In the Supreme Court of the State of Idaho

RE: EMERGENCY ORDER REGARDING COURT SERVICES	))))	**ORDER June 24, 2021**

Over the last 15 months, this Court has issued a series of emergency orders intended to address the substantial health and safety risks faced by the public accessing the courts, court personnel, and participants in court proceedings caused by the community spread of the coronavirus. Since the issuance of those orders, vaccines reducing the risks of COVID-19 have become available throughout the state of Idaho. The incidence rate of COVID-19 infection throughout the state has also reduced. The Court continues to monitor the data and information related to the coronavirus, COVID-19, and its variants, and will adjust court operations orders as becomes prudent with the changing circumstances.

In light of the improving circumstances, we have concluded that further modification of our emergency orders is now warranted. In order to continue to foster public safety and reduce the risk of the spread of coronavirus and the incidence of COVID-19 and its variants, court operations shall be governed by the following rules until further order of the Court:

1. **Weekly Publication of COVID-19 Incidence Rates:** The Data and Evaluation Unit of the Administrative Office of Courts shall utilize data obtained from the Idaho Department of Health and Welfare's COVID-19 Data Dashboard, and shall determine the weekly COVID-19 incidence rates for each county every Thursday evening after 5:00 p.m. Mountain Time. The weekly COVID-19 incidence rates shall be published to the Administrative District Judges and Trial Court Administrators on Friday mornings of each week.

2. **Administrative District Judges Authorized to Issue Orders Regarding Courthouse and Courtroom Risk Reduction Protocols in Their Districts:** If, as reflected in the report described in paragraph 1, a county's seven-day moving average incidence rate of confirmed or presumed cases of COVID-19 is 25.0 or greater per 100,000 population, the Administrative District Judge shall enter an administrative order defining the safety protocols that will be required in the county's courthouse. The order will, at a minimum, require all persons entering the courthouse to do court business to wear a mask that covers the nose and mouth and maintain six feet of social distance from anyone that does not live in their household.

   If, as reflected in the report described in paragraph 1, a county's seven-day moving average incidence rate of confirmed or presumed cases of COVID-19 is 24.9 or lower, the Administrative District Judge is responsible for ensuring adequate measures are in place in each courthouse to reduce the risk of transmission of the coronavirus to all

persons participating in a court proceeding or doing court business. Adequate measures may include, but are not limited to, social distancing requirements, masking requirements, and requiring the use of remote proceedings. In determining adequate 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 described in paragraph 1.

Presiding judges in a courtroom, or assigned judges in grand jury proceedings may, in the exercise of discretion, require appropriate social distancing and/or the wearing of masks covering the nose and mouth of any individual or group of individuals during a proceeding if any court participant is immunocompromised or other circumstances warrant such protocols.

3. **Court Proceedings Other Than Jury Trials:** Other than jury trials, court rules which prohibit hearing any case or part thereof remotely are suspended during the effective term of this order. Unless otherwise directed by the district's Administrative District Judge, an assigned judge has the discretion to hold proceedings in person or remotely, i.e. with all participants utilizing remote technologies including teleconferencing and video conferencing, subject to the following conditions and requirements:

    a. all trials on a petition to terminate parental rights and felony sentencing hearings shall be held in person;

    b. any party intending to offer documentary evidence during a hearing held remotely must provide the court and all parties a list of such exhibits and copies thereof at least seventy-two hours before such hearing unless the assigned judge modifies the time for good cause shown;

    c. an audio recording of all court proceedings must be created in For The Record (FTR) software or in Zoom software. For court proceedings in district court, the official record may be kept by a court reporter in addition to the audio recording. With the permission of the assigned judge, a court reporter may report proceedings remotely.

    d. To protect the integrity of the remote proceeding, an assigned judge has the discretion to enter other orders or impose other requirements to promote the safety of participants or to promote efficiency.

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. **Effective August 2, 2021, the peremptory challenges allotted to each side, shall be as provided in I.C.R. 24(d) and I.R.C.P 47(i) as applicable**. Until that date, peremptory challenges shall be subject to the following rules:

        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(i), 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.

b. In a criminal jury trial, with the judge's approval, counsel for both parties and defendant may stipulate that a witness may testify remotely. If the defendant is not present pursuant to Idaho Criminal Rule 43, counsel for the defendant may stipulate on his behalf.

c. In civil jury trials, with the assigned judge's approval, counsel for the parties may stipulate to offer any or all testimony remotely.

d. At no time shall a juror be asked or required to remove a mask against their wishes.

5. **Preliminary Hearing Timelines:** The 21-day preliminary hearing requirement for out-of-custody defendants under Idaho Criminal Rule 5.1 is waived until further order of this Court.

6. **No Judge Disqualification Without Cause:** No judge shall be disqualified without cause from any proceeding pursuant to Idaho Criminal Rule 25(a), Idaho Rule of Civil Procedure 40(a), Idaho Rule of Family Law Procedure 107 (2015), and Idaho Rule of Family Law Procedure 109 (effective July 1, 2021) during the effective term of this order. When this order is lifted, disqualification without cause rules will only operate prospectively and may not be exercised retrospectively in any existing case.

7. **Weekly COVID-19 Incidence Rate Jury Trial Postponements:** Jury proceedings, including jury trials and grand jury proceedings, may commence anytime during a calendar week unless the Administrative District Judge has determined that the county in which the prospective juror has been summoned to attend court has a seven-day moving average incidence rate of confirmed or presumed cases of COVID-19 of 25.0 or greater per 100,000 population as reflected on the Cases by County page of the Idaho Department of Health and Welfare's COVID-19 Data Dashboard available at www.coronavirus.idaho.gov

The Administrative District Judge's determination described in this paragraph shall be based on the weekly COVID-19 incidence rate for that county published ten days prior to the calendar week in which the jury trial is scheduled to occur. For example, a jury trial may commence during the week of July 21st in a county unless the Administrative District Judge determines on July 11th, 2021, that the weekly COVID-19 incidence rate published that day exceed the limit.

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 with written findings.

8. **Other Postponements Authorized by Administrative District Judge:** Notwithstanding the conditions set forth in paragraph 7, an Administrative District Judge may, in the exercise of discretion, enter an order prohibiting the commencement of jury trials or the impanelment of a grand jury in a county where there are circumstances beyond the acceptable incidence rates which pose a substantial increase in the health or safety risks to participants. 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.

9. **Trial Court Discretion to Commence or Discontinue Jury Trial:** Nothing contained in this order shall be construed to limit or expand an assigned judge's discretion to commence or suspend a jury trial for reasons unrelated to COVID-19.

10. **Tolling of Speedy Trial:** If this order, any previous COVID-19 emergency orders of this Court, or an order entered by an Administrative District Judge pursuant to paragraphs 7 or 8 above result in any delay in the commencement of jury trials due to COVID-19, the time used to calculate the right to a speedy trial pursuant to I.C. § 19-3501 shall be deemed to have been tolled for those counties affected by said order.

11. **Live Streaming of Proceedings:** Idaho Court Administrative Rule 45 shall be applied when a camera in the courtroom supplements (is in addition to) the physical presence of the public in any proceeding. Any portion of a proceeding traditionally open to the public may be live streamed rather than allowing the physical presence of the public only when the assigned judge finds that:

    a. health and safety concerns override other interests in allowing the public to be physically present in the courtroom;

    b. denial of the public's physical presence in the courtroom is necessary to protect the health and safety of those participating in the proceeding, including, if applicable, a lack of sufficient physical space for adherence to any social distancing requirements;

    c. The assigned judge has considered other reasonable alternatives to allow the physical presence of the public;

    d. The assigned judge has made findings on the record that live streaming is an appropriate alternative because

i. No reasonable in-person alternative is available that would sufficiently ensure the health and safety of those participating in the trial; and

ii. The available live streaming capability is a narrowly tailored and reasonable alternative.

e. If the public cannot be physically present in the courtroom, a publically accessible live audio and video stream of the proceedings must be provided. Such live stream may be publically accessible either:

i. via transmission to the internet, or

ii. by transmission to a separate room in the courthouse. Any live stream of a court proceeding shall not be a part of the official court record.

f. There shall be no live streaming of the following:

i. Images of jurors, unless the live streaming is by transmission to a separate room in the courthouse;

ii. audio of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding judge held at the bench;

iii. images of notes upon the counsel table, nor of any exhibits before they are admitted into evidence;

iv. audio or images of off-the-record, in-chambers sessions or judicial deliberations;

v. audio or images of proceedings in which jurors may have to disclose personal, embarrassing, or prejudicial information that traditionally would be addressed outside of the presence of the other jurors and the public.

12. **Courthouse Signage:** Signage shall be conspicuously posted at all public entry points of a courthouse or other locations designated for court business. The signage shall:

a. state that anyone entering the building to do court business is welcome to wear a facemask and encouraged to practice social distancing;

b. strongly advise individuals not to enter courtrooms or approach court services offices 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. 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;

13. Unless specifically stated otherwise, the terms of this order are effective immediately. This order supersedes the Court's emergency order entered on May 20, 2021.

IT IS SO ORDERED.

DATED this 24th day of June 2021.

G. Richard Bevan,
Chief Justice, Idaho Supreme Court

ATTEST:

Clerk