



## 20<sup>th</sup> JUDICIAL DISTRICT

### PLAN FOR RESUMING JURY TRIALS SAFELY DURING COVID-19 HEALTH EMERGENCY

The following plan was developed by a committee comprised of representatives of the 20<sup>th</sup> Judicial District Courts, the Boulder District Attorney's Office, the Office of the Public Defender, and the Boulder County Department of Public Health ("PH"). All recommendations extended by PH are incorporated below. The plan has been amended to reflect health conditions in our community.

Attorneys: Due to the effort involving in summoning, it is essential that attorneys and clients indicating they are proceeding to a jury trial be fully committed. Reaching a disposition or calling off a trial after jurors have arrived at the courthouse will not be favorably considered.

#### A. SUMMONING JURORS

1. *Questionnaire:* To shorten the jury selection process, prospective jurors may be asked to complete a supplemental questionnaire before appearing (example attached). In this event, the questionnaires would be reviewed in advance by counsel and the judge and ineligible jurors dismissed in advance of the trial date.
2. *Postponements:* Summonses will notify jurors that if they are deemed vulnerable to COVID-19 and wish to postpone jury duty, they may do so online or by contacting the Jury Commissioner. No documentation may be required.
3. *Dissemination of Information:*
  - a. *Website:* More information is posted on the 20<sup>th</sup> Judicial website as to what jurors can expect when they report for jury duty. This information is found at: [https://www.courts.state.co.us/Jury/County/Location.cfm?Location\\_ID=73&Section=Reporting](https://www.courts.state.co.us/Jury/County/Location.cfm?Location_ID=73&Section=Reporting)

*b. Administrative Order:* Administrative Order 20-107 directs individuals to not come to the building if they are sick or experiencing symptoms of respiratory illness, have been in contact with someone who is diagnosed with COVID-19, or if they have travelled out of the country in the last 14 days.

*c. Jury Phone Line:* When prospective jurors call the jury commissioner's number to check whether to report for jury duty, the recording remind jurors to not report:

- i. if they are experiencing any of the symptoms of COVID-19 or
- ii. if they have been in contact with someone who is diagnosed with COVID-19 in the past 14 days, or
- iii. if they have travelled out of the country in the last 14 days.

## **B. SAFEGUARDS TO ENSURE PARTICIPANTS' HEALTH**

1. *Masks:* In compliance with the Governor's July 16, 2020 Executive Order, all individuals entering the two courthouses must wear a face covering over their mouth and nose.
  - a. Jurors are encouraged to bring an extra mask.
  - b. Courthouse security, the Jury Commissioner and the Judge will attempt to ensure that every summoned citizen keeps their mask on over the nose and mouth at all times, including throughout jury selection and the trial.
  - c. The mask requirement extends to all trial participants, including the judge, attorneys, defendant, witnesses, deputies, and jurors. Anyone who refuses to comply or expresses a medical or personal reason not to do so must be excused.
  - d. Exceptions to keeping a mask over the nose and mouth are made when a party is introduced to the jury, for brief identification purposes, or when a participant is drinking a beverage, but the mask must be readjusted before speaking.
  - e. Extra masks will be kept on hand by the Judicial District to replace masks that break or become soiled.

f. Participants may want to test out a variety of mask styles to find one they are comfortable speaking in or wearing over a long period of time.

2. The Colorado Department of Public Health and the Environment issued the following guidance on masking in courthouses:

*“Unless it interferes with the integrity of the proceedings, mask-wearing is required. However, we recognize that the judicial branch is independent of the executive branch and may need to propose rules specific to trials (e.g., witnesses) that are reasonable and may require temporary removal of a mask. Judges are permitted to set rules for both their courthouse and individual trials.”*

3. *Social Distancing:* Spacing is marked in the outdoor entrance area of the buildings, and down the hallway to the Jury Assembly Room indicating six-foot distancing. Jurors are to be reminded to maintain social distancing throughout the trial.
4. *Symptom Advisory:* Once prospective jurors enter the Justice Center, they will be greeted by a judicial officer or staff member, who will display a board with screening questions about COVID-19 symptoms. Those prospective jurors who are not experiencing symptoms will be provided a juror sticker and directed to the Jury Assembly Room or Courtroom. Anyone who does not agree to respond to the screening questions will be excused. During the trial, the judge advises jurors to report the onset of any symptoms. If the trial is a multi-day trial, jurors are advised at the end of each day to not report the following day if they or anyone in their household is experiencing any COVID-19 symptoms, but to stay home and contact the bailiff instead. For multi-day trials, a notice is also posted outside the Courtroom advising jurors to not enter the Courtroom if they are experiencing any COVID symptoms.
5. *Sanitizing Supplies:* The security station has a free-standing hand sanitizer station and the bins for personal possessions are sanitized on a regular basis. Every courtroom as well as the Jury Assembly Room has personal protective equipment consisting of hand sanitizer (by the courtroom door, on the bar, and on the witness stand), sanitizing wipes, tissues, wastebasket and gloves. Court Administration has additional supplies.

6. County Court and District Court Judges are scheduling Pre-trial Readiness Conferences in advance of each trial week to prioritize trials, with input from the district attorney and defense counsel. Counsel and parties may appear in person or by Webex. In determining the priority of trial cases, the Court will consider the following: constitutional and statutory considerations, the preferences of the parties, the duration of the trial, speedy trial considerations, the age of the case, the custody status of the defendant, the severity of the charges, and the concerns of parties, victims and witnesses. (Note: Factors are not listed in order of importance).
7. The Court will determine how many trials are able to proceed each week on a week-to-week basis, taking into consideration health conditions in Boulder County as per CDPHE, the nature and length of the trials at issue, and the number of jurors involved in each jury pool and in the ultimate jury. Jurors will not be asked to report on the same date at staggered times. In addition to discussing which cases will proceed to trial, the Court will discuss trial logistics and jury selection. In the Judge's discretion, a modified civil method may be utilized to select a jury.
8. *Staff:* Employees of the Colorado Judicial Branch complete an online COVID-19 health assessment daily before entering the building. This tool is developed for employees to report whether they are experiencing COVID-19 related symptoms each day and receive determination on whether to report to work.
9. *Counsel/parties/witnesses:* Counsel and parties are asked to review the same symptom screening questions as jurors prior to the commencement of trial and each morning if the trial is one lasting more than one day. Each attorney or party calling any witnesses is responsible for ensuring the witness(es) have reviewed the screening questions before each witness takes the stand.

### **C. JURY ASSEMBLY ROOM**

1. On the morning of trial, the jury commissioner, from behind a plexiglass screen, will confirm that each juror has submitted a questionnaire. This creates a data base of jurors' contact information should it become necessary.
2. Chairs in the Jury Assembly Room have been re-configured by the Jury

Commissioner to conform with social distancing requirements. Only 28 prospective jurors can be accommodated.<sup>1</sup> [This may require utilization of other rooms. See section below.]

3. Signs throughout the JAR remind jurors about masks, appropriate ways to use masks, the importance of hand washing, social distancing, etc.
4. To maintain social distancing, signage on the bathroom doors indicates only two people may be in the bathroom at once.
5. After verifying attendance with the Jury Commissioner, if any prospective juror is experiencing extreme anxiety about their service, he or she will be excused.
6. The bailiff reminds jurors to make efforts to maintain six feet of space from other jurors as they make their way to the courtroom. The Bailiff should also announce that anyone with difficulty seeing or hearing should sit near the front of the courtroom.
7. Signs on the elevator indicate that only two users can ride at once.

#### **D. COURTROOMS AND TRIAL PROCEEDINGS**

1. *Designated Courtrooms:* The use of designated courtrooms permits cleaning staff to thoroughly sanitize the courtrooms as per CDC guidelines each day and minimizes retrofitting efforts, such as relocating tables, microphones, etc.
2. *Jury Selection:* As no courtroom is large enough to seat a jury with social distancing, jury selection is conducted using two courtrooms and/or the Jury Assembly Room connected by a video system. The primary courtroom includes the judge and counsel, the defendant or client(s), the bailiff, security if applicable, interpreter if applicable,

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<sup>1</sup> Public Health notes that walking between two people who are 6' apart is considered incidental contact and is not a concern if everyone is wearing face coverings. It takes prolonged exposure to the virus (at least five minutes and, more likely, 10-15 minutes) for virus transmission. As such, it is not necessary to institute a process for exiting or entering the Jury Assembly Room or courtrooms, such as requiring that jurors exit from back to front, etc.

and the witnesses during trial. The auxiliary courtroom or the Jury Assembly Room contains remaining jurors and a second bailiff during jury selection.

3. For County Court trials and six-juror District Court trials (civil, some juvenile or dependency and neglect), as the Jury Assembly Room can hold 28 jurors, the Bailiff calls the names of jurors for *voir dire* for two courtrooms. For District Court criminal trials, the Jury Commissioner completes a randomized list of summoned jurors from those who submitted the questionnaire in advance of trial. The judge providing the juror stickers in the front the building directs a prospective juror to either the primary courtroom, the auxiliary courtroom, or the Jury Assembly Room, depending on where that juror's name appears on the Jury Commissioner's roster.
4. *Courtroom Ventilation:* Public Health has confirmed with Building Services that the fresh air return for the courthouse is set at 100%, which reduces recirculation of viral particles. In addition, the type of air filters in use are effective at capturing viruses. These measures are in accordance with ASHRAE guidance for utilizing HVAC systems to decrease exposure to infectious droplets. Courtroom doors are not left open, as this upsets the room's circulation. It is advisable to not operate electric fans in the courtroom, as these could cause contaminated air to blow in the direction of unsuspecting individuals.
5. *Use of Gallery Space:* To accommodate six-foot spacing, the jury pool remains in the courtroom gallery during jury selection and the trial itself. During jury selection, depending on the number of jurors to be seated, the jury box and well may be used in combination with the gallery. Counsel tables are turned or slanted, depending on the courtroom, for best view of the jurors and witnesses. The lectern may be repositioned or removed. Jurors in the auxiliary room(s) are able to see and hear the discussion in the primary courtroom where the judge and counsel are conducting *voir dire*. As jurors are excused from Courtroom #1, alternate jurors are asked to come from Courtroom #2, etc. until a jury is sworn in.
6. During jury selection, standup microphone(s) are used for jurors to walk up to in their discussions with counsel and with the judge. Jurors are instructed to not touch the microphones, and there are markings on the floor indicating where jurors should stand.

7. *Public Proceedings:* Public access to trial proceedings is made available via Webex. Members of the public will be provided Webex information to watch in their home or office. In an effort to protect the health of jurors and trial participants, members of the public will not be permitted in the courtroom.
8. *Expanded Media:* As trials are simulcast on Webex, and in order to reduce the risk of having a photographer or any other non-essential participant in the courtroom, no expanded media requests will be considered during this time during the jury trials. The court will consider granting for preliminary hearings, motions practice, and at sentencing hearings.
9. *Breaks:* As individuals may be stressed from wearing a mask, it is appropriate to take more frequent breaks; the Court will take breaks as frequently as trial intervals permit. Participants are allowed to go outside and remove their facial coverings while socially distancing. Participants are reminded to hydrate during breaks.
10. *Masks for Those Who Cannot be Socially Distanced During Trial:* The County or Judicial District will provide one KN95 mask or its equivalent per trial for participants who cannot maintain social distancing, such as co-counsel, advisory witnesses, and clients, upon request. These masks do not require medical clearance or a fit test but do provide filtration. They are not required but strongly recommended for these trial participants. Communication between these participants may also take place utilizing notes or electronic devices. As side bars are not considered prolonged exposure, these masks are optional for judges.
11. *Attorney Examination:* Attorneys may utilize the microphones at counsel table for questioning prospective jurors, or at the lectern if the lectern has not been removed. Counsel may utilize a lapel microphone for opening statements and closing arguments, but note that these are not provided by the Court
12. *Witnesses:* Witnesses are to remain outside the courtroom until they are called to testify. Counsel are responsible for ensuring witnesses adhere to the sequestration order, especially as a Webex simulcast is available. Depending on the configuration of the courtroom, witnesses may testify from the witness stand or, if this places the witness too close to the judge or if jurors do not have a clear line of sight, from the jury box. Witnesses must wear a mask at all times, except for, in the Judge's

discretion, a brief introduction. Hand sanitizer is to be available on the witness stand, and the witness is to be instructed to use the sanitizer prior to removing the facial covering and immediately after donning the facial covering. If any witness removes a mask, PH stated it is advisable to sanitize all surfaces on the witness stand between witnesses. A sign on the witness stand instructs witnesses to wipe down all surfaces at the completion of the testimony. It is the witness's or the party calling the witness's responsibility to sanitize the witness box area after testimony.

13. *Clear Masks:* Attorneys may provide clear masks for themselves and their clients. The District Attorney's Office has agreed to provide Clear Masks for all witnesses during their time on the witness stand. A defendant may wear a Clear Mask for a portion of the proceeding, but may not wear a Clear Mask for the duration of trial.
14. *Opening/Closings:* Attorneys may utilize the lectern or counsel table to deliver opening statements and closing arguments. If any attorney has access to lapel microphones that tie in to the FTR recording system, lawyers must respect others' six-foot spacing. Lapel microphones connect to the FTR recording system.
15. *Sidebars:* Sidebars are discouraged. Depending on the courtroom layout, the judge will establish procedures that balance safety with the need for conference outside the hearing of the jury. The judge may utilize break time or technology as appropriate.
16. *Orientation:* The Jury orientation will include several new necessary terms to be read by the judge, including instructions to not touch the microphone, maintaining the mask over the nose and mouth at all times, etc. Juror questions may or may not be permitted, but the presumption would be no jury questions due the increased health risk of bench conference and prolonging the proceedings.
17. *Jury Deliberation Room:* During recesses, instead of utilizing a jury deliberation room that would not permit social distancing, the jurors are escorted to another courtroom or an outdoor space for breaks. Deliberations will take place in the trial courtroom.



## E. ADDITIONAL TRIAL CONSIDERATIONS

1. *Consideration on Number of Alternates:* In determining the number of alternates to seat, judges may consider current health data and the possibility that a juror or the juror's family member may present COVID-19 symptoms during the course of the trial.
2. *Dismissal:* Judges will liberally excuse any jurors who raise concerns about their ability to serve as a juror due to concerns about COVID-19. This includes jurors who have personal health and safety concerns, jurors who have health and safety concerns related to an immediate family member, and jurors who are experiencing financial pressures and may be unable to serve on a lengthy trial.
3. *Assigned Juror Seats:* If the trial is longer than one day, jurors are requested to keep the same seat on subsequent days. Each juror is provided a notebook that has been sanitized in which a notepad and clean pens are placed for that jurors' individual use, along with freshly printed inserts. Juror notebooks remain under or on the juror's assigned seat in a secured courtroom during breaks, including the evening break.
4. *Exhibits:* The use of electronic exhibits is encouraged. It is unnecessary to use gloves to handle paper (i.e. juror questions) and other physical exhibits. It is, however, appropriate to use hand sanitizer prior to and after handling such exhibits. The use of rubber gloves is reserved for handling matters that are known to be contaminated or for when cleaning surfaces that may be contaminated
5. *Deliberations:* Jurors are reminded to maintain social distancing at all times during deliberation, that they must keep their masks on unless drinking or eating, and that no piece of evidence may be handled unless hand sanitizing occurs immediately before and after the evidence is handled. Juries deliberate in a room that is large enough to ensure spacing but is private and appropriate for meaningful deliberations.
6. *Court Reporters:* Due to budgetary considerations, the official record in the 20<sup>th</sup> Judicial District is maintained by a digital recorder for all proceedings. If parties elect to provide a privately retained freelance court reporter, the Court is to be advised of this at the PTRC. The Court Reporter will be provided an agreement form by the Court Executive to review and sign. A signed agreement must be submitted to the judge on the first day of trial.

7. *Food and Beverages:* Any food provided to the jury during deliberations is individually packaged for each juror. Jurors may bring their own beverages and food, but jurors do not have use of refrigerators or microwaves to store their belongings.
8. *Post-verdict Discussion:* Any post-verdict discussions between the judge and the jury occurs with proper social distancing and mask-wearing.

#### **F. PROTOCOL IF A JUROR DEVELOPS COVID-19 SYMPTOMS.**

1. Jurors will be asked to report to the bailiff if they experience any COVID-19 symptoms during the course of the trial. That juror will be sent home.
2. Before dismissing the jurors at the end of the day, the judge will advise jurors to not return for jury duty the following day if either they or anyone in their household is experiencing COVID-19 symptoms. In that event, they are to contact the bailiff, who will consult the judge and excuse the juror by phone before the juror drives to the courthouse.
3. If either #1 or #2 above occurs, if the trial can continue safely, the judge will explain the next steps. If not, the jury will be excused.
4. Cleaning staff will increase sanitization of the facility. The Courtrooms are cleaned daily by Boulder County janitorial staff.
5. Social distancing measures will continue to be emphasized and enforced.
6. The bailiff will notify the local PH and all recommendations provided will be followed.

# ATTACHMENTS

Sample Instructions for Jury Questionnaire

Sample Jury Questionnaire



## Twentieth Judicial District of Colorado

Dear Prospective Juror, You have received a jury duty summons for a scheduled reporting date of Wednesday, August 12 at the Boulder Justice Center courthouse at 1777 6<sup>th</sup> St., Boulder. Please read the following instructions thoroughly.

1. **Please complete the enclosed questionnaire and return it to the court by 5:00 p.m. on Wednesday, August 5.** The questionnaire is **required**. If you do not complete it and return it by 5:00 p.m. on Wednesday, August 5 you **MUST APPEAR** on Thursday, August 6 to the **Boulder** Jury Assembly Room at 11:00 a.m. to complete it. The Boulder Justice Center is located at 1777 6<sup>th</sup> St. If you complete and return the questionnaire by Wednesday, August 5 at 5:00 p.m., you do **NOT** need to appear in person on Thursday, August 6.

You may send your questionnaire by email (preferred), fax, or mail.

Email: [boulderjury@judicial.state.co.us](mailto:boulderjury@judicial.state.co.us)

Fax: 303-441-4750 Attn: Jury Commissioner

Mail: PO Box 4249, Boulder, CO 80306 Attn: Jury Commissioner You may also drop off your questionnaire to the either courthouse:

Boulder – 1777 6<sup>th</sup> St. | Longmont – 1035 Kimbark St.

**\*\*\*If you submit a postponement or disqualification request, you are NOT required to return the questionnaire. Please see section 2 of your summons if you need to submit a postponement or disqualification request. Your juror number is located above your name on the mailing label of this envelope.\*\*\***

2. As stated on your summons, you will need to check the website (<http://boulder.cojury.org>) or call the recording (303-441-3784) after 5:00 pm on Tuesday, August 11 for reporting instructions for Wednesday, August 12.

Thank you for your time and service.

Sincerely,  
Boulder County Jury Commissioner  
303-441-4732

## SAMPLE JURY QUESTIONNAIRE

This questionnaire will save time during jury selection. Only the judge and attorneys will be able to read your answers. Please answer the questions completely and accurately. DO NOT DISCUSS YOUR ANSWERS WITH OTHERS.

1. Name: \_\_\_\_\_ Age: \_\_\_\_ Scheduled reporting date: \_\_\_\_\_ Juror Number: \_\_\_\_\_
2. Are you a citizen of the United States, as required by law to participate in jury service? \_\_\_\_\_
3. Are you a resident of Boulder County, as required by law to participate in jury service? \_\_\_\_\_
4. Are you at least 18 years old, as required by law to participate in jury service? \_\_\_\_\_
5. Are you able to read, speak, and understand the English language, as required by law to participate in jury service?  
\_\_\_\_\_
6. Are you unable to serve on a jury because of a physical or mental disability? (if “yes,” please explain)  
\_\_\_\_\_  
\_\_\_\_\_
7. Are you solely responsible for the daily care of an individual with a permanent disability who lives with you? (if “yes,” please explain) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Have you served on a jury within the last 12 months, or are you scheduled for jury service within the next 12 months? (if “yes,” please explain) \_\_\_\_\_  
\_\_\_\_\_
9. Do you work for a public law enforcement agency or for a public defender’s office? (if “yes,” please explain)  
\_\_\_\_\_  
\_\_\_\_\_
10. Describe your current employment? (if retired, please list former employment) \_\_\_\_\_
11. What is your educational background? (please include level of education, and, if applicable your degree and major) \_\_\_\_\_
12. Who else lives in your household; what is their occupation/how do they spend their time?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
13. Do you have children? (if applicable, please list their age(s) and occupation(s))  
\_\_\_\_\_  
\_\_\_\_\_
14. Do you have any friends or relatives in law enforcement? (if “yes,” please explain)  
\_\_\_\_\_
15. How long have you lived in the County and State? \_\_\_\_\_

16. Have you or any of your friends or relatives ever had a particularly good or bad experience with a law enforcement officer? (if “yes,” please explain) \_\_\_\_\_

\_\_\_\_\_

17. Have you, a friend, or a relative ever been the victim of a crime or been accused of a crime? (if “yes,” please explain who, when, and the relevant circumstances) \_\_\_\_\_

\_\_\_\_\_

The court realizes that this is a very trying time in our nation’s history and that many jurors have had their lives disrupted as a result of the COVID-19 pandemic. One of the core foundations of our freedom and democracy are trials by jury.

In order to ensure trials by jury can continue safely in this trying time, the court has instituted several safety measures to protect you, the parties, and all court staff. These safety measures include the following: requiring that anyone entering the courthouse wear a mask at all times while in the building; limiting the number of individuals in any room in accord with the Governor’s orders; requiring that all individuals participating in jury service or trials maintain a distance of six feet from any other person at all times during the trial (except when not feasible); and making masks, sanitary wipes, hand-sanitizer, and hand-washing readily available to everyone.

Understanding this, if applicable, please check the appropriate box indicating if any of the following make it especially difficult for you to serve as a potential juror:

(a.) I am currently ill and have tested positive for the Coronavirus.

(b.) I am currently ill and I am concerned that I may test positive for the Coronavirus.

(c.) I am caring for a family member or loved one who has tested positive for the Coronavirus.

(d.) I have a financial hardship that will make it impossible for me to serve as a juror. **If you check this box, please fully explain your financial circumstances that prevent you from serving:**

\_\_\_\_\_

(e.) I have a difficulty not listed above (please describe): \_\_\_\_\_

\_\_\_\_\_

19. Other than anything mentioned previously in this questionnaire, is there any other reason why you cannot serve as a juror, please fully explain the circumstances: \_\_\_\_\_

\_\_\_\_\_

**I swear or affirm under penalty of law that I have truthfully answered these questions:**

**SIGNATURE:** \_\_\_\_\_