdemeanors, approximately 90 jurors are summonsed, and approximately 40 appear at the courthouse for selection. For felonies, those numbers are 120 and 60. There is no jury assembly room in the Fremont courthouse so all jurors assemble in a small courtroom on the first floor. This courtroom is too small to accommodate the requisite 6 feet of social distancing. Once the jurors have watched the instructional video, they are led through public hallways to the courtroom holding the trial for jury selection. Neither of the two district courtrooms are large enough to allow the jury pool to social distance. Potential jurors must sit next to each other and some jurors are left standing at the beginning due to lack of seating. The county court courtroom has a larger gallery and jurors could be more spread out but still would not be able to social distance. In all courtrooms, the jury boxes are too small for selected jurors to social distance. Seating jurors in the gallery area is impractical as they would not be able to see or hear as well and the jurors would be exposed to any member of the public who chose to observe the trial. In all district courtrooms, the jury deliberation rooms are too small for the jurors to social distance and all jurors share one bathroom. In the county court jury deliberation room, because of a fewer number of jurors, the jurors might be able to social distance but the efficacy of this would be minimal as the jurors will still be in close proximity to each other, speaking to each other, in a closed room for hours or potentially longer.

Chaffee County

For misdemeanors, approximately 120 jurors are summonsed, and approximately 65 appear at the courthouse for selection. For felonies, those numbers are 130 and 70. The Chaffee County Courthouse contains two courtrooms, one for district court and one for county court. The courtrooms are relatively small and are the same size. There is no jury assembly room in the Chaffee courthouse so all jurors assemble in the courtroom not holding the trial. Neither courtroom is large enough to accommodate the requisite 6 feet of social distancing. Once the jurors have watched the instructional video, they are led through public hallways to the courtroom holding the trial for jury selection. Neither of the two courtrooms are large enough to allow the jury pool to social distance. Potential jurors must sit next to each other and some jurors are left standing at the beginning due to lack of seating despite extra chairs being set up in the aisle. In both courtrooms, the jury boxes are too small for selected jurors to social distance. Seating jurors in the gallery area is impractical as they would not be able to see or hear as well and the jurors would be exposed to any member of the public who chose to observe the trial. There is one jury deliberation room and that room is too small for either 6 or 12 jurors to social distance.

Park County



ELEVENTH JUDICIAL DISTRICT

For misdemeanors, approximately 80 jurors are summonsed, and approximately 40 appear at the courthouse for selection. For felonies, those numbers are 120 and 60. The Park County Courthouse contains two courtrooms, one for district court and one for county court. The courtrooms are relatively small and are the same size. There is no jury assembly room in the Park courthouse so all jurors assemble in the courtroom holding the trial. Neither courtroom is large enough to accommodate the requisite 6 feet of social distancing. Potential jurors must sit next to each other and some jurors are left standing at the beginning due to lack of seating despite extra chairs sometimes being set up in the aisle. In both courtrooms, the jury boxes are too small for selected jurors to social distance. Seating jurors in the gallery area is impractical as they would not be able to see or hear as well and the jurors would be exposed to any member of the public who chose to observe the trial. There is one jury deliberation room and that room is too small for either 6 or 12 jurors to social distance.

Custer County

For misdemeanors, approximately 50 jurors are summonsed, and approximately 35 appear at the courthouse for selection. For felonies, those numbers are 90 and 50. The Custer County Courthouse contains one courtroom for both district court and county court. The courtroom is relatively small. There is no jury assembly room in the Custer courthouse so all jurors assemble in the courtroom. The courtroom is not large enough to accommodate the requisite 6 feet of social distancing. Potential jurors must sit next to each other with little spacing. The jury box is too small for selected jurors to social distance. Seating jurors in the gallery area is impractical as they would not be able to see or hear as well and the jurors would be exposed to any member of the public who chose to observe the trial. There is one jury deliberation room and that room is too small for either 6 or 12 jurors to social distance. The jury deliberation room is also the breakroom/kitchen area for Custer County employees.

In short, there is no way to summons a jury, select a jury and have a jury deliberate in any of the courthouses of the Eleventh Judicial District without exposing those jurors to others who could be carrying the virus. The Chief Judge takes note of the fact that confined spaces where large amounts of people have close contact with others over an extended period of time (such as cruise ships and assisted living facilities) seem to present the greatest risk of mass infection. The Chief Judge notes the similarities should the courts compel jurors to appear in crowded courtrooms, to sit elbow to elbow with other jurors for hours and days during the trial and then to sit in a closed room for an extended period of time conversing with other jurors and handling exhibits.

Based upon the foregoing, it is ordered that the trial courts in the Eleventh Judicial District shall call any case affected by this Directive for trial on the date currently scheduled for trial, offer the defendant the opportunity to proceed to a court trial and, if the defendant declines the offer of a court trial, proceed in any manner the trial court deems appropriate.

Any adverse consequences to the prosecution of any cases that results from the decision not to call a jury to try a case on its scheduled trial date are the sole responsibility of Chief Judge Patrick W. Murphy.

Done in Salida, Colorado, March 27, 2020

/s/ Patrick W. Murphy

Chief Judge, 11th J.D.