

1 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, BUTTE COUNTY**
2 **ORDER OF THE PRESIDING JUDGE AFFECTING JURY TRIALS**



3
4 **I. FINDINGS**

5 **A. PUBLIC HEALTH CRISIS**

6 Herein, this Court adopts and incorporates the previous findings of this Court, of the California
7 Judicial Council, and of the Chief Justice of the California Supreme Court, issued previously in response
8 to the public health crisis emanating from the coronavirus and COVID-19.

9 Herein, this Court takes judicial notice of the website of the Office of the Governor of the State of
10 California, and all declarations issued therefrom in response to the public health crisis emanating from the
11 coronavirus and COVID-19.

12 Herein, this Court takes judicial notice of the websites for the Center for Disease Control and
13 Prevention (CDC), the California Department of Public Health, and the Butte County Department of
14 Public Health wherein those departments address the public health crisis emanating from the coronavirus
15 and COVID-19.

16 Herein, this Court takes judicial notice of website Covidactnow.org, as the state of California
17 derives information from Covidactnow.org.

18 Based thereon this Court does find that the public health crisis emanating from the coronavirus
19 and COVID-19 remains a persistent threat that warrants ongoing mitigation measures and adjustment to
20 court operations by this Court in order to protect the public, litigants, attorneys, staff, court users, and
21 justice partners, and that this public health crisis presents a real danger to those same individuals if
22 mitigation measures are not put into place by this Court and maintained throughout the crisis.

23 In response to this public health crisis, this Court consulted previously with justice partners,
24 including the District Attorney of Butte County, the Sheriff of Butte County, and the Director of the Butte
25 County Public Defender consortium, on intended mitigation measures, court operations and jury trials.
26 This Court consulted also with a representative of Butte County Administration, to determine appropriate
27 mitigation measures affecting jury selection and jury trials, and this Court will continue to so consult, as
28 warranted by the circumstances.

1 In response to this public health crisis, this Court has reviewed routinely information provided on
2 the websites for Butte County Department of Public Health, the California Department of Public Health,
3 the Office of California Governor Newsom, Covidactnow.org, and the Center for Disease Control and
4 finds therefrom that all sources inform the court on past, present and future risk of infection and the
5 sources are interrelated and all sources have been equally considered.

6 **B. ORDERS ON COURT OPERATIONS FOR JURY TRIALS**

7 This Court finds that this Court has issued Orders since March of 2020 affecting Court operations
8 in an effort to mitigate against the risk of the coronavirus and to implement Orders of the Governor and
9 the California Department of Public Health.

10 This Court finds that on June 18, 2020, California Governor Newsom mandated compliance with
11 direction from guidance from the California Department of Public Health wherein face coverings must
12 be worn in public settings. This Court finds no exception was listed therein for courtrooms or jury
13 selection of jury trials. This Court issued an Order implementing the Governor's order.

14 This Court finds that Orders on mitigation were subsequently modified by this Court as warranted
15 by public health information and direction, allowing for gradual return of greater access and services over
16 several weeks period of time starting June 12, 2020. The graduated increase in calendars and access was
17 part of a plan to return the court to operations that met the needs of court users while maintaining public
18 health and safety. On June 12, 2020, this Court ordered the return to criminal in-custody defendant time-
19 not-waived jury trials to begin on July 13, 2020.

20 This Court prepared for this limited return to jury trials by ordering a series of mitigation
21 measures that included that summons issue for July 13, 2020 and for each Monday thereafter so that each
22 Monday is available for an in-custody time-not-waived jury trial. Also, in preparation for return to jury
23 trials, and as a mitigation measure, this Court directed the time for which prospective jurors are
24 summoned to be at intervals and in smaller groups. This Court directed courtrooms be measured so that
25 summoned prospective jurors would maintain six feet of distance while seated inside the courthouse and
26 courtroom.

27 Mitigation measures in the return to jury trials included limiting one jury trial selection per
28 courthouse to accommodate the requirement for six feet of social distancing. Further, this Court ordered

1 that cases with in-custody time not waived cases have priority. This Court finds that jury trials for Civil
2 cases, and for Criminal cases with time waived, did proceed when an in-custody time not waived criminal
3 case was not then ready for trial. This Court finds that under the Order and protocol, Criminal and Civil
4 trials did proceed interrupted periodically by Court Order pausing trials during times of surge of the
5 coronavirus.

6 This Court finds that subsequent to the Court's Order limiting jury trials for public health and
7 safety and to accommodate the facilities limitation, a vaccine against the coronavirus became widely
8 available, and the Governor of the State of California subsequently rescinded the requirement for social
9 distancing.

10 This Court finds that in response to the Order of the Governor of the State of California, this
11 Court rescinded its own Order requiring social distancing of six feet inside the Butte Superior Courthouse
12 and outside on court property, effective June 21, 2021.

13 This Court finds as of the date of this Order it is widely reported by the same sources relied on
14 by this Court stated herein that a variant of the coronavirus, the Delta variant, is more contagious and
15 widely spreading. This Court finds that as of the date of this order, the coronavirus has not abated. Not in
16 Butte County, not in the state of California, nor the nation.

17 This Court finds that this Court, due to the inability to effectively and efficiently determine
18 vaccine status of all court users and staff, and in light of the unabated virus, continued to Order that masks
19 remain worn inside the Butte Superior Courthouse at all times regardless of vaccine status.

20 This Court continues to find that the unique aspect of jury trials and the ongoing presence of the
21 coronavirus and related variants requires this Court to continue to rely on all data sources referenced
22 herein to determine whether an increasing infection rate within the county warrants more restrictive
23 mitigation measures and whether a continuance of a jury trial is necessary.

24 Courts of Appeal have found the presence of an epidemic or pandemic as supportive of good
25 cause to extend the time for trial beyond the statutory time. (See Stanley v. Superior Court (2020) 50
26 Cal.App.5th 164, COVID-19; People v. Tucker (2011) 196 Cal.App.4th 313, H1N1; In re Application
27 of Venable (1927) 86 Cal.App. 585, epidemic of infantile paralysis) This Court finds that it is the
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1 responsibility of the Presiding Judge, under California Rule of Court, Rule 10.603, to ensure the safe
2 operation of court proceedings.

3 Based thereon, this Court finds that the jury trial protocol for the Butte Superior Court must
4 continue to include many mitigation measures and be responsive to current public health orders and
5 responsive to the ongoing risk from coronavirus and any variant.

6 In light of the findings made previously, and those made herein, modification of the jury trial
7 protocol is necessary to respond to the current circumstances. As of the date of this Order, the rescission
8 of the requirement for social distancing allows for Civil cases to proceed to trial and allows for courtrooms
9 and jury deliberation rooms to return to use without social distancing. This Court finds that the inability
10 to determine vaccine status, and the public health concern that has not abated over the coronavirus or the
11 Delta variant, requires that this Court's order for mask compliance remain.

12 Therefore, effective August 3, 2021, this Court orders into place the court operations plan for
13 jury trials for the North Butte County Courthouse (NCCH/Chico) and the Butte County Courthouse
14 (BCCH/Oroville), incorporating the circumstances and findings stated herein, as further detailed in
15 Attachment A, below.

16 II. ORDER OF THE COURT

17 For the reasons stated herein, Attachment A is ordered to apply to criminal and civil jury trials.
18 As stated in the attachment, if Public Health data sources indicate high risk for the rate of infection, the
19 Presiding Judge intends thereafter to find good cause to continue jury trials set for the next available jury
20 trial date in order to better protect the public, jurors, litigants, attorneys, staff, court users, and justice
21 partners from the risk of infection. This Order supersedes the July 10, 2020 Order of the Presiding Judge
22 Affecting Jury Trials.

23
24 **SO ORDERED.**

25
26 Date: 8/3/2021

27 Clare Keithley
28 Hon. Clare Keithley
Presiding Judge

ATTACHMENT A

**I.
CRIMINAL JURY TRIALS**

1. When Criminal Trials Will Not Go Forward

Jury selection for jury trials will not go forward if on the Trial Assignment Calendar (TAC) the Friday before the date for trial, or on the day of trial, the Presiding Judge determines from currently available Public Health data sources that the risk of coronavirus spread is high or critical for Butte County.

2. Cases Will Go to Trial Based on Readiness

- a. A *Readiness List* will be maintained by the Court to determine which cases are pending and ready for trial.
- b. Cases assigned on the TAC to go to trial on Monday (or Tuesday if Monday is a holiday*) will be those that are then 1st and 2nd on the *Readiness List*. Placement of a case may change if a case higher on the list resolves at TAC. This means that if case number 2 resolves at TAC, case number 3 moves up to number 2 in *Readiness* for trial.
- c. Cases 3rd, 4th, 5th, and 6th on the *Readiness List* at TAC will not be vacated until the Monday (or Tuesday*) of Jury Selection to ensure that if the case(s) listed 1st or 2nd resolve, that cases 3rd, 4th, 5th, or 6th on the *Readiness List* proceed.
- d. The *Readiness List* will be ready for each TAC calendar.
- e. The *Readiness Lists* will be based on the following criteria:
 - i. Custodial Status
 - ii. Time Waiver Status
 - iii. Degree of Case (misdemeanor/felony)
 - iv. Weight of the Charge
 - v. Age of the Case
 - vi. Mental Health Concerns
 - vii. Witness Availability
 - viii. Courtroom Availability
 - ix. Input from Counsel
 - x. Input from Assigned Judge

1 **3. Number of Juries**

- 2 a. Only two Criminal juries will be selected on any given week subject to availability of
3 resources. The Presiding Judge may approve a third and fourth Criminal jury trial to be
4 selected and heard the same given week on request of the Supervising Judge of the Criminal
5 Division when so needed and if the resources are available.
- 6 b. All juries will be selected on a Monday, with Tuesday as an available second selection day if
7 needed. In the event of a Monday holiday, selection will begin on Tuesday.
- 8 c. Remaining cases on the *Readiness List* may be continued on the finding of good cause. Such
9 continuances will be set for the next available trial date, or a different date selected by counsel.
- 10 d. Trials will proceed on all days available for the judge in each given week, with priority given
11 by the Court and counsel to the trial dates.
- 12 e. Trial will start at 8:30 a.m. and end at 4:30 p.m., unless the trial judge and counsel arrange
13 otherwise.

14 **4. Jury Selection and Trial Will Be Subject to Mitigation Measures**

- 15 a. Prospective jurors will be summoned for staggered time for arrival for jury selection.
- 16 b. Masks are required to be worn at all times, consistent with CalOSHA regulations and the Order
17 of the Presiding Judge.
- 18 c. Face shields with drapes may be allowed for any person who requests such an accommodation.
- 19 d. Prospective jurors: Courtroom panel
- 20 i. Will check in at Jury Assembly.
- 21 ii. Will be seated in the trial courtroom when the panel is called for by the trial judge.
- 22 iii. Will be given a date sheet.
- 23 iv. Will be given written information about the case if the Court and counsel so agree.
- 24 v. Will be sworn in as prospective trial jurors.
- 25 vi. Will be given hardship claim forms in the trial courtroom.
- 26 vii. The trial judge will rule on the hardship claim forms and excuse those who qualify.
- 27 viii. The hardship forms will be retained as part of the record.
- 28 e. Prospective jurors: Overflow
- i. Prospective jurors who are not seated in the trial courtroom will be/remain seated in jury
assembly or an overflow courtroom if more seating is needed.
- ii. Prospective jurors will be addressed in the trial courtroom and hardships claims taken
therein unless the trial court judge finds an exception is needed that requires assistance
for claims to be taken by another judge in jury assembly or the overflow courtroom.

- iii. The panel will not be moved to the courtroom until called for by the trial judge
- f. Hardship by Mail Will Continue
- i. Hardship claim forms will be mailed with the summons.
 - ii. Form will provide the grounds for an undue hardship and be kept as part of the record.
 - iii. Prospective juror will sign under penalty of perjury.
 - iv. Jury Commissioner will rule on the claim unless review is sought with the judge.
 - v. Hardship claim forms will be retained by the Court as part of the Jury Commissioner's records.

II. CIVIL JURY TRIALS

1. When Trials Will Not Go Forward

Jury selection for jury trials will not go forward if on the Thursday TRC before the date for trial, or on the day of trial, the Presiding Judge determines from currently available Public Health data sources that the risk of coronavirus spread is high or critical for Butte County.

2. Number of Juries

- a. Only one jury will be selected on any given week subject to availability of resources and consistent with the Court's regular Calendar Structure.
- b. All juries will be selected on a Monday.
- c. All jury selection and trial will take place at the North County Courthouse (NCCH) in Chico, California, unless directed otherwise by the Presiding Jdg.

3. Jury Selection and Trial Will Be Subject to Mitigation Measures

- a. Prospective jurors will be summoned for staggered time for arrival for jury selection.
- b. Masks are required to be worn at all times, consistent with CalOSHA regulations and the Order of the Presiding Judge.
- c. Face shields with drapes may be allowed for any person who requests such an accommodation.
- d. Prospective jurors: Courtroom panel.
 - i. Will check in at Jury Assembly.
 - ii. Will be seated in the trial courtroom when the panel is called for by the trial judge.
 - iii. Will be given a date sheet.
 - iv. Will be given written information about the case if the Court and counsel so agree.

- v. Will be sworn in as prospective trial jurors.
- vi. Will be given hardship claim forms in the trial courtroom.
- vii. The trial judge will rule on the hardship claim forms and excuse those who qualify.
- viii. The hardship forms will be retained as part of the record.

e. Prospective jurors: Overflow

- i. Prospective jurors who are not seated in the trial courtroom will be/remain seated in jury assembly or an overflow courtroom if more seating is needed.
- ii. Prospective jurors will be addressed in the trial courtroom and hardships claims taken therein unless the trial court judge finds an exception is needed that requires assistance for claims to be taken by another judge in jury assembly or the overflow courtroom.
- iii. The panel will not be moved to the courtroom until called for by the trial judge.

f. Hardship by Mail Will Continue.

- i. Hardship claim forms will be mailed with the summons
- ii. Form will provide the grounds for an undue hardship and be kept as part of the record
- iii. Prospective juror will sign under penalty of perjury
- iv. Jury Commissioner will rule on the claim unless review is sought with the judge
- v. Hardship claim forms will be retained by the Court as part of the Jury Commissioner's records