

1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 **July 6, 2020**

3 **NO. 20-8500-025**

4 **IN THE MATTER OF THE**
5 **SAFE AND EFFECTIVE ADMINISTRATION**
6 **OF THE NEW MEXICO JUDICIARY DURING**
7 **THE COVID-19 PUBLIC HEALTH EMERGENCY**

8 **ORDER**

9
10 WHEREAS, since the declaration of a public health emergency by the
11 Governor of New Mexico on March 11, 2020, this Court has issued a series of
12 administrative orders to guide the safe and effective administration of the New
13 Mexico Judiciary during the COVID-19 pandemic;

14 WHEREAS, the Court wishes to consolidate many of its prior administrative
15 orders into a single document for ease of reference;

16 WHEREAS, the Court also wishes to amend certain provisions in its prior
17 administrative orders in response to the continuing evolution of the public health
18 emergency; and

19 WHEREAS, in light of the foregoing and the Court being sufficiently advised,
20 Chief Justice Judith K. Nakamura, Justice Barbara J. Vigil, Justice Michael E. Vigil,
21 Justice C. Shannon Bacon, and Justice David K. Thomson concurring;

1 NOW, THEREFORE, IT IS ORDERED that that Order Nos. 20-8500-012,
2 20-8500-013, 20-8500-017, 20-8500-020, 20-8500-022, and 20-8500-023 are
3 WITHDRAWN;

4 IT IS FURTHER ORDERED that the following New Mexico Judiciary Public
5 Health Emergency Protocols (Emergency Court Protocols) are ADOPTED,
6 effective immediately:

7 No. 1: Precautionary Measures for Operating Judicial Buildings

8 No. 2: Precautionary Measures for Conducting Judicial Proceedings

9 No. 3: Temporary Procedural Requirements for Judicial Proceedings

10 IT IS FURTHER ORDERED that a copy of the Emergency Court Protocols
11 shall be attached to this order and shall be posted to the New Mexico Judiciary
12 website;

13 IT IS FURTHER ORDERED that the travel restrictions in the Emergency
14 Court Protocols shall apply to any out-of-state travel commenced before the date of
15 this order and all out-of-state travel requests approved prior to the date of this order
16 that conflict with the Emergency Court Protocols shall be rescinded;

17 IT IS FURTHER ORDERED that the Emergency Court Protocols shall apply
18 to all appellate, district, metropolitan, magistrate, probate, and municipal courts in
19 the State of New Mexico and the Administrative Office of the Courts;

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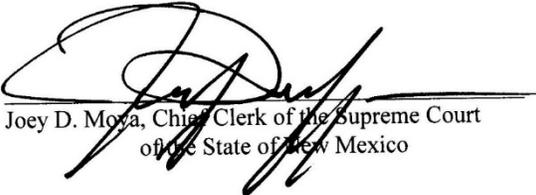
IT IS FURTHER ORDERED that all references in the Emergency Court Protocols to the chief judge of the judicial district shall, when applicable, include the presiding judge of a probate or municipal court, the chief judge of the Bernalillo County Metropolitan Court, chief judge of the Court of Appeals for judges and employees of the New Mexico Court of Appeals, and the Chief Justice for Justices and employees of the Supreme Court or Administrative Office of the Courts; and

IT IS FURTHER ORDERED that this order and the Emergency Court Protocols shall remain in effect until amended or withdrawn by future order of this Court.

IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 6th day of July, 2020.


Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

**NEW MEXICO JUDICIARY
PUBLIC HEALTH EMERGENCY PROTOCOLS**

EMERGENCY COURT PROTOCOL NO. 1

**Precautionary Measures for Operating Courthouses
and Other Judicial Buildings**

- A. Continuity of Court Operations.**
- B. Health Screening and Self-Isolation Procedures.**
- C. Face Mask Requirements.**
- D. On-Site Employees and Telework Procedures.**
- E. Travel Restrictions for Judicial Officers and Employees.**
- F. Courthouse Cleaning Requirements.**

EMERGENCY COURT PROTOCOL NO. 2

Precautionary Measures for Conducting Judicial Proceedings

- A. Social Distancing and Use of Face Masks.**
- B. Format of Court Proceedings.**
- C. Resumption of Jury Trials.**

EMERGENCY COURT PROTOCOL NO. 3

Temporary Procedural Requirements for Judicial Proceedings

- A. Filing by Email and Fax.**
- B. Exhibits in Remote Proceedings.**
- C. Identification Issues in Remote Proceedings.**
- D. Temporary Stays.**
- E. Peremptory Excusal of Judges.**
- F. Deadlines for Trials in Criminal Cases.**
- G. Plea and Settlement Deadlines.**
- H. Motions to Reduce Sentences.**

1 courts shall screen any person wishing to enter a courthouse or other building
2 operated or occupied by the New Mexico Judiciary and deny access to anyone,
3 including any judicial officer, judicial employee, juror, witness, attorney, litigant, or
4 other person, as appropriate, based on the answers to the screening questions
5 required by the Supreme Court for entry to courthouses and other judicial buildings,
6 which are posted on the New Mexico Judiciary website on the New Mexico Courts
7 - Coronavirus (COVID-19) Information webpage at nmcourts.gov.

8 2. All courts shall conduct temperature checks for all persons, including
9 judicial officers and judicial employees, seeking to enter a courthouse or other
10 judicial building operated or occupied by the New Mexico Judiciary and shall deny
11 entry to anyone with a temperature of 100.4 degrees Fahrenheit or higher.

12 3. All courts shall maintain a daily log of all persons, including judicial
13 officers and judicial employees, entering a courtroom. The daily log shall include
14 the name, telephone number, and date of entry for each person on the log. The daily
15 log shall be retained for four (4) weeks.

16 4. Any person, other than a judicial officer or judicial employees, who
17 engages in or returns from out-of-state travel may enter a courthouse to appear
18 pursuant to a court order, provided that the person successfully passes all other safety
19 and public health screenings required by the court and otherwise complies with all
20 other applicable directives from public health authorities.

1 **C. Face Mask Requirements.**

2 1. The use of a protective face covering that covers the nose and mouth
3 shall be required by anyone, including judicial officers and judicial employees,
4 entering and while in a courthouse, judicial building, or other physical space used,
5 occupied, or operated by the New Mexico Judiciary, provided that this order shall
6 not apply to the following individuals:

7 (a) young children who are unable to remove the face covering
8 without assistance;

9 (b) any person who provides written proof that the person has been
10 advised by a health care provider not to wear a face covering; or

11 (c) anyone who is unconscious, incapacitated, or otherwise unable
12 to remove a face covering without assistance.

13 *See also* Emergency Court Protocol No. 2, Subsections A(2) and (3).

14 2. The use of a protective face covering is not required by a judicial officer
15 or employee when in that person's private office with no one else present.

16 **D. On-Site Employees and Telework Procedures.**

17 1. The chief judge or administrative authority in each judicial district may
18 permit judicial employees to work from home if they can effectively perform their
19 designated functions remotely, provided that adequate personnel continue to remain

1 on site for court operations that must take place inside the courthouse.

2 2. Any judicial officer or employee who is denied access to a courthouse
3 or other building operated or occupied by the New Mexico Judiciary because of the
4 results of the screening or temperature check requirements in these Emergency Court
5 Protocols shall be required to do the following unless otherwise directed by the chief
6 judge of the judicial district:

7 (a) engage in a fourteen (14)-day period of self-isolation;

8 (b) obtain a test for COVID-19 in accordance with New Mexico
9 Department of Health protocols and disclose the results of the test to the chief judge
10 of the judicial district; and

11 (c) work from home to the extent that their work can be performed
12 remotely with the permission of the chief judge or other administrative authority of
13 the affected individual.

14 3. Any judicial employee engaged in a period of self-isolation required
15 under these Emergency Court Protocols who is not able or permitted to work from
16 home shall use annual and sick leave or, if eligible, leave under the Families First
17 Coronavirus Response Act.

18 **E. Travel Restrictions for Judicial Officers and Employees.**

19 1. The suspension of all out-of-state travel on work-related business by

1 judicial officers and judicial employees of the New Mexico Judiciary shall remain
2 in effect until further order of the Court.

3 2. All judicial officers and judicial employees are strongly discouraged
4 from traveling out-of-state on personal business.

5 3. Any judicial officer or judicial employee who engages in out-of-state
6 travel shall report the nature, extent, and details of the travel to the chief judge of the
7 judicial district before traveling or, if advance notice of the out-of-state travel is not
8 possible because of unforeseen, emergency circumstances, as soon as possible after
9 the travel begins.

10 4. Any judicial officer or judicial employee who engages in or returns
11 from out-of-state or international travel shall engage in a fourteen (14)-day period
12 of self-isolation upon return to New Mexico before returning to the workplace.

13 5. If a judicial officer or judicial employee has contact with any person,
14 including a household member, while that person is required to engage in a period
15 of self-isolation under any applicable executive order, the judicial officer or judicial
16 employee shall engage in a fourteen (14)-day period of self-isolation from the date
17 of contact with that person before returning to the workplace.

18 6. Exceptions to the self-isolation required under Subsections (E)(4) and

1 (E)(5) of this Protocol are permitted under the following circumstances:

2 (a) Out-of-state travel for commuting to and from the personal
3 residence of the judicial officer or employee shall not require self-isolation if
4 telework is not available;

5 (b) Out-of-state travel for essential medical treatment for the judicial
6 officer or employee or that person's immediate family member shall not require self-
7 isolation, provided that the travel is not to an international destination.

8 7. The exceptions to self-isolation in Subsections (E)(6)(a) and (b) of this
9 Protocol shall not apply to the following:

10 (a) Out-of-state travel to another state where the COVID-19 regional
11 transmission rate is greater than 1.05; and

12 (b) Out-of-state travel that included discretionary stops in addition
13 to the intended destination, that included a mass gathering with other persons, or that
14 did not otherwise comply with other social distancing requirements and
15 recommendations from New Mexico public health authorities.

16 **F. Courthouse Cleaning Requirements.**

17 All courthouses and other judicial buildings operated by the New Mexico
18 Judiciary must be maintained in accordance with the guidelines issued by the New

- 1 Mexico Department of Health for the cleaning and disinfection of public facilities
- 2 during the current public health emergency. *See* Cleaning and Disinfection of Public
- 3 Facilities in Response to Novel Coronavirus (COVID-19) (Issued March 22, 2020).
- 4 [Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020.]

1 face covering, which may be granted in the discretion of the judge subject to the
2 following requirements:

3 (a) the witness shall be required to appear by two-way audio-visual
4 connection outside of the courtroom;

5 (b) the audio-visual connection must enable simultaneous audio-
6 visual communication between the witness and the judge and attorneys in the
7 courtroom for direct examination, cross-examination, and other necessary
8 communications during the testimony of the witness;

9 (c) no other person shall be present in the room with the witness
10 while the witness is unmasked;

11 (d) the judge, court monitor or court reporter, the litigants and their
12 counsel who are present in the courtroom, and all jurors shall be able to see, hear,
13 and observe the demeanor of the witness while testifying;

14 (e) if the witness is a party to the case, the ability for confidential
15 communication between the testifying party and the party's attorney shall be made
16 available; and

17 (f) the judge shall make a factual finding on the record of the
18 necessity for allowing audio-visual testimony to further an important public policy,
19 which may include finding that the witness is unavailable for testimony in the
20 courtroom because of the need to protect public health during the current public

1 health emergency.

2 **B. Format of Court Proceedings.**

3 1. All hearings, except for jury trials, shall use telephonic or audio-video
4 connection for court appearances by all attorneys, litigants, and witnesses, unless the
5 judge presiding over the bench trial or other hearing makes oral or written findings
6 of fact and conclusions of law supporting a compelling need for an in-person
7 appearance that are specific to the particular circumstances in an individual case.

8 2. A judge shall obtain the approval of the chief judge of the judicial
9 district before proceeding with an in-person appearance that is requested upon
10 motion of a party or upon the judge's own motion.

11 3. A judge may continue to take other protective measures, including the
12 granting of continuances upon motion of any party or the judge's own motion, in
13 appropriate cases when remote appearances are not feasible but a compelling need
14 for an in-person appearance does not exist.

15 4. Telephonic or audio-video hearings shall be held in a manner that
16 allows the press and members of the public to observe the proceeding.

17 5. Any criminal procedure rules requiring the presence of the defendant
18 may be accomplished through remote, audio-visual appearance in the discretion of
19 the judge, provided that confidential communication between the defendant and
20 defense counsel is made available.

1 **C. Resumption of Jury Trials and Other In-Person Proceedings.**

2 1. The resumption of civil and criminal jury trials and other in-person
3 proceedings by July 15, 2020, shall occur in each judicial district pursuant to
4 individualized plans submitted by the chief judge in each judicial district for
5 approval by the Supreme Court.

6 2. Jury trials and other in-person proceedings shall be held in a manner
7 that allows the press and members of the public to attend in person or, if necessary
8 to comply with the social distancing requirements in these Emergency Court
9 Protocols, by audio or audio-video connection.

10 3. Each judicial district's plan for resuming jury trials and other in-person
11 proceedings shall incorporate all of the precautionary measures in these Emergency
12 Court Protocols, which shall include maintaining a minimum distance of six (6) feet
13 in each direction between every individual participating in the trial proceedings.
14 Approved plans for resuming jury trials and other in-person proceedings shall not be
15 revised without approval of the Supreme Court.

16 [Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020.]

1 (b) an exhibit list that indicates whether the parties stipulate or object
2 to the admission of each proffered exhibit and, if opposed, the grounds for any
3 objections.

4 2. If it appears that one or more proffered exhibits will be opposed, the
5 presiding judge may hold an evidentiary hearing prior to the hearing at which the
6 exhibits are sought to be admitted in order to resolve objections to the admission of
7 exhibits.

8 3. The admission of exhibits opposed on foundational or authentication
9 grounds may be conditionally admitted pending witness testimony, but purely legal
10 objections to the admission of an exhibit may be resolved before the hearing for
11 which the exhibits are sought to be admitted.

12 **C. Identification Issues in Remote Criminal Proceedings.**

13 If a party anticipates challenging the identification of a defendant at a hearing
14 to be held by telephonic or audio-video connection, that party shall notify the court
15 and opposing counsel at least forty-eight (48) hours before the hearing so that the
16 court and opposing counsel have adequate time to prepare and make arrangements
17 for conducting the hearing in a manner conducive to addressing and resolving a
18 challenge to the identity of the defendant.

19 **D. Temporary Stays.**

20 No court shall order a blanket temporary stay of any type of court proceeding

1 except pursuant to written order of the Supreme Court. *See, e.g.*, Order No. 20-8500-
2 007 (Staying Execution of Writs of Restitution in Eviction Proceedings); Order No.
3 20-8500-008 (Staying Writs of Restitution under Mobile Home Park Act); Order
4 No. 20-8500-021(Staying Issuance of Writs of Garnishment and Writs of Execution
5 in Consumer Debt Collection Cases).

6 **E. Peremptory Excusal of Judges.**

7 To facilitate case management processes in the district, metropolitan and
8 magistrate courts during the current public health emergency, the temporary
9 suspension of the exercise of peremptory excusals under Rules 1-088.1, 2-106, 3-
10 106, 5-106, 6-106, 7-106, 10-162, and LR2-308(E) NMRA shall remain in place
11 until further order of the Supreme Court.

12 **F. Deadlines for Trials in Criminal Cases.**

13 1. The calculation of any deadlines in Rules 5-604, 6-506, 7-506, 8-506,
14 and LR2-308 NMRA for all cases pending or filed on or after the date of this order
15 shall not include any period of time-delay caused by the current public health
16 emergency. But to exclude a period of time from the calculation of deadlines under
17 the terms of this Emergency Court Protocol, a judge must enter specific findings of
18 fact demonstrating that the period of delay was caused by the current public health
19 emergency.

20 **G. Plea and Settlement Deadlines.**

1 1. In criminal and civil proceedings in which a jury or bench trial has been
2 scheduled by a district, magistrate, or metropolitan court, a plea agreement or a
3 settlement agreement between the parties that would eliminate the need for a trial
4 shall be submitted for the court’s consideration by a deadline set in the court’s
5 discretion that will allow the court sufficient time to take action on the plea
6 agreement or settlement agreement no later than five (5) business days before the
7 scheduled date for jury selection or commencement of a bench trial.

8 2. A request for the court to approve an untimely plea agreement or
9 settlement agreement shall not be granted except upon a written finding by the judge
10 of extraordinary circumstances that excuse the untimely submission of the
11 agreement. If the court denies a request to accept an untimely plea agreement or
12 settlement agreement, the case shall proceed to trial on the scheduled date.

13 3. Notwithstanding the denial of a request to accept an untimely plea
14 agreement in a criminal case, a defendant may elect to plead guilty to all charges
15 leaving full sentencing discretion with the court or the state may elect to dismiss all
16 charges with prejudice any time before or during trial.

17 4. The provisions of this Emergency Court Protocol shall not apply to the
18 plea deadline provisions in local Rule LR2-308 NMRA or to non-attorney
19 prosecutions in the metropolitan and magistrate courts.

20 5. This Emergency Court Protocol shall be effective for all cases in which

1 a jury selection or bench trial is scheduled to commence on or after July 1, 2020.

2 **H. Motions to Reduce Sentences.**

3 The deadline for filing a motion to reduce a sentence under Rule 5-801(A)
4 NMRA may be waived by the court upon a showing of an extraordinary change in
5 circumstances caused by the current public health emergency.

6 [Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020.]