

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO

ORDER RE:
POSTPONEMENT OF JURY TRIALS AND
MANDATORY SAFETY PROTOCOLS
FOR THE SECOND JUDICIAL DISTRICT -
March 1, 2022, forward

ADMINISTRATIVE ORDER
2022-07

Gregory FitzMaurice, Administrative District Judge of the Second Judicial District hereby finds and orders as follows:

WHEREAS, on February 17, 2022, the Idaho Supreme Court issued an “EMERGENCY ORDER REGARDING COURT SERVICES”. Said Order contained the following requirements and prohibitions:

2. **Administrative District Judges Authorized to Issue Orders Regarding Courthouse and Courtroom Risk Reduction Protocols in Their Districts:** The Administrative District Judge shall be responsible for ensuring appropriate measures are in place in each courthouse in their district to reduce the risk of transmission of the coronavirus to persons participating in a court proceeding or conducting court business. In the discretion of the Administrative District Judge, appropriate measures may include, but are not required or limited to, social distancing, masking, and the use of remote proceedings. In determining appropriate measures, the Administrative District Judge should consider local conditions including, but not limited to, the COVID-19 incidence rate of the county as reflected in the weekly incidence report and whether crisis standards of care have been activated in the health district. At no time shall a person who is not a testifying witness, while in the portions of the courthouse where court business is conducted, be asked or required to remove a mask against their wishes.

and;

4. **Conduct of Jury Trials:** All provisions of I.C.R. 24 and I.R.C.P. 47, not otherwise modified in this order, shall remain in force and effect. Provided, any jury trial shall be subject to the following conditions:
 - a. In a criminal jury trial, with the judge's approval, counsel for both parties and defendant(s) may stipulate that a witness may testify remotely. If the defendant(s) is/are not present pursuant to Idaho Criminal Rule 43, counsel for the defendant may stipulate on his or her behalf.
 - b. In civil jury trials, with the assigned judge's approval, counsel for the parties may stipulate to offer any or all testimony remotely

c. Peremptory Challenges.

i. Pursuant to I.C.R. 24(d), if the offense charged is punishable by death and the state is seeking a death sentence when voir dire commences, each party, regardless of the number of defendants, is entitled to 10 peremptory challenges.

ii. Pursuant to I.C.R. 24(d), in all other felonies, each party, regardless of the number of defendants, is entitled to three peremptory challenges; however, if there are co-defendants and the court determines that there is a conflict of interest between them or among them, the court may allow one additional peremptory challenge (total of four), and permit them to be exercised separately (e.g. two each), or jointly.

iii. Pursuant to I.C.R. 24(d), in all misdemeanors, each side, regardless of the number of defendants, is entitled to two peremptory challenges.

iv. Pursuant to I.R.C.P. 47(r), in every civil case, each party is entitled to two peremptory challenges. If there are co-parties the court must determine the degree of conflict of interest, if any, among the co-parties and may allocate no more than two peremptory challenges to the co-parties, not to exceed a total of four, to be apportioned as determined by the court.

v. Pursuant to I.C.R. 24(e) and I.R.C.P. 47(j), no additional peremptory challenges are authorized for alternate or additional jurors, irrespective of the number of additional or alternate jurors which are used.

and;

7. **Jury Trial Postponements:** On or after February 28, 2022, jury proceedings, including jury trials and grand jury proceedings, may commence any time during a calendar week unless the Administrative District Judge issues an order postponing such jury proceedings. In determining whether to issue such an order, the Administrative District Judge should consider local conditions including, but not limited to, the COVID-19 incidence rate of the county as reflected in the weekly incidence report and whether crisis standards of care have been activated in the local public health district. Such an order shall be in writing and contain the factual basis for the determination and shall upon entry be submitted via email to the Administrative Office of the Courts.

Once a trial has commenced, it should continue to verdict unless, in the discretion of the assigned judge, a significant increase in the county's weekly COVID-19 incidence rate or other local coronavirus exposure or public health action justifies a temporary suspension of the trial. Any order in this regard must be supported by the assigned judge's written findings.

and;

WHEREAS, we are experiencing significant decreases in COVID-19 cases in the counties listed below and our seven-day moving average incidence rate of confirmed or presumed cases of COVID-19 are trending down. As of **February 17, 2022**:

Clearwater	24.5
Idaho	18.9
Latah	33.8
Lewis	44.7
Nez Perce	49.1

and;

WHEREAS, in addition to the seven-day moving average and in accordance with paragraph number 7, the five counties in the Second Judicial District are very closely interlinked.

IT IS HEREBY ORDERED as follows:

1. Jury Trials will be able to proceed in person as of March 1, 2022, until further order of the Administrative District Judge, in the Second Judicial District.
2. Unless otherwise directed by the Administrative District Judge, the assigned judges have the discretion to hold proceedings/sentencings in person or remotely, i.e., with all participants utilizing remote technologies.
3. The Administrative District Judge will continue to monitor the seven-day moving average incidence reports and local conditions that could potentially impact public safety around the district. Any changes in local conditions that would adversely affect public safety in the opinion of the Administrative District Judge could trigger issuance of an updated Administrative Order potentially restricting jury trials and implementing increased safety protocols.

The seven-day moving average incident report information can be found on the Idaho Department of Health and Welfare's COVID-19 Data Dashboard
<https://public.tableau.com/app/profile/idaho.division.of.public.health/viz/DPHIdahoCOVID-19Dashboard/Home>

4. The presiding judge is hereby authorized, in his or her discretion, to impose safety protocols upon the parties, participants, and staff, within their courtroom as they deem appropriate, to include, but not limited to, social distancing and masking.

IT IS FURTHER ORDERED that all persons entering county court operations areas in the Second Judicial District, not under COVID-19 restrictions, are instructed to follow the guidance as listed below:

- a. Anyone entering county operation areas to do court business are encouraged to wear masks and practice social distancing, but not required.

- b. Strongly advise individuals not to enter courtrooms or approach court services areas if they:
 - i. have been asked to self-isolate by any doctor, hospital, or health agency;
 - ii. have been diagnosed with, but have not yet recovered from COVID-19; or
 - iii. if you are experiencing any signs or symptoms of illness including: fever, cough, shortness of breath or difficulty breathing, chills, repeated shaking with chills, muscle pain, headache, or new loss of taste or smell.

This Order is to remain in effect until further direction by administrative order.

IT IS SO ORDERED.

DATED 2/18/2022 3:50:14 PM



Honorable Gregory FitzMaurice
Administrative District Judge
Second Judicial District

cc:

2nd Judicial District Elected Clerks
2nd Judicial District Jury Commissioners
2nd Judicial District Magistrate & District Judges
2nd Judicial District Court Reporters
2nd Judicial District Lead Court Clerks
Roland Gammill, Trial Court Administrator
Sara Omundson, ADOC, Idaho Supreme Court