

<p>TWENTY SECOND JUDICIAL DISTRICT in and for DOLORES AND MONTEZUMA COUNTIES</p> <p>STATE OF COLORADO</p>	
<p><b>ADMINISTRATIVE ORDER 2020-06 CONCERNING PROCEDURES FOR JURY TRIALS DURING PRESENT 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 United States is gripped by a deadly pandemic caused by the Covid-19 virus. As of September 30, 2020, more than 205,000 people have died from the virus in the United States. Colorado reports 70,025 people have contracted the disease with 1,952 deaths 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.

The Covid -19 pandemic is particularly dangerous for high risk populations including persons over 60 years of age. A normal jury in Montezuma or Dolores County would include several, if not a majority of, persons who are over 60 or who may have other underlying conditions that places them at risk of death.

This order is meant to provide a plan to keep, the public, potential jurors, parties, attorneys, witnesses and Court staff safe while honoring a litigant’s right to a jury trial.

**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.

All potential jurors, all persons who are ultimately selected to serve on the jury, all witnesses, court staff, judges, attorneys, parties and spectators, will wear a mask or other face covering at all times, except as is set out below. Any face covering required by this order must cover the person's nose and mouth. Any face shield used, must wrap around the face and extend from the forehead to below the chin and 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. The witness will remove their mask upon taking the witness stand. If a witness is asked to identify the Defendant who is not wearing a clear plastic shield, the Defendant may be required to 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 entire trial, except for jury deliberations and sidebars will be broadcast to the public by WebEx, provided that any person who disrupts the proceedings will be removed from the WebEx site and will be subject to sanctions for contempt of court.

#### 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, have been ill from or who have tested positive for the Covid-19 virus within 2 weeks of the day of trial and who has not subsequently tested free of the virus will have their jury service continued for at least six months.

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.

Potential jurors and those who are eventually chosen to serve as a juror will be allowed to enter the Courthouse with gloves and small bottles of hand sanitizer.

#### CHECKING IN ON THE DAY OF TRIAL

Jurors may be given staggered report times for jury selection. The Clerk's office will set up one or more stations outside of the Courthouse for jurors to check in. The potential jurors will be first directed to a 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 or difficulty breathing, fatigue, muscle or body aches, sore throat, a new loss of taste or smell, 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. If a potential juror indicates that they previously tested positive for Covid-19 within 14 days, and they can show a negative test taken since that time, the potential juror will continue to be checked in. Any other 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 are concerned about serving on a jury due to Covid-19 and who feel they should be excused due to that concern. Any person who answers yes will have their jury service postponed for at least six months. The clerk will keep records of who was postponed and the attorneys will be informed that the jurors had their service postponed because of the screening process.

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

The potential jurors will then proceed through security and enter the building. The jurors will be met on the inside of security by Court staff 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 in Montezuma County. The jurors in Dolores County will be directed to a jury assembly area.

#### VOIR DIRE<sup>1</sup>

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. The judge will begin a general voir dire by video link if the jurors are in a room connected by a video link. Once the judge has completed the general voir dire, potential jurors will be called into the trial courtroom, for voir dire from the judge and the attorneys. The presiding judge will have discretion to bring up to four potential jurors at a time into the courtroom. If jurors are brought into the court room for voir dire individually, that potential juror will be seated at the witness stand. If more than one potential juror is brought in for voir dire at the same time, the potential jurors will be seated in specific chairs in the jury box in such a fashion as to maintain a 6-foot distance between each of them and each other and any other person in the court room. Attorneys are to present a motion to strike for cause any potential juror after that juror or group of potential jurors are questioned by the judge and both attorneys. Any

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<sup>1</sup>Jury selection in Dolores County cannot proceed exactly as outlined here, due to space limitations. The presiding judge of any trial in Dolores County will conduct voir dire in such a manner as to limit the number of people in the Courtroom to no more than 50% of capacity and by following the basic virtual jury box procedure as possible.

potential juror, who has not been challenged for cause after both attorneys have questioned the individual juror (if only one is called in at a time) or jurors in a group, will be considered to be passed for cause. The jurors passed for cause will then be assigned a seat number in a virtual jury box. A “virtual jury box” is simply a diagram containing the number of squares that will be used for the particular jury (6 or 12) plus alternates plus the number of total possible preemptory challenges, arranged to resemble a seating chart as if the jury was seated in a box. That juror will then be either returned to the Kiva or courtroom that they came from and another juror will be called in for voir dire.

If any juror expresses a desire to answer questions outside the presence of the other potential jurors, then the video link to the other waiting areas will be interrupted by placing those rooms in the WebEx “lobby”. Any other potential jurors in the courtroom will be removed and the juror will then be questioned on the sensitive matters. After the sensitive matters have been discussed, the potential jurors will be removed from the lobby or returned to the courtroom and will rejoin the process. The WebEx link for the public will not be terminated and the public will not be placed in the lobby while the individual sensitive voir dire occurs unless the Defendant stipulates to exclude the public from this portion of the voir dire.

Once a sufficient number of jurors<sup>2</sup> are cleared for cause the attorneys will exercise preemptory excuses by use of a shared virtual seating chart. Each side will mark that they have excused a juror. When all of the preemptory challenges are not used, the jury will consist of the jurors remaining, starting with the lowest number seat until the correct number of jurors (including alternates) are reached and the additional jurors will be excused. The selected jurors will be assigned to a numbered seat in the virtual jury box with the juror with the lowest number

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<sup>2</sup> For example, for a county court trial with 3 preemptory excuses per side this would be 12 jurors. For a District Court trial with 6 preemptory challenges this would be 25

from the full virtual jury box being assigned to seat number 1 and the second lowest assigned to seat number two. The remaining jurors and alternates will be assigned seats in a similar fashion and all jurors and alternates will retain the number assigned to that juror in the virtual jury box, for the length of the trial. If there will be one or more alternates seated, the presiding judge may use what ever method that judge sees fit to determine which seat in the virtual jury box the alternate or alternates will sit in before jury selection begins.

### TESTIMONY AND ARGUMENTS

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 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 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 and to insure that it does not interfere with Court Security's communication system.

All witnesses will be sequestered in the hallway of the court house and will remain at least 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 allow the attorneys to remain where they are to speak 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 will move to another court room for argument.

Attorneys are encouraged to use electronic forms of exhibits to the greatest extent possible. Exhibits will be submitted electronically to the Court's e-filing system once they are either admitted or not admitted, it. Attorneys and pro se litigants will be prepared to publish their exhibits to the jury electronically, using the courtroom system. All attorneys and pro se litigants are required to be familiar with the courtroom system and will test their equipment (i.e. laptop) with the system within seven (7) days of the trial during a break in court proceedings. This requirement is to avoid a waste of the jury's time. Any exhibit that cannot be shown because of technical difficulties when an attorney or pro se litigant has failed to test their equipment and become familiar with how to present an exhibit prior to trial will be rejected and will not be admitted.

Physical exhibits will not be permitted unless there is no other fair way to show them to the jury. The presiding judge will have discretion to limit the actual contact by the jurors with the exhibit. Physical exhibits will be published to the jury with as little contact between the jury and the exhibit as possible. If there are any physical exhibits that 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.

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.

Each party will be represented by one and only one attorney in the courtroom during the trial. The attorney may have contemporaneous and confidential communication with other attorneys who are representing the Defendant remotely and who will be able to view the proceedings by WebEx.

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 the Court's other orders concerning health screening and entrance into the Courthouse will not be allowed to enter the Courthouse.

No courtroom will ever be filled with more than 50% of its capacity. Any person wishing to watch the trial, including defendant's family members will be allowed 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, either remotely or in a viewing room at the courthouse if one is set up. 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.

## JURY CARE AND DELIBERATIONS

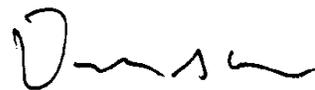
The jury will remain in the courtroom if there are any breaks during the trial, unless there is a reason that the jury should be moved to an empty courtroom (such as removal of a defendant which will disclose that he is in custody). All jury deliberations will be in the trial courtroom with all other persons exiting the Courtroom. If a jury requests an examination of any 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.

The jurors 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, with the aid of Court Security, will insure that the bathroom is empty of other persons and the juror will then be allowed to enter.

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 touched.

Any request 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 the order. The presiding judge will have the authority to deviate from this order, with or without a request by the parties, when necessary to protect the fairness of the trial or if the procedures set out herein are not physically possible. This order replaces Administrative Order 2020-05 which is repealed in its entirety.

SO ORDERED THIS 30<sup>th</sup> DAY OF September, 2020.



Douglas S. Walker  
Chief Judge