

Amy Eddy
Robert B. Allison
Heidi J. Ulbricht
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DISTRICT COURT JUDGES
Flathead County Justice Center
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CLERK OF DISTRICT COURT
2020 MAR 19 PM 2:50
FILED
BY _____
DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT,
FLATHEAD COUNTY

IN RE CONDUCT OF JURY TRIALS
DURING MARCH AND APRIL 2020

GENERAL ORDER RE: VACATING
PRETRIAL CONFERENCES AND
JURY TRIALS

THE UNDERSIGNED JUDGES OF THE ELEVENTH JUDICIAL DISTRICT COURT
ENTER THE FOLLOWING:

FINDINGS

1. Between March 19, 2020, and May 1, 2020, a number of jury trials are scheduled to commence in the District Courts of this District.
2. The President of the United States, the Governor of the State of Montana, and the Flathead County Board of County Commissioners have declared, respectively, national, statewide, and countywide public health emergencies in response to the spreading contagion of the novel coronavirus, which causes the disease known as COVID-19.
3. The Centers for Disease Control and Prevention (CDC), a federal agency of the U.S. Department of Health and Human Services, and other authorities have issued advisories to reduce the incidence and rate of exposure to the coronavirus for individuals, and they have identified classes of persons who may be particularly vulnerable to the incidents of COVID-19.

4. The classes of such particularly vulnerable persons include, but are not limited to, persons aged 65 years and older.
5. The Montana Supreme Court issued advisory directives to all Montana courts on March 17, 2020. Among those directives, the Supreme Court advises that if a jury must be seated, the jury pool should not be assembled in groups numbering more than 10 persons.
6. Based on the configuration of courtrooms in this District, along with the size and configuration of jury rooms available for jury deliberations, it is neither reasonably possible nor practicable to seat a 12-person jury, conduct a trial appropriately in their presence, and sequester them during periods of recess and deliberation without subjecting any juror to the protracted and communal presence of more than 9 other persons.
7. A number of civil and criminal cases pending in this District have been set for pretrial conferences and jury trials to convene between March 19 and May 1, 2020.
8. The Clerk of District Court, Peg Allison, is the duly appointed and acting Jury Commissioner for each of the Departments in the Eleventh Judicial District and, in those capacities, she is responsible for summoning jurors to appear for jury service for each of the jury trials conducted in this District.
9. Ms. Allison has submitted an affidavit for the consideration of the District Court Judges within this District and, based upon the sworn statements in the affidavit, additional findings are appropriate. A copy of the affidavit is appended to this Order.
10. Except in unusual circumstances not relevant here, Ms. Allison draws a pool of 65 persons eligible for jury selection for each jury trial.
11. Jury pools are drawn and assembled by a random process from a larger pool of potential jurors selected for service during a jury term. The pool of 65 potential jurors drawn for jury service in any particular case, therefore, contains a representative cross-section of persons eligible for jury service in other cases set for trial during the same jury term.
12. On March 18, 2020, Ms. Allison drew a pool of 65 potential jurors for the next-scheduled jury trial set to commence on April 6, 2020. Of those persons, 12 persons should be excused from jury service because each of them is aged 65 years or older and, according to the

present advice and guidelines of the CDC, their participation in a public event such as a jury trial may pose an unreasonable risk to their health.

13. Of those persons remaining in the pool of potential jurors, Ms. Allison and her staff conducted a poll by contacting each person and posing this question: “Given the current situation with the COVID-19 virus, the Court would like to know if you are able to appear for jury selection on April 6?”
14. Of the persons remaining in the pool of potential jurors, 21 persons responded they would be able to appear for jury selection on April 6, 2020.
15. Three persons did not respond to the poll.
16. To seat a venire panel for jury selection in a felony criminal trial, there must be at least 20 eligible persons who have reported for jury duty. There must be 23 eligible persons present to seat a venire panel to select a jury of 12 persons, plus one alternate juror. In nearly all criminal jury trials, an alternate juror is seated.
17. According to Ms. Allison’s poll, there are fewer than 23 potential jurors available for jury service for the next-scheduled jury trial in this District.
18. The results of Ms. Allison’s review of the number of potential jurors and the results of her poll of potential jurors for the April 6 jury trial are not likely to vary substantially for any case set for a jury trial between March 19, 2020, and May 1, 2020.
19. The summoning of any jury pool between March 19, 2020, through (and including) May 1, 2020, is unlikely to result in seating a sufficient number of potential jurors to comprise a venire panel for jury selection.
20. Further, whether a sufficient number of potential jurors could be summoned to fill a venire panel for jury selection, the conduct of any jury trial between March 19, 2020, and May 1, 2020, may put the health of jurors and other citizens of Flathead County at unreasonable risk because the configuration of courtroom and jury room facilities in the Flathead County Justice Center would, in any event, require the prolonged and close contact of a group of twelve or thirteen jurors contrary to the current advice from the CDC. Therefore,

ORDER

All Orders setting a pretrial conference or jury trial in any civil or criminal case between March 19, 2020, and May 1, 2020, are VACATED.

Pretrial conferences and jury trials which are vacated by this Order will be reset by order of the presiding judge. This Order does not vacate any pending deadlines other than those setting pretrial conferences and jury trials scheduled during the applicable period.

The Clerk of District Court shall note entry of this Order upon the docket of each case affected by this Order and shall, additionally, provide a copy of this Order to the Flathead County Attorney and the Office of the State Public Defender.

The Court Administrator of the District Court shall provide a copy of this Order to the President of the Northwest Montana Bar Association, the State Bar of Montana, and the Court Administrator's Office.

SO ORDERED.


DATED: March 19, 2020.



Amy Eddy, District Court Judge



Robert B. Allison, District Court Judge



Heidi J. Ulbricht, District Court Judge



Dan Wilson, District Court Judge

Peg Allison
Clerk of District Court
Flathead County Montana
920 South Main Street, Ste. 300
Kalispell, MT 59901
(406) 758-5870

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

AFFIDAVIT OF THE CLERK OF DISTRICT COURT AND JURY COMMISSIONER
DATED MARCH 19, 2020

I, Peg Allison, being duly sworn, depose and say:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts set forth herein.
2. I am the Clerk of District Court for Flathead County, Montana, within the jurisdiction of the Montana Eleventh Judicial District Court (District Court). Pursuant to the Court's Standing Order, dated March 16, 2020, I am the Jury Commissioner for the District Court to exercise all authority provided in Montana Code Annotated §§ 33-15-312 and 3-15-313 to discharge such persons from serving as trial jurors and excusing such persons from jury service. In my capacities as Clerk of District Court and Jury Commissioner, I am responsible for summoning jurors to appear for jury service for each of the jury trials conducted in District Courts in this District.
4. I am familiar with the facilities of the District, including the configuration courtrooms and jury rooms. I am also familiar with the trial schedules of the District Courts of this District. Between March 19, 2020 and May 01, 2020, the District Courts have scheduled jury trials to occur in both civil and criminal cases.

5. The Centers for Disease Control and Prevention (CDC), a federal agency of the U.S. Department of Health and Human Services, and other authorities have issued advisories to reduce the incidence and rate of exposure to the coronavirus for individuals and have identified classes of persons who may be particularly vulnerable to the incidents of COVID-19. The classes of such particularly vulnerable persons include, but are not limited to, persons aged 65 years and older.
6. The Montana Supreme Court issued an advisory directive to all courts within Montana on March 17, 2020. Among those directives, the Supreme Court advises that if a jury must be seated, the jury pool should not be assembled in groups numbering more than 10.
7. Based on the configuration of courtrooms in this District, along with the size and configuration of jury rooms available for jury deliberations, it is neither reasonably possible nor practicable to seat a 12-person jury, conduct a trial appropriately in their presence, and sequester them during periods of recess and deliberation without subjecting any juror to the protracted and communal presence of more than 9 other persons.
8. A number of civil and criminal cases pending in this District have been set for pretrial conferences and jury trials to convene between March 19 and May 1, 2020, by orders issued in the various Departments.
9. It is my usual practice to draw a pool of 65 persons eligible for jury service in advance of each jury trial.
10. Jury pools for particular cases are by drawn by a random process from the entire pool assembled for a jury term. A pool of 65 jurors drawn for a particular jury trial, therefore, contains a representative cross-section of persons eligible for jury service during any jury term.

11. On March 18, 2020, I drew a pool of 65 potential jurors for the next-scheduled jury trial set to commence on Monday, April 6, 2020. Of those persons, 12 persons should be excused from jury service because each of them is 65 years of age or older and, according to the present advice and guidelines of the CDC, participation in a public event such as a jury trial may pose an unreasonable risk to the health of those persons.
12. Of the persons remaining in the pool of potential jurors, my office staff conducted a poll by contacting each person and posing this question: "Given the current situation with the COVID-19 virus, the Court would like to know if you are able to appear for jury selection on April 6?"
13. Of the persons remaining in the pool of potential jurors, 21 persons responded that they would be able to appear for jury service on April 6, 2020.
14. Three persons were not available to respond to the poll.

FURTHER AFFIANT SAYETH NAUGHT.

March 18, 2020.

Peg Allison, Affiant

State of Montana)
) ss.
County of Flathead)

Subscribed and sworn to before me this 19th day of March, 2020.



Signature

Sara Smith
Printed Name / Deputy Clerk of Court