

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

2 **August 14, 2020**

3 **NO. 20-8500-034**

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
11 **ORDER**

12 WHEREAS, on July 6, 2020, this Court adopted the New Mexico Judiciary
13 Public Health Emergency Protocols (Emergency Court Protocols) to guide the safe
14 and effective administration of the New Mexico Judiciary during the COVID-19
15 pandemic;

16 WHEREAS, on August 6, 2020, the Governor of New Mexico issued
17 Executive Order 2020-056, which, among other things, removed self-isolation and
18 self-quarantine restrictions for brief out-of-state travel by New Mexico residents “for
19 matters attendant to parenting responsibilities;” and

20 WHEREAS, this matter having come before the Court upon recommendation
21 to amend Emergency Court Protocol No. 1 to address out-of-state travel by judicial
22 officers and employees of the New Mexico Judiciary for matters attendant to

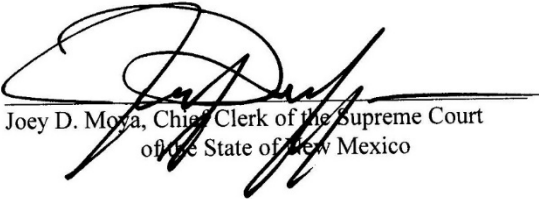
1 parenting responsibility and to clarify other travel, reporting, screening, and self-
2 isolation requirements in the Emergency Court Protocols, and the Court having
3 considered the recommendation and being sufficiently advised, Chief Justice
4 Michael E. Vigil, Justice Barbara J. Vigil, Justice Judith K. Nakamura, Justice C.
5 Shannon Bacon, and Justice David K. Thomson concurring;

6 NOW, THEREFORE, IT IS ORDERED that the amendment of Emergency
7 Court Protocol No. 1 is APPROVED, effective immediately.

8 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 14th day of August, 2020.


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

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

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

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

20 4. Any person, other than a judicial officer or judicial employees, who

1 engages in or returns from out-of-state travel may enter a courthouse to appear
2 pursuant to a court order, provided that the person successfully passes all other safety
3 and public health screenings required by the court and otherwise complies with all
4 other applicable directives from public health authorities.

5 5. Upon receipt of notice that a judicial officer or employee has received
6 a positive test results for COVID-19, the chief judge of the judicial district in which
7 the judicial officer or employee works shall report the positive test result to the
8 Supreme Court Emergency Response Team at emergencyresponse@nmcourts.gov
9 within two (2) hours of receiving notification of the positive test result.

10 6. For purposes of these Emergency Court Protocols, “self-isolation”
11 refers to the voluntary physical separation of a judicial officer or employee in that
12 person’s residence or other place of lodging. Any judicial officer or employee who
13 is self-isolating shall comply with all directives of the New Mexico Department of
14 Health and shall not return to a courthouse or other building operated or occupied
15 by the Judiciary until completing the required period of self-isolation.

16 **C. Face Mask Requirements.**

17 1. The use of a protective face covering that covers the nose and mouth
18 shall be required by anyone, including judicial officers and judicial employees,

1 entering and while in a courthouse, judicial building, or other physical space used,
2 occupied, or operated by the New Mexico Judiciary, provided that this order shall
3 not apply to the following individuals:

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

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

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

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

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

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

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

18 2. Any judicial officer or employee who is denied access to a courthouse
19 or other building operated or occupied by the New Mexico Judiciary because of the

1 results of the screening or temperature check requirements in these Emergency Court
2 Protocols shall be required to do the following unless otherwise directed by the chief
3 judge of the judicial district:

4 (a) engage in a fourteen (14)-day period of self-isolation;
5 (b) obtain a test for COVID-19 in accordance with New Mexico
6 Department of Health protocols and disclose the results of the test to the chief judge
7 of the judicial district; and

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

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

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

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

19 2. All judicial officers and judicial employees are strongly discouraged

1 from traveling out-of-state on personal business.

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

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

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

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

17 (a) Out-of-state travel for commuting to and from the personal
18 residence of the judicial officer or employee shall not require self-isolation if

1 telework is not available;

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

5 (c) Out-of-state travel by a judicial officer or employee who is
6 outside the state for twenty-four (24) hours or less to attend to non-discretionary
7 parenting responsibilities, such as travel for custody or visitation exchanges or to
8 transport a child to or from school or college.

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

11 (a) Out-of-state travel for vacation purposes; 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; as
5 amended by Supreme Court Order No. 20-8500-034, effective August 14, 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 **EMERGENCY COURT PROTOCOL NO. 3**

2 **Temporary Procedural Requirements for Judicial Proceedings**

3 **A. Filing by Email and Fax.**

4 1. All courts shall maintain local procedures for accepting filings by email
5 or by fax from self-represented litigants to minimize the need for self-represented
6 litigants to enter a courthouse to file a document.

7 2. Filing by email or fax also shall be permitted by attorneys in those case-
8 types that are not eligible for electronic filing through the New Mexico Judiciary’s
9 File and Serve system.

10 3. Applicable provisions in the rules of procedure addressing the filing of
11 documents in the appellate, district, metropolitan, and magistrate courts by email or
12 fax shall remain temporarily suspended to the extent necessary to accommodate
13 local procedures used by courts for expanded filing by email or fax during the current
14 public health emergency.

15 **B. Exhibits in Remote Proceedings.**

16 1. No later than forty-eight (48) hours before the start of any hearing held
17 by telephonic or audio-video connection at which a party plans to offer documentary
18 exhibits for admission, unless otherwise directed by the court, the offering party shall
19 submit the following to the court with a copy to the opposing parties:

20 (a) the proffered exhibits; and

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.]