



STATE OF NEW MEXICO

Ninth Judicial District Court

The Ninth Judicial District Court's plan to gradually resume and expand court operations, including in-person hearings and jury trials, in an environment where the coronavirus remains present has been developed in coordination with the Court Executive Officer, Court Attorney, District Attorney's Office, Public Defender's Office, all District and Magistrate Judges of the Ninth Judicial District and the Criminal Justice Coordinating Council. The judicial facilities in the Ninth Judicial District include the Curry County District Court, Curry County Magistrate Court, Roosevelt County District Court and Roosevelt County Magistrate Court. This plan is evolving and may be amended or modified as the Court continues to identify issues.

Safety: minimizing the risk of exposure to the novel coronavirus

The Ninth Judicial District Court will continue to keep a minimal amount of people in our four judicial facilities and keep them safe by:

- 1) Continuing forward with remote appearances as the default for most Court proceedings
- 2) Allowing self-represented litigants to fax or email pleadings for filing
- 3) Telework/Shiftwork/Remote Training for staff
- 4) Screening criteria
- 5) Cleaning protocols
- 6) Social distancing
- 7) Masks/face coverings/other protective equipment

Managing the number of people permitted in our courthouses.

Criteria for in-person hearings

We will continue remote proceedings in all cases where it is possible and practicable.

Criteria for deciding when an in-person hearing will be held (if a remote proceeding is not possible or is impractical):

The presumption is that all attorneys, litigants and witnesses will appear via telephone or by video. The Court has implemented the use of Google Meet.

In order for an attorney, litigant or witness to appear in-person at a hearing, the parties may move the Court, in writing, for an in-person appearance OR the judge presiding over the case may, sua sponte, require in-person appearance after consultation with the parties and the chief judge of the district.

The Chief Judge of the Ninth Judicial District, through consultation with the Judges of the Ninth Judicial District, has identified the following types of hearings that may require the in-person appearance of a defendant, petitioner or respondent, and through this identification, the Chief Judge authorizes each judge, in his or her discretion, to require in-person appearance at the hearing:

1. **Plea/Disposition Hearings and Sentencing Hearings** in Magistrate and District Court. Defendants shall appear in-person unless otherwise determined by the presiding Judge over the case;
2. **Probation Violation Revocation Hearings** in Magistrate and District Court. If a Defendant is not in custody, the Defendant shall appear in-person unless otherwise determined by the presiding Judge. If a Defendant is in custody, then audio-visual appearance may be permitted at the discretion of the presiding Judge. Witnesses will be presumed to appear remotely;
3. **Hearings on Motions to Revoke Conditions of Release** in Magistrate and District Court. The Defendant shall appear in-person when the Defendant is out of custody unless otherwise determined by the presiding Judge. If a Defendant is in custody, then audio-visual appearance may be permitted at

the discretion of the presiding Judge. Witnesses will be presumed to appear remotely; and

4. Preliminary Examination Hearings. If identification of the defendant is at issue, any necessary witnesses may appear in-person. Defense Counsel must give at least 48 hour notice to the State and the Court prior to the hearing if identification is in fact an issue. It is presumed that all other parties will appear remotely unless otherwise permitted by the presiding Judge. If identification is not an issue, then it is presumed that all parties will appear remotely unless otherwise permitted by the presiding Judge.

It is incumbent upon attorneys and self-represented litigants to file a Motion requesting in-person appearance for the attorney, client and witnesses.

The prosecution and defense shall arrange with the defendant, the victim, their respective witnesses, and any other person to attend the hearing via telephone conference or audio-visual conference. These people can be physically located off site at the prosecutor's office, the defense attorney's office or some other location as long as they have the ability to attend the hearing via the medium used to hold the hearing. This includes evidentiary hearings where physical evidence/exhibits will be introduced into the record.

In the event of an evidentiary hearing, the attorneys who intend to introduce exhibits/evidence into the record shall, not later than 48 hours prior to the hearing, provide the Court and all counsel of record with an Exhibit List and copies of the exhibits that they intend to use at the hearing, pursuant to Supreme Court Order 20-8500-12. The parties must follow the order and confer regarding the exhibits prior to Court. The copies of the exhibits can be provided, via email, to the TCAA for the district judge presiding over the hearing or the Court Manager in the Magistrate Court.

The exhibits shall be pre-marked. The prosecution/plaintiff shall use numbers and the defense/respondent shall use letters to identify their respective exhibits. The exhibit, if a document, shall be legible; and if a photograph/video, shall be such that the thing depicted is easily and readily visible. Counsel shall use their best discretion and professional judgment to

limit the number of exhibits submitted to those that are necessary to establish their point. Duplicative exhibits shall not be allowed.

Privacy of attorney-client communication is essential and when the need arises, the Court will make arrangements to permit confidential communication. It is required that defense counsel speak with their clients prior to court hearings.

We have identified one method the Magistrate and District Courts will use to conduct remote hearings which is Google Meet. Google Meet, also more widely known as Google Hangouts, can accept video conferencing and telephonic calls simultaneously. Up to twenty separate parties may call into a virtual meeting room in which all persons can communicate simultaneously with each other.

If Google Meet is not available to an attorney, litigant, or witness, telephonic appearance should be available. In-custody Defendants will appear via video from the detention center.

Also, pursuant to New Mexico Supreme Court Order No. 20-8500-006, "the parties may, by motion, request in-person appearance when necessary. If a judge identifies a need for an in-person appearance, the judge shall confer with the parties and the chief judge of the district".

Filing

The Ninth Judicial District Court plans to continue to allow attorneys and self-represented litigants to file pleadings by email or fax in case types not currently available by e-filing.

Scheduling

Hearings:

In the Ninth Judicial District, we plan to maintain remote participation for hearings, and in doing so, courthouse traffic has been very minimal. As a result, we do not see a need to stagger hearings.

Jury Trials:

Traditionally, the judges who mainly hear criminal cases each have a jury trial docket week for each month. Each jury trial docket week begins on Monday with jury selections for the jury trials set for the following four days (Tuesday through Friday). At times, a jury trial will proceed in the afternoon of the Monday jury selection so no more than five jury trials will proceed for each jury trial docket week. In conducting jury selections and trials in this manner, the jury trials are staggered so as to avoid multiple selections and trials proceeding at the same time.

With regard to our plan in consideration of the public health crisis, we do not foresee the need to change the manner at which we conduct our jury trial docket weeks since each judge has a single week out of each month to conduct jury trials. When a firm multiple-day setting is needed for a jury trial, we will schedule that jury selection and trial to be held on the week not being used by a judge for his or her jury trial docket week.

Keeping the public, employees and judges safe

Protect judges and court staff from exposure to the degree possible

The Ninth Judicial District Court will continue to allow all employees, including judicial staff, to work in a manner that best promotes social distancing. This includes shift work, telework, and remote training as approved by a Judge or Department Supervisor.

Signs for keeping a 6-foot distance are visibly prominent throughout all judicial locations in the Ninth Judicial District.

The New Mexico Judiciary requires that all court employees and judicial officers must wear masks/face coverings in the workplace. All judges/staff have been provided with 2 masks/face coverings.

Plexi-glass/lexan dividers/shields will be installed in all courtrooms where a 6-foot distance cannot safely be maintained during an in-person hearing or jury trial.

Cleaning requirements are as follows:

- 1) Security Bailiffs have been advised to encourage (to the best of their ability) respiratory etiquette (covering coughs and sneezes). Signs advising visitors to wash hands and sneeze into tissues or sleeve are visibly prominent.
- 2) High traffic areas, objects and surfaces are regularly cleaned and/or disinfected. This includes common tables and podiums between uses, door handles and elevator buttons and security buckets.
- 3) All courtrooms and high traffic areas contain disinfecting wipes, trash receptacles and/or tissue.
- 4) All restrooms contain adequate soap.
- 5) Hand sanitizer is available to all staff and visitors in a judicial facility. Currently, in the Curry County District Courthouse and the Roosevelt County District Courthouse, we have hand sanitizers mounted immediately outside the main courtrooms, in the elevator, outside the court clerk's office, and inside the court clerk's office. In addition, we have hand sanitizer bottles placed at the entry point, throughout the courtrooms and in almost every office. In the Curry Magistrate Courthouse and the Roosevelt Magistrate Courthouse, we have ordered stand-alone hand sanitizer stations, but these orders will not arrive until July. Nevertheless, hand sanitizer can be found throughout all public areas, the courtrooms, the clerk's offices, and in every office.

Screening

Emergency response signs are posted where the public can view before or upon entry to the building. Signs are visibly posted regarding reporting symptoms, not entering the court if exhibiting symptoms, etc.

All staff has been instructed to self-monitor on a daily basis. Daily screening and forehead temperature checks using an infrared thermometer are conducted to ensure judges, court staff and the public do not enter a judicial entity when they are ill. Screenings are conducted by sheriff's office staff and/or first "point-of-contact" court personnel.

The following screening questions are asked at each facility:

- 1) Have you been asked to self-quarantine because of COVID-19 and are you still within the quarantine period?
- 2) Within the past 14 days, have you been diagnosed with COVID-19 by a doctor?
- 3) Within the past 14 days, have you had a positive test result for COVID-19 from a testing center by the Department of Health?
- 4) In the past 14 days, have you been in contact with anyone who you know has COVID-19?
- 5) Within the past 14 days, have you had a fever above 100.4 degrees, chills, sore throat, body aches, or headaches?
- 6) Within the past 14 days, have you developed new shortness of breath, difficulty breathing, or dry cough?
- 7) Have you recently developed a loss of taste or smell?

Vulnerable Populations

Jury - 65 and older individuals can be postponed from serving jury duty upon request. Individuals with serious underlying conditions such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those with compromised immune systems resulting from cancer treatment or other autoimmune disorders will be excused with a physician's note.

Court - 65 and older individuals as well as individuals with serious underlying conditions such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those with compromised immune systems resulting from cancer treatment or other autoimmune disorders will appear for court hearings remotely.

Social Distancing

Security Bailiffs will ensure adequate social distancing of at least six feet will be maintained for all individuals in a judicial facility. This includes public common areas, courtroom galleries, wells of the courtroom, hallways, elevators, restrooms and other locations where the public might gather.

Gathering Limits

Adequate spacing within a courtroom or facility used for judicial purposes will be focused on the number of people who can gather in a particular space while consistently maintain a minimum six-foot distance, in all directions. This includes the lobbies and elevators as well.

Face Coverings

The New Mexico Judiciary requires that all court employees and judicial officers must wear masks/face coverings in the workplace. The Court will provide face coverings if necessary for individuals required to appear in Court (jurors, witnesses, attorneys and others who may not have them).

Courtroom Protocols (jury trials/in-person hearings)

A minimum 6' distance must be maintained every person in the courtroom. This includes when individuals enter, exit or any time a person moves. The number of individuals you can have in a courtroom while maintaining the 6' minimum is the new occupancy limit. This will be posted in each courtroom as applicable.

Where a minimum 6' cannot be maintained, plexiglass/lexan glass will be installed.

Security Bailiffs will be present and ensure jurors will enter/exit slowly in six feet intervals for spacing, aisle by aisle.

Temperature Checking

Temperature checking is a necessary component of screening judges, employees and all courthouse visitors to ensure an outbreak of the virus in our facilities is avoided. Temperature checks will be conducted by designated staff/sheriff's office employees for all visitors to judicial facilities. In addition, designated staff per location will be assigned to monitor the daily temperature of staff reporting to work.

Hygiene

All individuals in judicial facilities will have access to supplies to maintain high levels of hygiene. This includes hand sanitizer dispensers, tissues, signage and waste bins.

Cleaning

Frequent and appropriate cleaning consistent with NMDOH and CDC guidelines of surfaces in and around courtrooms (including between hearings) and common areas will be conducted.

Curry District Court – All restrooms, courtrooms, hallways, conference rooms, elevators, and holding cells are cleaned/sanitized/disinfected twice daily by Curry County janitorial staff. This includes counters, doorknobs, keypads, handrails, benches, chairs, etc. Court staff also disinfect and wipe down all areas used by court visitors/litigants after each use. All toilet paper dispensers, soap dispensers, and paper towel dispensers are refilled as needed.

Curry Magistrate Court – Staff cleans/disinfects common areas in the morning, afternoon and whenever someone coughs/sneezes. Contracted janitorial staff clean and disinfect the entire facility Monday thru Friday.

Roosevelt District Court – Court staff disinfect and wipe down all areas used by court visitors/litigants after each use. Contracted janitorial staff clean and disinfect the entire facility every other

week. All employees working for this contractor are trained and certified in COVID 19 cleaning techniques.

Roosevelt Magistrate Court – Court staff disinfect and wipe down all areas used by court visitors/litigants frequently throughout the day, including the courtroom and lobby (sanitizing door handles, counter tops, chairs, tables, pens, etc.). Contracted janitorial staff clean and disinfect the facility every week. All employees working for this contractor are trained and certified in COVID 19 cleaning techniques.

Contracted janitorial staff is available upon request.

Docket Management and Scheduling

Address backlog:

In order to address any backlog in both Criminal and Civil cases, we see the most appropriate method as utilizing and enforcing scheduling orders containing deadlines. With Criminal cases, we run a trailing trial docket and have a Docket Call hearing one week before scheduled trials. The plea deadline is the Docket Call hearing. If no plea is announced, the case is ready for trial. If a plea is announced, the next case on the docket moves into the first trial slot. This insures that not only will we address the backlog, but we can keep the new cases moving on the trailing docket. Additionally, most judges in the district have eliminated unnecessary hearings that had previously been utilized to get the parties together to assess the status. Judges are planning to be more stringent with deadlines and keep cases moving.

Civil cases may not have the backlog of trials, but they still need merits, motions and other hearings. Judges are again planning to utilize scheduling orders in civil cases to keep the cases moving and set important deadlines.

Prioritizing Cases:

As a general jurisdiction Court our priorities are set by local rule. However, within the framework of the local rule, these are the priorities our district has agreed upon:

- (1) Juvenile cases, including those set for trial
- (2) Criminal cases where the defendant is in pretrial detention (oldest case first)
- (3) Criminal cases where the defendant is in custody (oldest case first)
- (4) Criminal cases where the defendant is not in custody (oldest case first)
- (5) Domestic relations matters
- (6) Civil and other matters

Manage the influx of new cases:

Our judges are constantly running reports to see if there are cases without hearings set and tracking new cases. Keeping on top of these reports will help manage the influx. Additionally each judge has a set time on his or her calendar for arraignments. Following arraignments, each judge will utilize the scheduling orders and set appropriate deadlines to keep the Criminal cases moving. Regarding Civil and Domestic Relations matters, this district plans to continue to utilize mediation orders and referrals to Online Dispute Resolution to hopefully aid disposition or resolution without court appearances. If there is a need for court appearance, each judge will use scheduling orders to move cases to prevent further backlog.

Our Court will encourage alternate witness testimony or presentation with the stipulation of the parties, especially in Civil and Domestic relations cases. What the CoVid-19 pandemic has taught us is that we can utilize technology and still conduct accurate and appropriate proceedings. Witnesses who could testify via Google Meet, Skype, or other platform will be allowed provided there is no objection in Civil cases.

Anticipated case type increases:

Currently our Courts are seeing an increase in the number of Criminal, Domestic Violence, Civil, Domestic Relations and Juvenile Delinquency cases. In each of these case types our numbers are at approximately least one

month ahead of where we were this time last year. We have seen a large increase in Domestic Violence cases and currently our numbers are three months ahead of last year. Additionally, we can predict that there may be an increase in Foreclosure and Landlord/Tenant cases in the District Court once the pandemic eases.

The Ninth Judicial District Court has the necessary resources to deal with any influx of new cases.

Civil trials we be conducted in similar fashion to the criminal jury trial procedures discussed in our plan. One possibility would be to ask counsel if they would consider stipulating to a 6 person jury to reduce the number of jurors called into selection.

Plea Conference Meeting

A mandatory plea conference meeting will be held at least one month before the jury trial setting, with required attendance of the prosecutor, defense counsel, and the defendant. Counsel shall be responsible for scheduling the plea conference meeting using Google Meets (or another agreed upon platform). A Certificate of Compliance affirming that the conference was held shall be signed by both attorneys and filed. Counsel shall indicate on the Certificate if the case is proceeding to jury trial or if a Change of Plea hearing is requested.

(*All minimum plea or settlement deadlines will be implemented in accordance with the forthcoming order from the Supreme Court)

Jury Trials

A mock trial will conducted in jury ready courtrooms to help identify and resolve any issues before an actual jury trial occurs.

The Ninth Judicial District Court website/social media page will be updated with information for jurors.

We will ensure our local media has received all press releases regarding safety protocols the court has undertaken and what is expected of those visiting our facilities.

Our cleaning processes and schedules are available at all judicial facilities.

We will be limiting the size of all jury panels to no more than can safely fit into our space while maintaining social distance of six feet.

We will be sharing panels across multiple courtrooms.

Dedicated rooms will be reserved for remote viewing. A camera will be set up in the courtroom and the sound system is capable of transmitting sound to the remote viewing room.

Judges will utilize and enforcing scheduling orders containing deadlines.

Proposed jury instructions shall be submitted prior to trial and a hearing will be scheduled to resolve as many jury instruction issues as possible before the day of trial.

A copy of the jury instructions will be provided to each juror to prevent the need to pass or share copies.

For all proceedings and case types, if a party plans to offer documentary exhibits for admission at the hearing, the offering party shall submit the proffered exhibits to the court, with a copy to the opposing party, no later than forty-eight (48) hours before the start of the hearing, unless otherwise directed by the court, along with an exhibit list that indicates whether the parties stipulate or object to the admission of each proffered exhibit and the grounds for any objections. If it appears that one or more proffered exhibits will be opposed, the presiding judge may hold an evidentiary hearing prior to the hearing at which the exhibits are sought to be admitted in order to resolve objections to the admission of exhibits. The admission of exhibits opposed on foundational or authentication grounds may be conditionally admitted pending witness testimony, but purely legal objections to the

admission of an exhibit may be resolved before the hearing for which the exhibits are sought to be admitted.

Motions in limine shall be addressed prior to the day of trial, unless the court makes a finding of good cause for the delay. It is the duty of counsel to request a hearing on motions in limine.

Any jurors selected for a jury trial will not be excluded from subsequent selections.

Excuse jurors 65 or older and those who fall into a vulnerable population as defined by the CDC upon request.

1. COVID-19 constitutes a well-documented extreme physical risk to elderly people, and participation in jury service increases the risk of exposure. Potential jurors aged 75 and older seeking an exemption from jury service may be excused under Section 38-5-2 (C), allowing a person to be excused without an affidavit at the judge's discretion if service would cause an extreme physical hardship or if the person presents other satisfactory evidence. In most instances, jury clerks can independently confirm a potential juror's age with existing data.

38-5-2. Exemption from jury service; excusals; service of disqualified juror.

C. A person may be excused from jury service at the discretion of the judge or the judge's designee, with or without the person's personal attendance upon the court, if:

- (1) jury service would cause undue or extreme physical or financial hardship to the prospective juror or to a person under the prospective juror's care or supervision;
- (2) the person has an emergency that renders the person unable to perform jury service; or
- (3) the person presents other satisfactory evidence to the judge or the judge's designee.

Jurors will be screened in advance and health limitations will be addressed prior to entry into a judicial facility. This will include temperature checks and routine questions.

Jury selections may be held at a larger facility, if necessary.

Masks will be provided to jurors who do not have them.

Hand sanitizer, tissue, and trash receptacles will be available to all jurors.

Bags (from the ERT) will also be distributed to jurors which will contain hand sanitizer, a pen, and a mask for their use throughout the trial.

All courtrooms and other spaces used for jury selection will be cleaned and disinfected before and after use.

Restrooms to be utilized one person at a time per restroom. Protocols are in place to ensure proper cleaning of restrooms in all courthouses. We will post and maintain logs in the restrooms to track when they have been cleaned or sanitized.

Areas will be clearly marked to ensure appropriate social distancing and wayfinding. Areas outside of the court buildings and interior hallways of court buildings will also be marked to ensure proper social distancing and traffic flow. Public common areas, including breakrooms and snack rooms, will be marked off and closed to the public.

All fire and security doors will remain closed.

Portable lexan glass/plexiglass partitions will be used during trial on all benches with less than six foot separation between the judge, witness stand and monitor station.

The planned installation of the lexan glass/plexiglass in front of the bench will allow for bench conferences to be conducted without concern in all courtrooms within the Ninth Judicial District Court.

The height of the lexan glass/plexiglass barrier will allow for protection when someone is standing. In addition, the dividers will be sufficiently tall and wide to act as a barrier between coughs, sneezes, loud talking, and other potential

actions that could spread the virus. This will not replace the mask and social distance requirements.

Defendants will be able to communicate with their attorney by passing notes and or utilizing interpretation equipment if the equipment is not being utilized. Counsel will be instructed to be mindful of asking for a brief break if a moment is needed to read a note from a defendant.

Juries will deliberate in courtroom galleries.

The Press or Public can attend a jury trial via Google Meet and the Court can mute all parties to avoid potential disruptions.

In order to support contact tracing, a daily log, which includes the date, name, and phone number of any person attending hearings and trials, will be maintained by each division for anyone in the courtroom. This log will be retained for four weeks.

Resources

The Ninth Judicial District has the resources it needs to implement its proposed plan through August 31, 2020. We currently are working with both local and statewide suppliers of masks, thermometers, etc.

Other Topics