



IT.

DOUGLAS COUNTY, NEBRASKA

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

MS 20-110

**ORDER LIMITING IN-PERSON
COURT ACCESS IN RESPONSE TO
COVID-19 PANDEMIC**

#36 FILED
IN DISTRICT COURT
DOUGLAS COUNTY NEBRASKA
NOV 06 2020

In consideration of the November 5, 2020 joint letter to the Chief of the Nebraska Supreme Court and Nebraska State Court Administrator Corey R. Steel's November 6, 2020 reply letter (attached to this Order), the following Order is effective Monday, November 9, 2020 through Friday, January 1, 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) 9,486,486 cases of Coronavirus, resulting in 233,729 deaths, in the United States, and 2) 43,162 cases of Coronavirus, resulting in 468 deaths, in the State of Nebraska. According to the Douglas County Health Department, there have been 24,737 positive tests and 242 deaths in Douglas County, Nebraska as of November 4, 2020.

It is worth noting that more than half the deaths in the State of Nebraska have been in Douglas County, Nebraska. 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 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, and December 2020. The COVID-19 Committee assigned each District Judge at least two jury trial settings for the remainder of the 2020 calendar year. As jury selection has been limited

solely to the Douglas County Legislative Chambers due to space issues, following has been the allocation of the jury selections.

Allocation of Jury Trials

Judge	July	August	September	October	November	December
Bataillon				1		1
Coffey			1	1		
Derr			1		1	
Gleason		1			1	
Masteller		1		1		
Randall			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	

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. 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 scheduled to commence a jury trial between Monday, November 9, 2020 through Friday, January 1, 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. 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 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, November 9, 2020 through Friday, January 1, 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 January 1, 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 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 January 1, 2021.
7. Other court matters can occur where an audiovisual platform may be used.
8. All domestic cases that involve child custody disputes will take place as scheduled in person or by an audiovisual platform.
9. All domestic cases that do not involve custody disputes, but that do involve asset or property disputes, will be continued to a date after January 1, 2021, unless the parties agree it can be done by an audiovisual platform.
10. All domestic temporary hearings will take place by an audiovisual platform.

11. 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.
12. No new civil bench trials will be scheduled during this time period.
13. Protection orders will proceed as scheduled.
14. 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 December 15, 2020.

IT IS SO ORDERED this 6TH day of November, 2020.

BY THE COURT:



HORACIO J. WHEELOCK
DISTRICT COURT PRESIDING JUDGE

Corey R. Steel
State Court Administrator



Deborah A. Minardi
State Probation Administrator

November 6, 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 Civic Center and the Hall of Justice until December 31, 2020. 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.

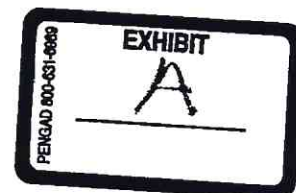
Thank you for your work and coordination during these difficult times.

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

Sincerely,

A handwritten signature of Corey R. Steel in black ink.

Corey R. Steel
State Court Administrator





City of Omaha
Jean Stothert, Mayor

November 5, 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:

Recently, there have been discussions among the people signing this petition to again ask the Nebraska Supreme Court for permission to re-impose a limited or restricted access conditions for the courts located in the Douglas County Hall of Justice and Civic Center. The sentiments expressed by those individuals in my letter to you dated April 2, 2020, are still valid.

As you know the State of Nebraska and, in particular, Douglas County, have seen an increase in positivity rates, hospitalizations and community spread. As infections spread, the courts and those either working with the courts or having access to the courts, are not immune.

The Governor's state of emergency still exists and all parties have received a comprehensive briefing from Dr. Adi Pour of the Douglas County Health Department. These concerns led to the conclusion that a restricted access plan is necessary.

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, Paul Kratz, the Omaha City Attorney, and Mayor Jean Stothert have all been consulted.

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. Prior to the end of the year, discussions will take place and a thorough evaluation of the current situation will occur.

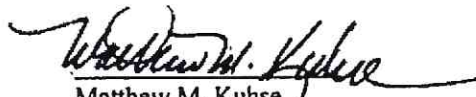
In addition to these court administrative orders, the following proposal is submitted to you for consideration and will begin on Monday, November 9, 2020, and will continue through December 31, 2020:

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 for the remainder of the year.
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.

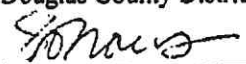
Respectfully Submitted,



Matthew M. Kuhse
Omaha City Prosecutor

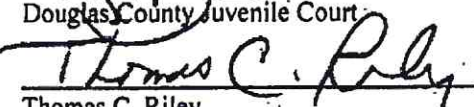
Approved as to form and content by:

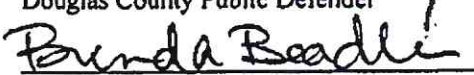

Jean Stothert,
Mayor of the City of Omaha

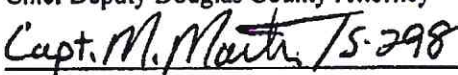

Judge Horacio Wheelock,
Douglas County District Court

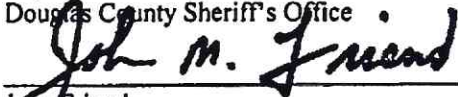

Judge Sheryl L. Lohaus,
Douglas County Court


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 M. Friend,
Clerk of the District Court