



ELEVENTH JUDICIAL DISTRICT

## **Chief Judge Order 20-13**

### **Suspension of All Jury Calls**

This Chief Judge Order is to be read in conjunction with Chief Judge Order 20-07.

The public health crisis of COVID-19 continues to exist and to worsen. Today, Colorado had the highest number of persons hospitalized due to COVID-19 than at any time since the pandemic started. The same is true for the number of positive cases. Positivity rates are more than double what they should be if the pandemic were in decline.

The COVID-19 pandemic poses a serious threat to the health and safety of persons participating in jury trials in Eleventh Judicial District courthouses. The decision to suspend the summoning of jurors to courts is not one undertaken lightly. 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 criminal and civil jury trials when the circumstances allow us to do so with appropriate mitigation of the pandemic risk. Several jury trials have been conducted in Fremont County and Custer County. These trials were conducted safely at a time when the pandemic was in a lull.

However as discussed below, it is inappropriate and unsafe at this time for the courts of the Eleventh Judicial District to hear jury trials.

The pandemic has been the subject of numerous executive orders from the Colorado Governor and public health orders from the Colorado Department of Public Health and Environment (CDPHE). The most recent public health order, Public Health Order 20-36, was issued November 2, 2020. PHO 20-36 confirmed that, as of November 2, there had been 112,147 known COVID cases in Colorado, 9,114 hospitalizations and 2,126 deaths. Just one day later, November 3, 2020, the number of cases rose by more than 2,000 to 114,709 and the number of hospitalizations rose by 66 to 9,180. On November 5, 2020 the number of new cases in Colorado was 3,814.

PHO 20-36 formally modified the preexisting COVID-19 Dial Dashboard into a color-coded dashboard that uses health-related metrics to place individual counties in one of five levels of risk and safety--lowest risk to highest risk, Level Green, Protect Our Neighbors; Level Blue, Safer at Home—Cautious; Level Yellow, Safer at Home—Concern; Level Orange, Safer at Home—High Risk; and Level Red, Stay At Home. The overall risk is determined by three metrics—the number of new COVID-19 cases per 100,000 people over a 2-week period (the incidence rate), the percent of positive test results over a 14-day period (the positivity rate), and hospitalization rates over a 14-day period. The Dial provides information for all four counties in the Eleventh Judicial District.

In all four counties, the incident rate is either in the orange or red range. In Park County, the incident rate is 175.1. In Chaffee County, the incident rate is 230.8. In Custer County the incident rate is 217.4 and in Fremont County, the incident rate is 419.8. These numbers all indicate that the spread of the virus is increasing at an alarming rate throughout the district.

It is now widely acknowledged that being indoors around other people for a prolonged period of time is the scenario that is most likely to lead to virus spread and infection.

Additionally, the next two months include a shift in seasons when indoor activities grow more common and social distancing grows more challenging. The next two months also include major holidays which will likely bring people into close contact with others who reside outside of their household. It is not unreasonable to assume that the combination of activities moving inside and the celebrations around the holidays will only increase the spread of the virus.



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For all of these reasons, and in consultation with the judges of the District, the Chief Judge determines that jury trials cannot safely be held in the courthouses of the Eleventh Judicial District for the foreseeable future.

Therefore, all jury calls between now and January 15, 2021 are suspended. No jury trials will be held during this period. The procedure for vacating trials during this period will be at the discretion of the trial judge. Any person with a summons to report for jury duty during this time period is not required to appear. Any juror appearing in person on a summons through January 15, 2021, shall be informed by the court or security team that the person's jury service has been cancelled and that person may return home.

This Order is granted pursuant to the authority granted in Chief Justice Directive 95-01 and Chief Justice Order dated July 24, 2020.

#### **Amendment 1. 12/11/20.**

All four counties in the District are now at level orange on the State of Colorado's COVID-19 dashboard. Incident rates are higher than when this Order was originally issued in November. Currently, the two-week incident rate per 100,000 people is 392 in Park County, 1,860 in Fremont County, 903 in Chaffee County and 830 in Custer County. Positivity rates are 9.4% in Park County, 9.9% in Fremont County, 5.3% in Chaffee County and 17.7% in Custer County. There is also consensus among public health experts that there is likely to be a spike in these numbers due to the Christmas and New Year holidays. While a vaccine is close to being approved and distributed, mass distribution of the vaccine will not occur until the spring or early summer.

Therefore, the suspension on jury calls will be extended by four weeks. No juries will be called for any trials prior to February 16, 2021 and no jury trials will occur prior to February 16, 2021.

#### **Amendment 2. 2/22/21**

All four counties in the district are currently seeing a sustained decline in the number of new COVID-19 cases. According to the State of Colorado's COVID-19 dashboard, the one-week incident rate in Park County is 58.4, in Chaffee County 147.3, in Custer County 8 and Fremont County 159. Positivity rates are 2.1% in Park, 2.4% in Chaffee, 1.7% in Custer and 2.3% in Fremont. Park and Chaffee Counties are now at level "yellow" in the new dashboard. Custer and Fremont Counties are at level "blue." Both level blue and level yellow restrict personal indoor gatherings indoor gatherings to 10 people and public gatherings, such as gyms, restaurants and retail to 50% capacity.

Since the last amendment to this order, vaccines have become more available. Colorado is now is phase 1B.2 of vaccine distribution. This means that citizens over the age of 65, teachers, health care workers, certain government employees and first responders have begun to receive access to a vaccine. The Chief Judge is aware that some judicial personnel and some members of the Office of the Public Defender and Alternate Defense Counsel have begun the vaccination process (the Chief Judge requested information from the Office of the District Attorney regarding vaccinations for their employees but has not received a response).

The next phase of vaccination, 1B.3, will target those citizens who have underlying health issues and those whose jobs require frequent interaction with the public. The date to begin 1B.3 has not been revealed.



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Dr. Erik France, Chief Medical Officer of the Colorado Department of Public Health, has informed the Judicial Department to expect a spike in new cases during the month of March due to the increasing prevalence of COVID-19 “variants” that are more contagious than the initial COVID-19 strain.

Taking all of the above into account, the Chief Judge believes that while trends are moving on the right direction, it is still too soon to safely conduct jury trials. The Chief Judge would expect that by early April, Court staff, staff from the Office of the Public Defender, staff from the Office of Alternate Defense Counsel and staff from the Office of the District Attorney would have had to opportunity to be fully vaccinated. At that time, the Court also believes that phase 1B.3 will have commenced and therefore the most vulnerable of our population will have completed, or at least begun, the vaccination process. Also, at that time, any spike due to the prevalence of new COVID-19 variants will have either not occurred or would be in remission.

The Court is hopeful that this extension will be the last.

Therefore, the suspension on jury calls will be extended until April 5, 2021. No juries will be called for any trials prior to April 5, 2021 and no jury trials will occur prior to April 5, 2021.

When jury trials commence, public health guidelines will still need to be followed. This could affect whether trials actually occur in each particular courthouse.

Done in Salida, Colorado, November 9, 2020

*/s/ Patrick W. Murphy*

Chief Judge, 11<sup>th</sup> J.D.