

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

2                                   **October 15, 2020**

3                   **NO. 20-8500-038**

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

10                                   **ORDER**

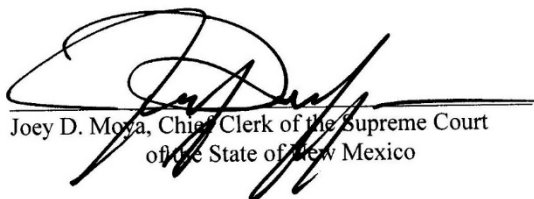
11                   WHEREAS, this matter having come before the Court upon recommendation  
12                   to amend Emergency Court Protocol No. 1, and the Court having considered the  
13                   recommendation and being sufficiently advised, Chief Justice Michael E. Vigil,  
14                   Justice Barbara J. Vigil, Justice Judith K. Nakamura, Justice C. Shannon Bacon, and  
15                   Justice David K. Thomson concurring;

16                   NOW, THEREFORE, IT IS ORDERED that the amendment of Emergency  
17                   Court Protocol No. 1 is APPROVED, effective October 16, 2020.

18                   IT IS SO ORDERED.



WITNESS, the Honorable Michael E. Vigil, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 15th day of October, 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; Scope of Protocols.**
- 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 or Other In-Person Proceedings.**

**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 and the Administrative Office of the Courts, and all references in the Emergency  
2 Court Protocols to the chief judge of the judicial district shall, when applicable,  
3 include the presiding judge of a probate or municipal court, the chief judge of the  
4 Bernalillo County Metropolitan Court, chief judge of the Court of Appeals for judges  
5 and employees of the New Mexico Court of Appeals, and the Chief Justice for  
6 Justices and employees of the Supreme Court or Administrative Office of the Courts.

7 **B. Health Screening and Self-Isolation Procedures.**

8 1. Any person wishing to enter a courthouse or other building operated or  
9 occupied by the New Mexico Judiciary shall comply with the screening  
10 requirements in this Protocol, which shall include all attorneys and employees of any  
11 other governmental entity housed within a building operated or occupied by the New  
12 Mexico Judiciary. In addition to the regular security screening that courts conduct,  
13 all courts shall screen any person wishing to enter a courthouse or other building  
14 operated or occupied by the New Mexico Judiciary and deny access to anyone,  
15 including any judicial officer, judicial employee, juror, witness, attorney, litigant, or  
16 other person, as appropriate, based on the answers to the screening questions  
17 required by the Supreme Court for entry to courthouses and other judicial buildings,  
18 which are posted on the New Mexico Judiciary website on the New Mexico Courts  
19 - Coronavirus (COVID-19) Information webpage at [nmcourts.gov](http://nmcourts.gov).

20 2. All courts shall conduct temperature checks using a thermometer on the

1 forehead for all persons, including judicial officers and judicial employees, seeking  
2 to enter a courthouse or other judicial building operated or occupied by the New  
3 Mexico Judiciary and shall deny entry to anyone with a temperature of 100.4 degrees  
4 Fahrenheit or higher.

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

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

14 5. Upon receipt of notice that a judicial officer or employee has received  
15 a positive test results for COVID-19, the chief judge of the judicial district in which  
16 the judicial officer or employee works shall report the positive test result to the  
17 Supreme Court Emergency Response Team at [emergencyresponse@nmcourts.gov](mailto:emergencyresponse@nmcourts.gov)  
18 within two (2) hours of receiving notification of the positive test result.

19 6. For purposes of these Emergency Court Protocols, “self-isolation”

1 refers to the voluntary physical separation of a judicial officer or employee in that  
2 person's residence or other place of lodging. Any judicial officer or employee who  
3 is self-isolating shall comply with all directives of the New Mexico Department of  
4 Health and shall not return to a courthouse or other building operated or occupied  
5 by the Judiciary until completing the required period of self-isolation.

6 **C. Face Mask Requirements.**

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

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

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

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

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

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

3           3.     Protective face coverings required by these Emergency Court Protocols  
4 shall comply with all design requirements approved by the Supreme Court and  
5 posted to the New Mexico Judiciary’s website.

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

7           1.     *Telework.* The chief judge or administrative authority in each judicial  
8 district may permit judicial employees to work from home if they can effectively  
9 perform their designated functions remotely, provided that adequate personnel  
10 continue to remain on site for court operations that must take place inside the  
11 courthouse.

12          2.     *On-Site Access Controls.* Any judicial officer or employee who is  
13 denied access to a courthouse or other building operated or occupied by the New  
14 Mexico Judiciary because of the results of the screening or temperature check  
15 requirements in these Emergency Court Protocols or who is displaying symptoms  
16 associated with COVID-19 while working on site, working remotely, or during off-  
17 duty hours shall be required to comply with Subsection (D)(3) or (D)(4) of this  
18 Protocol as applicable.

19          3.     *Requirements if On-Site Access Denied Because of Symptoms.* If

1 denied access to a courthouse or other building operated or occupied by the New  
2 Mexico Judiciary because of symptoms associated with COVID-19, the judicial  
3 officer or employee shall do the following:

4 (a) *Testing Required.* Obtain an immediate test for COVID-19 in  
5 accordance with New Mexico Department of Health protocols, if possible while still  
6 symptomatic, and disclose the results of the test to the chief judge of the judicial  
7 district or the chief judge's designee; and

8 (b) *Self-Isolation Required; Telework if Permitted.* Engage in a  
9 period of self-isolation as required under this Protocol and work from home during  
10 the period of self-isolation to the extent that work can be performed remotely with  
11 the permission of the chief judge or other administrative authority of the affected  
12 individual, with the duration of the required self-isolation determined as follows:

13 (i) *Positive Test.* If the test required under this Protocol is  
14 taken while symptomatic or asymptomatic and is positive for COVID-19, engage in  
15 a period of self-isolation of at least fourteen (14) days from symptom onset and as  
16 further directed by the New Mexico Department of Health until the Department of  
17 Health clears the person to resume activities recommended for the general public;

18 (ii) *Negative Test While Symptomatic.* If the test required



1 under this Protocol is taken while symptomatic and is negative for COVID-19,  
2 engage in a period of self-isolation until asymptomatic for seventy-two (72) hours;  
3 or

4 (iii) *Negative Test While Asymptomatic*. If the test required  
5 under this Protocol is taken when not displaying symptoms, engage in a fourteen  
6 (14)-day period of self-isolation from display of initial symptoms.

7 4. ***Requirements if On-Site Access Denied for Non-Symptom Reasons.***

8 If denied access to a courthouse or other building operated or occupied by the New  
9 Mexico Judiciary because of answers to screening questions regarding  
10 circumstances other than symptoms associated with COVID-19, the judicial officer  
11 or employee shall do the following:

12 (a) *Self-Isolation Required*. Engage in a fourteen (14)-day period of  
13 self-isolation unless otherwise directed by the chief judge of the judicial district in  
14 accordance with guidance provided by the New Mexico Judicial Branch Coronavirus  
15 (COVID-19): Frequently Asked Questions and Resources for Judges and CEOs;

16 (b) *Testing Required*. Obtain a test for COVID-19 in accordance  
17 with New Mexico Department of Health protocols and disclose the results of the test  
18 to the chief judge of the judicial district or the chief judge's designee; and

1           (c) *Telework if Permitted.* Work from home to the extent that their  
2 work can be performed remotely with the permission of the chief judge or other  
3 administrative authority of the affected individual.

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

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

9           1. The suspension of all out-of-state travel on work-related business by  
10 judicial officers and judicial employees of the New Mexico Judiciary shall remain  
11 in effect until further order of the Court.

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

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

19           4. Any judicial officer or judicial employee who arrives in New Mexico

1 from an out-of-state or international location that would require a member of the  
2 general public to engage in a period of self-isolation under any applicable executive  
3 order shall engage in a fourteen (14)-day period of self-isolation upon return to New  
4 Mexico before returning to the workplace.

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

10       6. Exceptions to the self-isolation required under Subsections (E)(4) and  
11 (E)(5) of this Protocol are permitted under the following circumstances:

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

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

18           (c) Out-of-state travel by a judicial officer or employee who is

1 outside the state for twenty-four (24) hours or less to attend to non-discretionary  
2 parenting responsibilities, such as travel for custody or visitation exchanges or to  
3 transport a child to or from school or college.

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

6 (a) Out-of-state travel for vacation purposes; and

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

11 **F. Courthouse Cleaning Requirements.**

12 All courthouses and other judicial buildings operated by the New Mexico  
13 Judiciary must be maintained in accordance with the guidelines issued by the New  
14 Mexico Department of Health for the cleaning and disinfection of public facilities  
15 during the current public health emergency. *See* Cleaning and Disinfection of Public  
16 Facilities in Response to Novel Coronavirus (COVID-19) (Issued March 22, 2020).

17 [Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020; as  
18 amended by Supreme Court Order No. 20-8500-034, effective August 14, 2020; as  
19 amended by Supreme Court Order No. 20-8500-037, effective September 4, 2020;

1 as amended by Supreme Court Order No. 20-8500-038, effective October 16, 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.]