

**IN THE DISTRICT COURT
FOR THE SIXTH JUDICIAL DISTRICT OF WYOMING**

GENERAL ORDER

FOR THE DISTRICT COURT

OF THE SIXTH JUDICIAL DISTRICT

)
)
)
)
)
)
)
)
)
)

2020-02

**SECOND ORDER AMENDING GENERAL ORDER 2020-01 AND REQUIRING
TELEPHONIC OR VIDEOCONFERENCE APPEARANCE EXCEPT UPON A
SHOWING OF EXTRAORDINARY CIRCUMSTANCES OR
AS OTHERWISE REQUIRED BY LAW IN COURTROOMS PRESIDED OVER BY
DISTRICT JUDGE MICHAEL N. “NICK” DEEGAN OR HIS SUCCESSOR**

THIS MATTER comes before the court upon its own motion. In March 2020, this court responded to an emerging global pandemic caused by the COVID-19 virus. After a few months of conducting hearings exclusively through video conferencing, this court developed Operating Plans for the Sixth Judicial District regarding the courtrooms within the Campbell, Crook, and Weston County courthouses, which were consistent with recommended practices from public health officials. These plans allowed the courtrooms within those Counties to re-open for in-person hearings and proceedings with significant precautions to protect public health .

Since September, 2020, the world has been experiencing a “second wave” of COVID-19 infections. The United States has seen a surge in COVID-19 cases. By the middle of October, 2020, the United States was reporting more than 50,000 new infections a day. On November 18, 2020 this number stood at 141,937 newly reported cases in a single day for the nation. The United States continues to set new daily records for COVID-19 infections in ascending magnitude.

Wyoming has not been spared. As of November 16, 2020, Wyoming’s statewide seven-day moving average of cases per 100,000 people was 128. Public health officials recommend stay-at-home orders for any area experiencing community spread in excess of 25 cases per 100,000 in population.

Likewise, Campbell County COVID-19 cases have been surging. Since mid-September, the active and total number of cases has exponentially escalated. On Sunday, October 25th, Campbell County had 769 lab-confirmed and 64 probable cases, and 374 active cases. The number of total cases as of November 16, 2020 is 2102, a significant and troubling increase. For Crook County it is 226. For Weston County it is 338. As of November 16, 2020, the seven-day rolling average of new COVID-19 cases per 100,000 people in Campbell County, Wyoming is 145.5. For Crook County it is 105.5, and for Weston County it is 57.7.

For more than a century, courts have recognized that “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.” *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 27, 25 S. Ct. 358, 362, 49 L. Ed. 643 (1905). This includes the ability of the States to “establish quarantines against human beings, or animals, or plants, the coming in of which may expose the inhabitants, or the stock, or the trees, plants, or growing crops, to disease, injury, or destruction thereby.” *Oregon-Washington R. & Nav. Co. v. State of Washington*, 270 U.S. 87, 93, 46 S. Ct. 279, 281, 70 L. Ed. 482 (1926). As one court stated, “when the state faces a major public health threat [], its Tenth Amendment police and public health powers are at a maximum.” *Legacy Church, Inc. v. Kunkel*, 455 F. Supp. 3d 1100, 1146 (D.N.M. 2020). Consequently, courts have affirmed the government’s authority to issue orders that limit access to places, including stay-at-home orders, when those orders are necessary to protect public health in light of the current COVID-19 pandemic. *See Williams v. Trump*, No. 20 C 2495, 2020 WL 6118560, at *1 (N.D. Ill. Oct. 16, 2020); *Gish v. Newsom*, No. EDCV20755JGBKKX, 2020 WL 1979970, at *5 (C.D. Cal. Apr. 23, 2020); *Bimber's Delwood, Inc. v. James*, No. 20-CV-1043S, 2020 WL 6158612, at *1 (W.D.N.Y. Oct. 21, 2020); *Hernandez v. Grisham*, No. CIV 20-0942 JB\GBW, 2020 WL 6063799, at *63 (D.N.M. Oct. 14, 2020); *Lewis v. Walz*, No. CV 20-1212 (DWF/HB), 2020 WL 5820549, at *4 (D. Minn. Sept. 30, 2020).

Under Wyo. Const. Art. 1, §8, Wyoming courts are generally open to the public. “[A]ccess to court proceedings should be limited only in exceptional circumstances.” *Williams v. Stafford*, 589 P.2d 322, 325 (Wyo. 1979), abrogated on other grounds by *Vaughn v. State*, 962 P.2d 149 (Wyo. 1998). Thus, while the trial courts of Wyoming must remain open, they must take into consideration the global health crisis caused by COVID-19 when determining the manner in which hearings will be conducted and scheduled.

In light of the surge in COVID-19 cases nationally, in Wyoming, and in Campbell, Crook and Weston Counties, the court must limit in-person appearances for hearings. In-person appearances create the precise situation that the Centers for Disease Control (CDC) say fans the flames of COVID-19 spread – indoor gatherings of unrelated persons that may last for a long time. See CDC, *Considerations for Events and Gatherings*, updated October 29, 2020 at <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>. Moreover, through the use of video and teleconferencing via the TEAMS® application, the courts can provide remote access to court proceedings. The application is free and allows any party to participate with nothing more than a telephone. As well, any member of the public interested in listening in on court proceedings may easily do so by accessing the Wyoming Supreme Court website on a smart phone, tablet or desktop computer and clicking “District Court Live Broadcast” in the drop-down menu under the district court heading, and thereafter selecting the court in question. All proceedings, other than those confidential under the law, will be available for listening by this means.

In light of these considerations,

IT IS HEREBY ORDERED that all persons appearing before Judge Deegan or his successor in any courtroom of the Sixth Judicial District shall appear via video or teleconference unless an in-person appearance is required by law or the person establishes extraordinary circumstances that would warrant an in-person appearance;

IT IS FURTHER ORDERED that any person seeking to establish extraordinary circumstances to permit an in-person appearance shall do so by written motion filed at least three (3) business days before the date of the court appearance at issue. Such motion shall be filed with the Clerk of District Court and a courtesy copy shall be provided to the court and all other persons involved in the case no later than one (1) day after the motion is filed with the Clerk of District Court. Failure to provide such copies to the court and other persons may constitute good cause to deny the motion;

FINALLY, IT IS ORDERED that this Order shall become effective November 18, 2020.

BY THE COURT this 18th day of November, 2020.

HON. MICHAEL N. "NICK" DEEGAN
SIXTH JUDICIAL DISTRICT