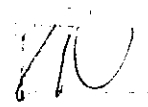


CLERK OF DISTRICT COURT
MONTANA EIGHTH JUDICIAL DISTRICT
CASCADE COUNTY
JUL 11 2020


MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

IN RE THE MATTER OF)
COURTHOUSE SAFETY AND)
SECURITY FOR DEPARTMENT B)
)
)
)
)

CAUSE NO. SB-2020- 412

ORDER RE: MASKS

This Court is scheduled to begin a jury trial in this case on June 19, 2020. Subsequent trials are scheduled into the foreseeable future. The Court, and other agencies and leaders in the State, are concerned with the risks associated with the COVID-19 pandemic. Expert scientists and doctors have said that COVID-19 may be as much as 10 times more deadly than the seasonal flu. Montanans have a constitutional fundamental right to a clean and healthful environment. Art. II, §3, Mont. Const. In turn, District Courts have power and authority over criminal and civil cases. Art. VII, §1, Mont. Const. All judges, including the undersigned, swore to uphold and defend the Constitutions of Montana and the United States.

The Governor of the State of Montana has issued several directives to protect public health and safety in the setting of the global COVID-19 pandemic. On May

19, 2020, the Governor issued a Directive implementing Executive Orders 2-2020 and 3-2020, which declare a state of emergency in Montana due to the COVID-19 Novel Coronavirus. (relying on § 10-3-104(2)(a), MCA, which authorizes the Governor to “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster.”)

Section 10-3-104(2)(c), MCA also authorizes the Governor to “control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.”

In response to the Governor’s orders and directive, the Chief Justice of the Montana Supreme Court issued a directive on May 22, 2020. Chief Justice McGrath directed courts to, *inter alia*, enforce physical distancing in courthouses, courthouses and offices, work with public health officials to screen people entering the courthouse, provide “extensive signagerequiring people who are ill not to enter the building and to adhere to all recommended hygiene practices recommended by the CDC. Screening may also include temperature checks if supported and recommended by public health officials.”

The Montana Supreme Court has supervisory control over the district courts.


Art. VII, §2(2), Mont. Const. Chief Justice McGrath required widely available hand sanitizers in public spaces and courtrooms and throughout the building, and for building maintenance to have a detailed plan for disinfecting and cleaning the building throughout each day. Chief Justice McGrath further “strongly encouraged” courts to “require the use of face coverings or masks for people entering the courthouse” because “masks can assist in stopping the transmission of the illness by an asymptomatic person...” The Chief Justice urged communication with county officials, health officials and law enforcement to ensure that trials are safe.

This Court and other judges in the district have worked to the extent possible to ensure conditions that will keep jurors, lawyers, witnesses, court staff, and the public safe. At this point, three months into the pandemic, persons entering the courthouse are not being screened. Few people entering are wearing masks. It is unclear whether the courthouse and courtrooms are being sanitized throughout the day.

The undersigned has consulted with public health officials on multiple occasions, and it is clear that if everyone wore masks and frequently used hand sanitizer, the risk of transmission would be significantly reduced. The undersigned has conferred with the Cascade County Sheriff to request assistance in preventing any person from entering courtrooms without a mask during jury trials. The Sheriff has stated that he believes this request is unconstitutional and will not enforce it.

For the foregoing reasons, the Court hereby ORDERS the Cascade County Sheriff to require persons entering any courtroom in which this Court is presiding to wear a mask.

DATED this 11th day of June, 2020.



ELIZABETH A. BEST
CASCADE COUNTY DISTRICT JUDGE
FOR DEPARTMENT B