



**IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA**

IN THE MATTER OF THE  
ADMINISTRATION OF THE COURT  
JURY TRIAL CONTINUANCES AND  
PROCEDURES FOR DAY TO DAY  
COURT PRACTICE

#28 **FILED**  
IN DISTRICT COURT  
DOUGLAS COUNTY NEBRASKA

DEC 11 2020

JOHN M. FRIEND  
CLERK OF DISTRICT COURT

MS 20-110

**AMENDED  
ORDER LIMITING IN-PERSON  
COURT ACCESS FOR JANUARY  
2021 AND FEBRUARY 2021 IN  
RESPONSE TO COVID-19  
PANDEMIC**

In consideration of the December 9, 2020 joint letter to the Chief of the Nebraska Supreme Court and Nebraska State Court Administrator Corey R. Steel's December 10, 2020 reply letter (attached to this Order), the following Order is effective Monday, January 4, 2021 through Sunday, February 28, 2021.

The Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and cause death. According to a recent Johns Hopkins University tally, there have been 1) 15,616,381 cases of Coronavirus, resulting in 292,179 deaths, in the United States, and 2) 145,774 cases of Coronavirus, resulting in 1,329 deaths, in the State of Nebraska. Dr. Robert Redfield, the head of the CDC said, "the reality is, December and January, and February are going to be rough times"... "I actually believe they're going to be the most difficult time in the public health history of this nation."

According to the Douglas County Health Department, there have been 45,612 positive tests and 387 deaths in Douglas County, Nebraska as of December 11, 2020. According to a December 9, 2020 press release from the Douglas County Health Department medical and surgical beds were at 82%

occupancy with 275 beds available and adult ICU beds are occupied at an 81% rate with 64 beds available. On December 5, 2020 there were 833 new cases of COVID-19 in Douglas County and on December 6, 2020 there were 620 new cases of COVID-19 in Douglas County.

The Douglas County Health Department's "Dial," a composite measure of eight indicators updated weekly on Mondays to generate the current week's severity, is presently at "Severe Risk of COVID-19 Spread." The Douglas County Health Department continues to report a significant rise in new cases and areas of public exposure. These developments have reached the point where the Douglas County District Court's ability to hold criminal jury trials and civil jury trials is affected.

The need for jury trials must be balanced against the risk associated with social contact as a factor driving transmission of the virus in the community. The Court recognizes that jury trials are not advised in the current stage of the pandemic outbreak. "The American jury system requires an impartial jury drawn from a cross-section of the entire community; recognition must be given to the fact that eligible jurors may be found in every stratum of society." *Thiel v. Southern Pacific Co.*, 328 U.S. 217, 66 S.Ct. 984, 90 L.Ed. 1181 (1946). At this time, drawing from that cross-section of the Douglas County community is contrary to the best guidance of public health officials. Even if the Court were able to draw a venire and try a case to conclusion, the Court is unable to assure that the jury's deliberations would be unaffected by conflicting health and safety concerns.

Although jury trials were temporarily suspended in Douglas County starting on March 23, 2020, the Douglas County District Court convened a "COVID-19 Committee" to assist with the resumption and implementation of jury trials. The COVID-19 Committee scheduled jury trials for July 2020, August 2020, September 2020, October 2020, November 2020, December 2020, January 2021, and February 2021. The COVID-19 Committee assigned each District Judge at least two criminal jury trial settings for the remainder of the 2020 calendar year and has assigned each District Judge with criminal jury and civil jury trials through June 2021. As jury selection has been limited solely to the Douglas County Legislative Chambers due to space issues, the following has been the allocation of the criminal jury selections.

**Allocation of Criminal Jury Trials**

Judge	July	August	Sept	Oct.	Nov.	Dec.
Bataillon				1		1
Coffey			1	1		
Derr			1		1	
GLEASON* (retiring)		1			1	
Masteller		1		1	1	
RANDALL* (retiring)			1			1
Retelsdorf		1		1		
Stratman		1	1			1
Bowie		1	1			1
Burns	1		1		1	
Dougherty			1		1	
Otepka		1		1		
Pankonin		1		1		
Polk	1		1		1	
Schatz	1			1		1
Wheelock		1			1	



Judge	January	February	March	April	May	June
Bataillon		1		1		1
Coffey	1		1		1	
Derr	1		1		1	
GLEASON* retiring		1		1		1
Masteller	1		1		1	
RANDALL* (retiring)		1		1		1
Retelsdorf	1		1		1	
Stratman		1		1		1
Bowie	1		1		1	
Burns		1		1		1
Dougherty		1		1		1
Otepka	1		1		1	
Pankonin	1		1		1	
Polk		1		1		1
Schatz		1		1		1
Wheelock	1		1		1	

Commencing January 2021 jury selection in civil cases has been limited solely to the Douglas County Court Annex building due to space issues, the following has been the allocation of the civil jury selections.

**Allocation of Civil Jury Trials**

Judge	January	February	March	April	May	June
Bataillon	1		1		1	
Coffey		1		1		1
Derr		1		1		1
GLEASON* (retiring)	1		1		1	
Masteller		1		1		1
RANDALL* (retiring)	1		1		1	
Retelsdorf		1		1		1
Stratman	1		1		1	
Bowie		1		1		1
Burns	1		1		1	
Dougherty	1		1		1	
Otepka		1		1		1
Pankonin		1		1		1
Polk	1		1		1	

Schatz	1		1		1	
Wheelock		1		1		1

The resurgence of the COVID-19 pandemic within Douglas County, Nebraska and the widespread increased community spread of the disease has reached the point at which the day-to-day operations of the Douglas County District Court are affected. It is undeniable that by all objective measures the COVID-19 pandemic is more severe today in Douglas County, Nebraska than it has been since its inception in Nebraska. Community spread, identified cases, quarantines, hospitalizations, and deaths continue to climb in Douglas County, Nebraska where the Douglas County District Court is located.

Despite the use of personal protection equipment, the wearing of masks, the constant washing of hands, the use of hand sanitizer, and the six feet physical distancing precautions in place, the Court is not able to draw a venire, select a jury, and complete a jury trial in a manner consistent with procedural and substantive due process for the citizens accused and for the civil litigants. The Court finds that jury trials during this spike in the COVID-19 pandemic pose a clear and present danger to the members of the public, participants in the judicial process, Douglas County Sheriff Deputies, law enforcement officers, attorneys, court staff, Judges, and all potential jurors due to the inherent risk of a direct exposure to COVID-19.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the criminal cases and civil cases scheduled to commence a jury trial between Monday, January 4 2021 through Sunday, February 28, 2021 are all continued

to the next available jury trial selection date of each individual District Judge pending further order of the Court. The Court enters this Order due to the Court's inability to safely call and retain an adequate cross-section of jurors, and the effect of following the rapidly evolving public health recommendations on the availability of parties, counsel, citizens accused, law enforcement officers, and court staff. /

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Court specifically finds that continuing these criminal jury trials outweigh the citizen accused's right to a speedy trial as well as the public's interest in the prompt disposition of these criminal cases. Accordingly, the period of delay resulting from the implementation of this Order in criminal cases is excluded for good cause, and the speedy trial "clock" in each criminal case is tolled for good cause until the next available jury trial selection date of each individual District Judge. See Neb. Rev. Stat. § 29-1207(4)(f) (Reissue 2016); Neb. Const. Art. 1, Section 11.

IT IS FURTHER ORDERED, ADJUGED, AND DECREED that commencing Monday, January 4, 2021 through Sunday, February 28, 2021 the Douglas County District Court will implement the following protocols and procedures:

1. The Hall of Justice shall have restricted public access. Although employees will still have access, they must present the required security credentials to enter the building. All persons in a courtroom will be socially distanced by at least six feet and will continue to wear masks at all times. No more than 10 persons total are allowed in a courtroom at a time.
2. All criminal pre-trial hearings will take place by audiovisual device.

3. All evidentiary hearings on motions to suppress involving citizens accused who are incarcerated will take place in person unless the parties agree it can be done by an audiovisual platform.
4. All evidentiary hearings on motions to suppress involving citizens accused who are not incarcerated will be continued until a date after February 28, 2021, unless the parties agree it can be done by an audiovisual platform.
5. All sentencing hearings involving incarcerated persons will take place by way of an audiovisual platform unless the Defendant requests that the sentencing be done in person and the Court agrees to conduct the sentencing in person.
6. All previously scheduled sentencing hearings where the citizen accused is not in custody will take place in person or by audiovisual platform at the discretion of the trial judge.
7. All previously scheduled criminal bench trials, where the citizen accused has waived her/his right to a jury trial prior to the date of this Order, will take place as scheduled in person. Any new criminal bench trials will be scheduled after February 28, 2021 as long as there is not a speedy trial issue.
8. Other court matters can occur where an audiovisual platform may be used.
9. All domestic cases that involve child custody disputes will take place as scheduled in person or by an audiovisual platform and a judge shall permit a witness who is to be examined by oral examination to appear via audio visual platform upon a finding of good cause.
10. All domestic cases that do not involve custody disputes, but that do involve asset or property disputes, will be conducted via an audiovisual platform and a judge shall permit a witness who is to be examined by oral examination to appear via audio visual platform upon a finding of good cause.
11. All domestic temporary hearings will take place by an audiovisual platform and a judge shall permit a witness who is to be examined by oral examination to appear via audio visual platform upon a finding of good cause.
12. Any civil bench trials that have already been scheduled for trial may take place as scheduled in person or by an audiovisual platform at the discretion of the Court and a judge shall permit a witness who is to be



examined by oral examination to appear via audio visual platform upon a finding of good cause.

13. All summary judgment motions will take place by audiovisual device. In the event of a complex summary judgment that involves voluminous exhibits the Courts are strongly encouraged to continue the motions to March 2021. However, at the individual Courts' discretion the Courts may have an in person summary judgment motion during this time period.

14. No new civil bench trials will be scheduled during this time period.

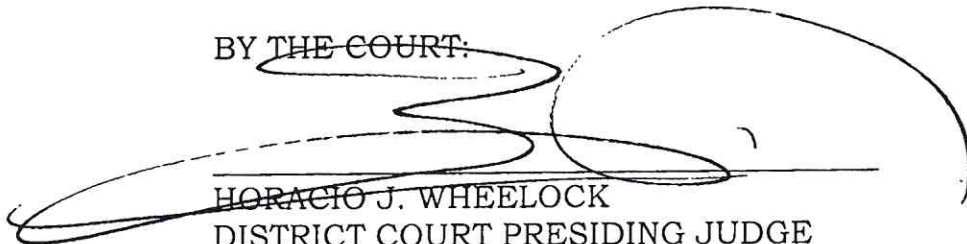
15. Protection orders will proceed as scheduled.

16. Treatment Courts shall be conducted by an audiovisual platform at the discretion of the District Judges presiding over the Treatment Courts.

IT IS FURTHER ORDERED, ADJUGED, AND DECREED that the Court will vacate, extend, or amend this Administrative Order no later than February 16, 2020.

IT IS SO ORDERED this 11<sup>TH</sup> day of December, 2020.

BY THE COURT:



HORACIO J. WHEELOCK  
DISTRICT COURT PRESIDING JUDGE





City of Omaha  
Jean Stothert, Mayor

December 9, 2020

**Law Department**

**Prosecution Division**

Hall of Justice, Suite #200  
1701 Farnam Street  
Omaha, Nebraska 68183  
(402) 444-5290

**Matthew M. Kuhse**  
City Prosecutor

Chief Justice Michael G. Heavican  
Nebraska Supreme Court  
State Capitol, Room 2214  
Lincoln, NE 68509

**Re: Restriction of Public Access to the Douglas County Hall of Justice and Civic Center**

Dear Chief Justice Heavican:

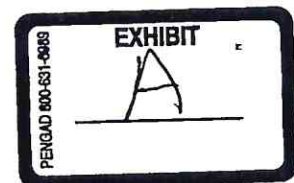
This letter is a request to extend the current limited access plan you approved in early November. The presiding judges of the District Court and the County Court have approached me and those listed on this letter about extending the current plan through February 28, 2021. The current plan that you approved is set to expire on December 31, 2020. This letter constitutes the unanimous opinion to extend the limited access plan through February 28, 2021.

While news of vaccines and the early stages of its availability and implementation are positive steps, Nebraska and specifically, Douglas County, continue to struggle with positivity rates and community spread. Currently, the Douglas County Health Department indicates the county is still in a severe risk of COVID-19 spread.

As stated in previous requests to you, this proposal is not a request to close the courts. Everyone is mindful of the need to keep the courts open and accessible to the public. However, there is a need to reduce the spread and this plan represents our attempt to accomplish this. The presiding judges of the Douglas County Court, the Douglas County District Court and the Douglas County Separate Juvenile Court have discussed this matter amongst their colleagues and with the Douglas County Attorney, the Douglas County Public Defender and me. The Douglas County Board, the Omaha City Council, and Mayor Jean Stothert have all been consulted. As you know, City Attorney Paul Kratz is retiring on Friday, December 11, 2020, and I will be serving as the acting city attorney, so my signature also constitutes the approval of the City of Omaha's Law Department.

Each of these courts will develop and disseminate an administrative order detailing their respective courts operations after consultation with relevant agencies and people. These administrative orders will last through the end of the year. Before February 28, 2021, there is an agreement that the necessary and relevant officials will discuss the need to request another extension from the Court. Everyone hopes that by February, we will be heading towards a return to full and normal court operations.

In addition to these court administrative orders, the following proposal is submitted to you for consideration and will begin on Friday, January 1, 2021, and will continue through February 28, 2021:



1. The Hall of Justice and the courts located in the Civic Center would have restricted public access. Employees will still have access, but they must present the required security credentials to enter the building.
2. Bond settings and arraignments for those individuals who have been arrested and are incarcerated would continue using the current videoconferencing system.
3. There will be no criminal or civil jury trials during this time.
4. Court matters can occur where videoconferencing can be used.
5. For those individuals who need access to the courts (i.e. request a protection order, attend a protection order hearing, landlord-tenant cases, file a lawsuit or other legal pleading, cancel a warrant, pay a fine, etc.), they will be allowed entrance to the respective office and escorted out of the building when their business has concluded.
6. The media will be allowed into the building but will be escorted by security and subject to the permission of the respective presiding judge.
7. Other matters which the respective courts will outline and detail in separate administrative orders.

The need for these restrictions and limitations is necessary for the protection of the public, the people who work in these buildings and the operation of the courts. The undersigned asks that you look favorably on this request and give us your permission to move forward.

Respectfully Submitted,

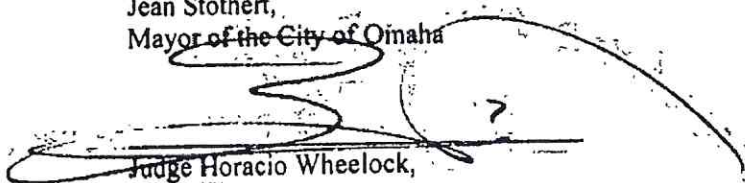


Matthew M. Kuhse  
Omaha City Prosecutor

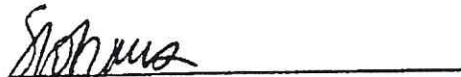
Approved as to form and content by:



Jean Stothert,  
Mayor of the City of Omaha



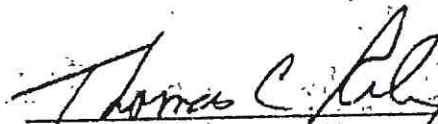
Judge Horacio Wheelock,  
Douglas County District Court



Judge Sheryl L. Lohaus,  
Douglas County Court



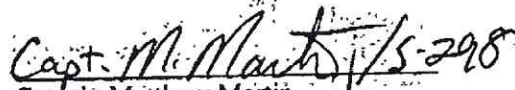
Judge Mary M.Z. Stevens,  
Douglas County Juvenile Court



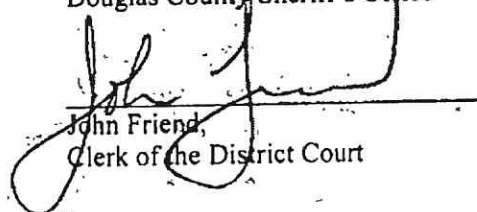
Thomas C. Riley,  
Douglas County Public Defender



Brenda D. Beadle,  
Chief Deputy Douglas County Attorney



Captain Matthew Martin,  
Douglas County Sheriff's Office



John Friend,  
Clerk of the District Court

Corey R. Steel  
State Court Administrator



Deborah A. Minardi  
State Probation Administrator

December 10, 2020

Matthew M. Kuhse  
Omaha City Prosecutor  
Hall of Justice, Suite 200  
1701 Farnam Street  
Omaha, NE 68183

Dear Mr. Kuhse:

We received Douglas County's request to limit access to the courts in the Douglas County Hall of Justice and the Civic Center and until February 28, 2021. Your request has been reviewed and is approved. Please continue to follow the plan as outlined in your letter. Any modifications, changes, or extension will need to be submitted for approval.

Thank you for your work and coordination during these difficult times.

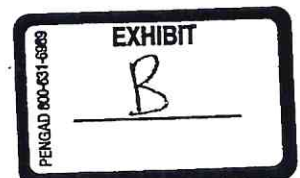
The Judicial Branch appreciates the support of the Douglas County Commissioners to keep court business accessible to the public.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey R. Steel", is written over a horizontal line.

Corey R. Steel  
State Court Administrator

Administrative Office of the Courts & Probation  
P. O. Box 98910, Lincoln, Nebraska 68509-8910  
[www.supremecourt.nebraska.gov](http://www.supremecourt.nebraska.gov)  
Phone (402) 471-3730  
Fax (402) 471-2197







To Protect, Promote and Prioritize the Health of  
Our Entire Community

**For Immediate Release: December 5, 2020**

## **COVID-19 Vaccine Questions Answered**

The opportunity for COVID-19 vaccinations is becoming closer to reality in Douglas County. With that in mind, the Centers for Disease Control and Prevention (CDC) and the Douglas County Health Department (DCHD) are offering some information to help you make a good decision on how to protect yourself.

We want you to know that getting vaccinated can help prevent you from getting sick with COVID-19. The vaccines have gone through testing that shows they are highly efficacious in preventing the disease.

Why would you want to get this new vaccine?

Well, while many people with COVID-19 have only a mild illness, others may get severely ill and too many die. There is no way to predict how COVID-19 will affect you, and that is true even if you are not at increased risk of severe complications.

Please know, if you get sick you may spread the disease to friends, family, and others around you. To prevent this kind of spread and getting sick yourself, COVID-19 vaccination creates an antibody response without you having to experience sickness.

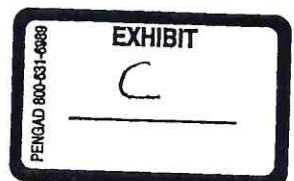
On Saturday, December 5, DCHD reported 833 new cases of COVID-19 that were received over the past day ending at midnight. This makes 43,233 total cases in Douglas County since the outbreak began in March.

The Health Department received six new death certificates during the past day related to COVID-19. Four females: a teenager, a woman in her 60s and two women over 80 have passed, as have two men over 75. The number of deaths in the county connected to the pandemic increases to 360. DCHD has confirmed 21,496 county residents have recovered from the illness.

According to our most recent report received Friday, medical and surgical beds were at 78% occupancy with 332 beds available and adult ICU beds are occupied at a 74% rate with 87 beds available. There were 362 individuals hospitalized who have been diagnosed with COVID-19, with 86 of them receiving adult ICU level care. There are also 24 more persons of interest (generally waiting for test results). Forty-five individuals who were confirmed or suspected of having COVID-19 were on ventilators.

**Adi Pour, Ph.D., Director**  
1111 South 41<sup>st</sup> Street  
Omaha, NE 68105

[www.douglascountyhealth.com](http://www.douglascountyhealth.com)







To Protect, Promote and Prioritize the Health of  
Our Entire Community

For Immediate Release: December 6, 2020

## A COVID-19 Testing Reminder

Testing remains a vital tool in the fight against COVID-19, and with the very real possibility of a post-holiday surge of the disease, the Douglas County Health Department (DCHD) wants you to know when to get tested and where you can get tested.

Testing is recommended if you have COVID-19 symptoms, if you've been referred by a healthcare provider or health department, or if you have had close contact with a confirmed case. Close contact is defined as being within six feet for 15 minutes or more.

If you or someone you know needs a COVID-19 test, Test Nebraska can help at one of dozens of test sites across the state. Douglas County residents have three conveniently placed drive-thru sites to choose from:

- Oakview Mall, Monday-Saturday: 8 a.m.-6 p.m.
- Metro Community College South Campus, Monday-Saturday: 1-6 p.m.
- Metro Community College Fort Campus, Tuesday-Sunday: 11 a.m.-7 p.m.

The first step in getting tested is visiting the Test Nebraska website at [TestNebraska.com](https://TestNebraska.com).

On Sunday, December 6, DCHD reported 620 new cases of COVID-19 that were received over the past day ending at midnight. This makes 43,853 total cases in Douglas County since the outbreak began in March. For the weekend that ended December 5, the positivity testing rate was 30.2%.

The Health Department received no new death certificates related to the pandemic during the past day. The number of deaths in the county connected to the pandemic remains at 360. DCHD has confirmed 21,623 county residents have recovered from the illness.

According to our most recent report received Saturday, medical and surgical beds were at 78% occupancy with 330 beds available and adult ICU beds are occupied at a 68% rate with 105 beds available. There were 341 individuals hospitalized who have been diagnosed with COVID-19, with 152 of them receiving adult ICU level care. There are also 19 more persons of interest (generally waiting for test results). Forty-four individuals who were confirmed or suspected of having COVID-19 were on ventilators.

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