

ADMINISTRATIVE ORDER 2021-05 RE: RESUMING, SCHEDULING AND CONDUCTING JURY TRIALS IN THE 7th JUDICIAL DISTRICT COMMENCING APRIL 5, 2021 ON A PHASED IN BASIS

The right to a jury trial in criminal cases is fundamental and guaranteed by the United States and Colorado constitutions, and it has been of paramount importance to the judges in this district to resume and conduct jury trials in criminal and civil cases only when we believe it was safe to do so. Due to serious public health issues related to the COVID-19 pandemic, jury trials throughout the state of Colorado were suspended by the order of then Colorado Supreme Court Chief Justice Nathan B. Coats dated March 16, 2020, and as extended by the Chief Justice's orders of May 5, 2020 and June 15, 2020, which precluded any person being summoned to state courts to assemble for jury service to begin any time prior to August 3, 2020, subject to waiver by Chief Justice Coats.

On July 24, 2020, Chief Justice Coats issued an Updated Order Regarding COVID-19 and Operations of State Courts removing the requirement that Chief Judges obtain a waiver from him to resume conducting jury trials after August 2, 2020, provided the Chief Judge of the district determined that a jury pool can safely be assembled consistent with applicable executive orders and health directives. We obtained such a waiver and conducted eight, six person trials in the District in the summer of 2020. Those were based on protocols approved by each local Public Health Department and began on a phased basis. Based on the increase in COVID cases in the district, state and nationally we again suspended jury trials. AO 2020-16. A copy is attached. That Order was extended by AO 2020-20 dated September 29, 2020, and further extended October 30, 2020 by AO 2020-22, AO 2020-24 dated November 3, 2020, AO 2020-27 dated December 1, 2020 and most recently AO 2021-04 suspending all jury trials set though April 2, 2021 dated February 1, 2021.

The judges of the Seventh Judicial District have met regularly since March 2020 to formulate plans to safely resume jury trials. We have considered information from the Center for Disease Control and Prevention ("CDC") and the Colorado Department of Public Health and Environment ("CDPHE"); information presented to the Chief Judges Council and all local Public Health Departments in the District.

After considering the information and recommendations from health experts, we have determined that we are able to resume a limited numbers of jury trials in the 7th Judicial District with six to seven person jury panels beginning on April 5, 2021 pursuant to the provisions of this administrative order and the previously prepared jury protocols followed last summer. This was discussed with both Seth Ryan, the District Attorney and Patrick Crane, Office Head of the Public Defenders Office for our District.

The CDC lists several potential or possible consequences of new variants that may include:

- Ability to spread more quickly in people;
- Ability to cause more severe disease in people;
- Ability to evade detection by specific viral diagnostic tests;
- Decreased susceptibility to therapeutic agents such as monoclonal antibodies;
- Ability to evade natural or vaccine-induced immunity.

The CDC reports that the last factor listed above, the ability to evade natural or vaccine-induced immunity (called "escape mutants"), would likely be the most concerning; however, according to the CDC "there is no evidence that this is occurring, and most experts believe that escape mutants are unlikely to emerge because of the nature of the virus."

We now have vaccines and most of our counties have reached level 1 B-4 on vaccine eligibility. Almost 20% of the population statewide has had at least one vaccination.

The Seventh Judicial District explored the possibility of holding jury trials at alternative locations, however no such locations were feasible for several reasons including security, cost and incompatible technology.

The provisions of the CDPHE *Seventh Amended Public Health Order 20-36 COVID-19 Dial*, issued on February 12, 2021, apply to judicial branch operations as a "Critical Government Function." See Sections III C. and III D. Social distancing of at least six feet and wearing of facial coverings are required for indoor government functions. See Executive Order D 2021-035 ("Ordering Individuals to Wear Non-Medical Face Coverings") and 7th Judicial District Administrative Order 2020-15 (requiring facial coverings to be worn in all public indoor spaces and court buildings).

The CDC provides clear guidance at their website at its "How to Protect Yourself & Others" section. Protective measures include:

- Wear a mask;
- Stay at least six feet away from others who don't live with you;
- Avoid crowds;
- Wash your hands frequently;
- Avoid poorly ventilated spaces.

While Executive Order D 2021-219 (or any order extending the provisions of D 2020-219) and Chief Judge Administrative Order 2020-19 are in effect, facial coverings must be worn in all indoor public spaces of the 7th Judicial District Courthouses and Probation buildings, and everyone entering the court buildings who is not subject to an exemption shall wear facial coverings. The Court will provide a facial covering to any person entering a court building, whether a juror, court observer, witness, or attorney who did not bring one.

To maintain a healthy work environment, the CDC recommends taking the following measures:

- Intensify cleaning and disinfection of frequently touched surfaces;
- Ensure ventilation systems operate properly and increase circulation of outdoor air;
- Ensure all water systems are safe to use;
- Modify layout to promote social distancing of at least 6 feet between people-especially for persons who do not live together;
- Install physical barriers and guides to support social distancing if appropriate;
- Close communal spaces, or stagger use and clean and disinfect between use;
- Limit sharing of objects, or clean and disinfect between use.

The judges of the Seventh have also considered the increased risk of exposure when larger groups of people are gathered for extended periods of time, which occurs when persons participate in jury selection, as opposed to encounters of short duration, such as brief trips to the grocery store. Based on the trials conducted last summer and in planning to conduct felony (12 person) jury trials:

- It takes approximately twice the number of staff members to assist with jurors than it did prior to the pandemic, particularly during jury selection;
- It is very difficult to maintain social distancing between jurors, staff and jurors, and other court users and jurors, even with the increased number of staff involved in the processes;
- Many felony cases will require several groups of jurors to be summoned at different times of the day or on successive days. We do not have a jury assembly room in any court facility;
- At least for felony jury trials, a courtroom will be necessary for jury deliberations to assure social distancing.

After conferring with the judges on our bench and giving consideration to all of the factors set forth in this order, we have determined that the Seventh Judicial District can safely assemble, select and empanel jurors for no more than one six or seven-person jury trial per week beginning April 5, 2021, subject to the provisions of this administrative order and the prior jury protocols. Our bench will continue to closely monitor the health circumstances in the community and other factors relevant to safely conducting jury trials and determine when we can begin felony jury trials and increase the number of jury trials held each week. Depending on public health status, juror turnout, and available courtroom space, we are tentatively planning to move to two trials per week in the district and to also resume felony jury trials in May 2021.

Because of the limited number of jurors that can be summoned at one time, as discussed in more detail below, the limited number of courtrooms available to safely and effectively seat juries, and in anticipation of holding multiple trials that are scheduled to begin on the same day in the foreseeable future, proper planning and coordination will be necessary to successfully conduct jury trials in a safe manner. The judges shall confer with the Chief Judge, the other judges who have jury trials scheduled to begin on the same day, the jury commissioner, and Court Executive regarding the cases set for jury trial to determine the priority of cases to be tried. Judges will consider:

1. Whether the trials are criminal or civil cases;
2. Whether the defendant in a criminal case is in custody or has been released on bond;
3. The nature of the cases, including community safety issues and, in the case of criminal offenses, the age of the case, speedy trial considerations, the level of offense(s) charges, whether any of the charges involve the Victim's Rights Amendment, as well as the potential penalties in each case;
4. Any other relevant factual or legal circumstances existing in the respective cases; and
5. The public interest in completing one case prior to another.

If more than one case is scheduled to begin a jury trial on the same day, the judges shall create a priority list establishing the order in which each case will be tried.

Dated and effective this the 17th day of March, 2021.

BY THE COURT:



Jy Steven Patrick
Chief Judge

XC: 7th JD Judges
7th JD Clerks of Court
7th Judicial District, District Attorney
7th Judicial District, Public Defender's Office
7th Judicial District Jury Commissioner

ADMINISTRATIVE ORDER 2020-16 RE: JURY TRIALS

In light of the ongoing public health orders and COVID-19 pandemic coupled with the budgetary cuts reducing staffing, while jury trials have now commenced, a continuing transition plan is necessary to limit the number of trials conducted in the district for the immediate future.

Presently the Chief Justice, subject to waivers from the respective districts, has ordered that all jury trials are suspended to August 3, 2020. Our district has obtained a waiver permitting limited jury trials on certain specific conditions including expressly in the month of July only county court misdemeanor and traffic trials would be conducted. His order of July 24, 2020, allows jury trials to proceed as may be feasible in the respective districts.

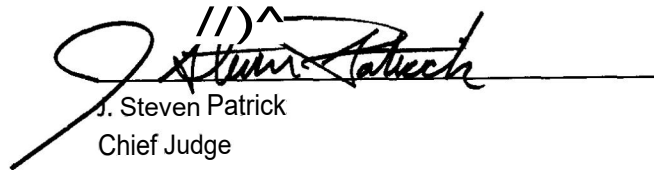
Based on the initial experience with those proceedings, and the staffing reductions and shortages presently faced by the district as a result of the state budget reductions commencing July 1, 2020, we cannot resume all jury trials as scheduled in all locations as of August 3, 2020. It is hereby ordered as follows:

ORDER

1. We will continue to the extent possible with the transition plan reflected in Administrative Order 2020-11.
2. However, we cannot presently conduct two jury trials in one location in any of our six counties. Trials are presently requiring two courtrooms to facilitate social distancing.
3. Presently we may not be able to summon jurors in more than one location at any given time.
4. To the extent possible a schedule will be established identifying which trials in which location will proceed through at least the month of September 2020.
5. As the pandemic conditions, public health orders and executive orders from the Governor may require, this administrative order may be revised or extended as necessary.

Dated this 29th day of July, 2020.

BY THE COURT:


J. Steven Patrick
Chief Judge