

<p>TWENTY SECOND JUDICIAL DISTRICT in and for DOLORES AND MONTEZUMA COUNTIES</p> <p>STATE OF COLORADO</p>	
<p><b>ADMINISTRATIVE ORDER 2021-04</b> <b>CONCERNING PROCEDURES FOR JURY TRIALS DURING PRESENT</b> <b>COVID-19 CRISIS</b></p>	

One of the most precious of rights guaranteed under the Constitutions of the United States and the State of Colorado is the right to a jury trial in criminal matters and some civil matters.

The world and, the United States remain in the grip of a deadly pandemic caused by the Covid-19 virus. As of March 27, 2021, more than 548,000 people have died from the virus in the United States alone and Colorado reports 456,302 people who have contracted the disease with 6,196 deaths due to Covid reported. Covid-19 is a highly contagious disease that has prompted the shuttering of business and schools and resulted in statewide orders to wear masks in public places. As of April 2, 2021, vaccines are now available to all adults who wish to take them. After a winter surge in Covid-19 infections, the number of new cases in Montezuma county is seemingly decreasing. The pandemic is not over but the risk to the public of resuming jury trials in the 22<sup>nd</sup> Judicial District has lessened dramatically. As a result, it is the finding of the undersigned that it is safe to begin to hold some jury trials while imposing measures to keep the public, potential jurors, parties, attorneys, witnesses and Court staff safe while honoring a defendant’s right to a jury trial. Further, while this order is similar to Administrative Order 20-05, it contains some important differences that are intended to make the process of conducting a jury trial more efficient and more like a “normal” jury trial but with safeguards remaining in place. This order replaces and repeals Administrative Order 2020-05.

## IN GENERAL

Until further notice, no civil cases will proceed to a jury trial except those cases where a child or children is alleged to be dependent and neglected under Title 19 of the Colorado Revised Statutes. It is expected that civil jury trials will begin in June of 2021. When civil trials begin, the procedures contained in this order will apply with such modification as the presiding judge determines appropriate. This order is aimed primarily at jury trials that occur in Montezuma County. Trial procedures for Dolores county will need to be modified by the presiding judge to account for the different physical limitations of the court facility there. Those modifications may necessitate the use of off-site venues for jury selection. The judge presiding over trials in Dolores County will consult with the Court executive and the Clerk of Court in Dolores County to develop modifications to this order.

All potential jurors and all persons who are ultimately selected to serve on the jury as well as all witnesses, court staff, judges, attorneys, parties and spectators, will wear a mask or other face covering at all times, except as noted below or in other administrative orders. Any face covering required by this order must cover the person's nose and mouth. Face shields may be used, provided they wrap around the face and extend from the forehead to below the chin. All face coverings must be worn correctly at all times so that the nose and mouth area of the wearer is covered. The only exception will be for witnesses, if there is a clear screen between them and all other persons in the courtroom or if a witness is asked to identify the Defendant. In that case, the Defendant may lower their mask temporarily so that the witness may view the defendant's face. The Court will not require the Defendant to lower his or her mask if the Defendant has entered into a stipulation so that the element of identity need not be proven. The Defendant may

wear a clear face mask or face shield if he or she wishes. Witnesses will be provided with a clear face mask if no screen is present or if they wish to wear a mask while testifying.

Any person who has a medical reason, documented with a letter from their doctor, to not wear a face covering will have their service continued for at least six months.

The entire trial, except for jury deliberations and sidebars will be broadcast to the public by WebEx Events.

#### PRIOR TO THE DAY OF TRIAL

Any potential juror who contacts the jury commissioner and indicates that they are in a high-risk group or who are not comfortable serving on a jury during the present pandemic will have their jury service continued for at least six months. Any person who contacts the jury commissioner who indicates that they have been exposed to or has become ill from the Covid-19 virus within 14 days of the day of trial and who has not tested free of the virus will have their jury service continued for at least six months. The clerk will keep records of who was postponed and specific reasons why the postponement was granted.

The Clerk will attempt to notify all potential jurors that they may fill out their jury questionnaires and email them to the clerk prior to the date of the trial.

Jurors will be allowed to enter the Courthouse with gloves and small bottles of hand sanitizer.

#### CHECKING IN ON THE DAY OF TRIAL

The Clerk's office will set up two stations either outside of the Courthouse or just inside in case of inclement weather. The jurors will check in at these stations. The potential jurors first will be directed to a health screen station where they will be identified and have their temperature taken and health questions will be asked. The questions will include whether the

juror is experiencing a fever or chills, cough, shortness of breath, any respiratory illness symptoms, muscle or body aches, sore throat, a new loss of smell or taste, fatigue, headache, congestion or runny nose, nausea, vomiting or diarrhea. In addition, the potential jurors will be asked if they have been diagnosed with or been in close contact with anyone within the past 14 days who has tested positive for Covid-19. Any person who answers yes to any of the health screen questions or who has a temperature above 100.4 will be denied entry and their service will be continued for at least 6 months. The potential jurors will also be asked if they do not desire to serve on the jury due to Covid-19. Any person who answers that they do not desire to serve on the jury due to Covid-19, will have their jury service postponed for at least six months. The clerk will keep records of who was postponed or continued based on the provisions of this paragraph, with the only notation being that the potential juror was postponed under the provisions of this order. The Court and the attorneys will be informed that the jurors had their service postponed because of the screening process. No medical information will be kept concerning potential jurors.

The remaining potential jurors will then move to a second station where they will be checked in and their juror questionnaires, if not previously emailed to the Court, will be scanned into the Court's computer system. The potential juror will then drop their questionnaire(s) into a basket for disposal by staff.

The potential jurors will also proceed through security. Depending on where the screening stations are set up, the second screening station may be in the building and inside of the secure area.

After clearing the screening stations and security, the potential jurors will be contacted by Court staff and/or the bailiff who will inform each juror whether they should go to the Kiva room or a vacant courtroom which will be used as jury assembly rooms.

### VOIR DIRE

Jurors may be given staggered report times for jury selection. Once all potential jurors with a particular report time have been checked in, they will be shown the Court's jury video. The judge and parties will be in the courtroom where the trial will occur for voir dire. The judge will begin a general voir dire by video link. Once the judge has completed the general voir dire, potential jurors will be called into the trial courtroom, for additional voir dire from the judge and the attorneys. The jurors to be called into the courtroom will be called from a list prepared by the clerk of all jurors who have reported and passed the screening which has been randomized. In general, the judge will call for a number of jurors equal to the number of jurors required for a particular trial (six or twelve) plus the number of alternates if any to be used in a particular trial, plus the total number of possible preemptory excuses that will be available for a trial. By way of example in a normal felony trial with one alternate and one defendant, this would mean 25 possible jurors will be called into the court room. This represents twelve jurors, one alternate and 12 preemptory excuses. For a county court trial with 3 preemptory excuses per side this would be 12 potential jurors.

Voir dire will then proceed as directed by the judge presiding over the trial and will be viewed by the remaining jurors in the Kiva and any other courtrooms used for jury assembly. Motions to strike a juror for cause shall be presented as called for by the presiding judge. If a juror is excused for cause, a new juror will be selected from the jury pool in the Kiva or the spare

courtroom with the next juror on the clerk's list being called into the trial courtroom. As each juror is called into the courtroom, the juror will be assigned a seat number in a virtual jury box.

The "virtual jury box" is simply a chart showing the number of boxes that is equal to the number of jurors described above (i.e. 25 for a normal district court trial with the names of the jurors on it). The first juror called into the trial courtroom will sit in the spot designated for juror number 1 with each successive juror called of the original group sitting in the next seat on the chart. For example, the second juror called will sit in the spot marked in the court room as seat 2 and will be listed on the virtual seating chart as being in seat 2.

If any juror expresses a desire to answer questions outside the presence of the other potential jurors, the trial judge will use their discretion to grant or deny individual voir dire of that juror. If individual voir dire is allowed, the judge, the attorneys, the defendant and the potential juror will go to a separate room where social distancing can occur and a record made for individual voir dire. The room may be a separate courtroom if one is available or a jury deliberation room.

Once the jury panel that is seated in the trial courtroom is cleared for cause, the attorneys will exercise preemptory challenges by use of a shared virtual seating chart. Each side will mark that they have excused the juror with the name of the excused juror listed by the attorney who is excusing the potential juror. If all of the preemptory challenges are not exercised but the attorneys announce that they are not intending to use any further preemptory challenges, the jury will consist of the jurors remaining, starting with the lowest number seat until the correct number of jurors and alternates are reached. The additional jurors will be excused.

Any alternate juror will be seated in a seat to be selected by the Defendant prior to the beginning of the jury trial. For example, the judge may ask the Defendant, before jury selection

begins, to pick a number between 1 and 13 and the juror who ends up in that seat will be the alternate.

If the pool of potential jurors is exhausted and the necessary number has not been reached to exercise preemptory excuses, the remaining jurors will be filled in by the second wave of jurors (if called).

Each judge will be free to vary from this procedure, if they wish or if it is necessary, provided that any procedure used must be fair to both sides and must be as safe as possible for the jurors and participants.

#### TESTIMONY AND ARGUMENTS

To the extent possible, the jurors will maintain a six (6) foot distance between themselves and others during the trial. Each juror must be able to see the face of each witness from where they are seated. Each presiding judge will have the responsibility to set out the seating arrangement for the jurors and other participants.

Attorneys are authorized to use any quiet and discreet method to converse with their clients, including face to face conversation, writing notes, text, email, or radios. Any electronic device used to communicate between the defendant and the Defendant's attorney must be provided by the Defendant or the Defendant's attorney and must be cleared with the clerk and Court security prior to the start of trial solely to insure that it does not interfere with any of the electronics in the court room, such as the court's Wi-Fi, the court's recording device, or WebEx, or the Court Security's communication system.

All witnesses will be sequestered in the hallway of the Court house and will remain at least 6 feet apart and 6 feet from any other person.

Attorneys are to make one word or short objections to the greatest extent possible. Bench conferences are to be discouraged and the presiding judge is authorized to deny request for bench conferences and require the attorneys to remain at counsel tables to present any longer objection or argument. If the presiding judge determines that a conference is necessary outside of the presence of the jury, the judge, attorneys, judicial assistants and defendant/party may move to another courtroom for argument.

Attorneys are required to use electronic forms of exhibits. Exhibits which may be offered will be submitted electronically, after they are offered, using the Court's e-file program for attorneys. Any Defendant who is not represented by counsel may e-mail their proposed exhibits to the Clerk prior to the trial. Attorneys will be prepared to present their exhibits electronically, using the Courtroom system. All attorneys are required to be familiar with that system and to test their computer with the system within seven (7) days of the trial during a break in Court proceedings.

In order to avoid wasting the juror's time, exhibits that cannot be shown because of technical difficulties where an attorney has failed to test their equipment with the Court's system and become familiar with how to present an exhibit prior to the trial, will be rejected and will not be admitted. If there are any physical exhibits that absolutely must be handled by anyone in the Court room or during jury deliberations, the person handing the exhibit will use gloves. Once the exhibit has been handled by that person, she or he will remove and discard their gloves. Any party proposing to admit physical exhibits will notify the Court and opposing counsel at least seven days before trial. The notification will include a description of the possible exhibit and the reason why it must be admitted in physical form. The trial judge will make the final

determination concerning admitting any exhibit in physical form and any process to provide for such admission.

The presiding judge may, in his or her discretion, allow or not allow jury questions during the trial.

Court staff will disinfect the witness stand after each witness has testified.

No person will use the podium and the attorneys are required to remain seated at counsel table when asking questions or addressing the Court or jury. Each counsel table will be equipped with spare gloves and bottles of hand sanitizer and a disinfectant.

Prior orders have limited the number of attorneys for each party to one at any particular time. This provision is expressly revoked and each party may be represented by as many attorneys as they wish, provided that the judge conducting the trial may limit the number to no more than two if the number of attorneys and staff in the courtroom interferes with social distancing or access by the general public.

Persons wishing to personally attend the trial as participants or spectators must undergo the general health screening provided by the court security officers at the secure entrance. Any person who would be excluded from the Courthouse under the provisions of this orders concerning health screening and entrance into the Courthouse will not be allowed to enter the Courthouse.

No courtroom will ever be filled to more than 50% of its capacity. Any person wishing to watch the trial, including defendant's family members, will be allowed entry to the courtroom on a first come-first served basis but only to the extent there is room in the Court room after taking into account, the judge, attorneys, jury, defendant, court security, bailiff, witnesses, victims and court staff. The presiding judge may make accommodations to remove any person

deemed to not be necessary for the trial to proceed, in that judge's discretion, if the above listing of persons exceeds 50% of the courtroom's capacity. Anyone denied access under this provision may view the proceedings by WebEx.

All spectators and participants will maintain a distance of 6 feet from each other with the exception that a Defendant and his or her attorney who may be closer than 6 feet from each other. If the Center for Disease Control and Prevention or the Colorado Department of Health deems it safe to decrease the general social distancing space to a number smaller than six feet, (as it has done with schools where a three foot space is deemed safe) the trial judge may allow persons in the courtroom to be closer than six feet from each other but not closer than what is recommended by the CDC or the Colorado Department of Health.

#### JURY CARE AND DELIBERATIONS

The jury will remain in the courtroom during any breaks during the trial, unless there is a reason to remove the jury (such as where the removal of a defendant would will disclose that she is in custody). In that case, the jury should be moved to a spare courtroom. All jury deliberations will be in the trial Courtroom with all other persons exiting the Courtroom. If a jury requests an examination of any electronic exhibit, the Court, after consulting with counsel may allow the exhibit to be shown to the jury in the courtroom or may arrange for the Court to print a copy of the exhibit for each juror who will then be allowed to retain that exhibit during deliberation. After jurors are selected, they will use the bathroom in the nearest jury deliberation room. If it becomes necessary for a juror to use a different bathroom, the presiding judge will direct the bailiff to escort the juror to the bathroom chosen by the judge. The bailiff will insure that the bathroom is empty of other persons and the juror will then be allowed to

enter. The Bailiff may enlist the aid of court security or other court personnel to determine if the bathroom is empty.

The jury instructions and verdict forms will be handled only by Court staff, judges and jurors who will wear gloves at all times that the item is being touched.

Any request from any party, to deviate from this procedure must be made in writing at least seven (7) days prior to trial with specific reasons provided to deviate from this order. The presiding judge will have the authority to deviate from this order but only as provided in this order or in extraordinary circumstances when necessary to protect the fairness of the trial. The presiding judge may not vary from this order in any fashion that would endanger the health and safety of the jurors and other participants.

SO ORDERED this 30 day of March, 2021.



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Douglas S. Walker  
Chief Judge