

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

2 **May 21, 2021**

3 **NO. 21-8500-008**

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**

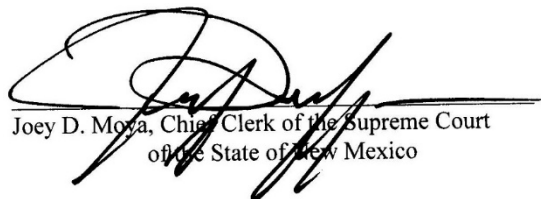
11 WHEREAS, this matter having come on for consideration by the Court upon  
12 recommendation to adopt amendments to New Mexico Judiciary Emergency Court  
13 Protocols Nos. 1 and 2 to revise certain masking, distancing, and telework  
14 provisions, and the Court having considered the recommendation and being  
15 sufficiently advised, Chief Justice Michael E. Vigil, Justice Barbara J. Vigil, Justice  
16 C. Shannon Bacon, Justice David K. Thomson, and Justice Julie J. Vargas  
17 concurring;

18 NOW, THEREFORE, IT IS ORDERED that the recommendation is  
19 ADOPTED and the amendment of Emergency Court Protocols Nos. 1 and 2 is  
20 APPROVED, effective May 24, 2021.

21 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 21st day of May, 2021.

  
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. Conduct 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 **EMERGENCY COURT PROTOCOL NO. 1**

2 **Precautionary Measures For Operating Courthouses**  
3 **and Other Judicial Buildings**

4 **A. Continuity of Court Operations; Scope of Protocols.**

5 1. All New Mexico state courts shall remain open and operating under  
6 regular business hours to ensure that the courts fulfill their constitutional and  
7 statutory responsibilities to all New Mexicans.

8 2. There shall be no blanket cancellation of cases or types of proceedings  
9 by New Mexico courts, unless authorized pursuant to an approved continuity of  
10 operations plan under Supreme Court Administrative Order No. 20-8500-016 or as  
11 otherwise ordered by the Supreme Court.

12 3. Probate courts and municipal courts in New Mexico may close if the  
13 building in which a court operates is closed by county or municipal authorities, or if  
14 the presiding judge in the court chooses to do so, provided that

15 (a) notice is posted at the closed courthouse with the locations and  
16 phone numbers of the nearest magistrate and district courts; and

17 (b) the public and the chief district judge in the judicial district is  
18 given advance notice of any such closure.

19 4. These Emergency Court Protocols shall apply to all appellate, district,  
20 metropolitan, magistrate, probate, and municipal courts in the State of New Mexico

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). All screening  
20 question forms submitted by judicial officers and judicial employees are

1 confidential, shall be retained for two (2) weeks for contact tracing purposes, and  
2 shall then be destroyed.

3       2. All courts shall conduct temperature checks using a thermometer on the  
4 forehead for all persons, including judicial officers and judicial employees, seeking  
5 to enter a courthouse or other judicial building operated or occupied by the New  
6 Mexico Judiciary and shall deny entry to anyone with a temperature of 100.4 degrees  
7 Fahrenheit or higher.

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

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

17       5. Upon receipt of notice that a judicial officer or employee has received  
18 a positive test results for COVID-19, the chief judge of the judicial district in which  
19 the judicial officer or employee works shall report the positive test result to the

1 Supreme Court Emergency Response Team at emergencyresponse@nmcourts.gov  
2 within two (2) hours of receiving notification of the positive test result.

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

9 **C. Face Mask Requirements.**

10 1. The use of a protective face covering that covers the nose and mouth  
11 shall be required by any member of the public, including jurors, witnesses, and  
12 attorneys, entering and while in a courthouse, judicial building, or other physical  
13 space used, occupied, or operated by the New Mexico Judiciary, provided that this  
14 order shall not apply to the following individuals:

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

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

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

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

4 2. The use of a protective face covering is not required by a judicial officer  
5 or employee who is fully vaccinated, as defined in the New Mexico Judicial Branch  
6 Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges,  
7 CEOs, and Employees, except while that judicial officer or employee is engaged in  
8 face-to-face interaction with a member of the public, is present in a public area of a  
9 courthouse or other judicial building, or is present during a trial or other in-person  
10 proceeding.

11 3. Any judicial officer or employee who is not fully vaccinated, as defined  
12 in the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently Asked  
13 Questions and Resources for Judges, CEOs, and Employees, shall be required to  
14 wear a protective face covering except when in that person's private office with no  
15 one else present or if that judicial officer or employee provides written proof that the  
16 person has been advised by a health care provider not to wear a face covering.

17 4. Any judicial officer or employee who is not fully vaccinated and who  
18 does not wear a mask or face covering as required by these Emergency Court

1 Protocols will be subject to a minimum three (3)-day suspension without pay.

2 5. Protective face coverings required by these Emergency Court Protocols  
3 shall comply with all design requirements approved by the Supreme Court and  
4 posted to the New Mexico Judiciary’s website, which shall include any directives  
5 for double-masking by judicial officers and employees.

6 6. The use of two (2) protective face coverings, i.e., double-masking, is  
7 required for jurors.

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

9 1. **Telework.** The chief judge or administrative authority in each judicial  
10 district may permit judicial employees to work from home if they can effectively  
11 perform their designated functions remotely, provided that adequate personnel  
12 continue to remain on site for court operations that must take place inside the  
13 courthouse. Any teleworking arrangements permitted by a chief judge or  
14 administrative authority shall be reported to the Supreme Court Emergency  
15 Response Team with an explanation of the reason why the teleworking arrangement  
16 was permitted.

17 2. **On-Site Access Controls.** Any judicial officer or employee who is  
18 denied access to a courthouse or other building operated or occupied by the New  
19 Mexico Judiciary because of the results of the screening or temperature check



1 requirements in these Emergency Court Protocols or who is displaying symptoms  
2 associated with COVID-19 while working on site, working remotely, or during off-  
3 duty hours shall be required to comply with Subsection (D)(3) or (D)(4) of this  
4 Protocol as applicable.

5       3.     ***Requirements if On-Site Access Denied Because of Symptoms.*** If  
6 denied access to a courthouse or other building operated or occupied by the New  
7 Mexico Judiciary because of symptoms associated with COVID-19, the judicial  
8 officer or employee shall do the following:

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

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

18             (i)    *Positive Test.* If the test required under this Protocol is

1 taken while symptomatic or asymptomatic and is positive for COVID-19, engage in  
2 a period of self-isolation of at least fourteen (14) days from symptom onset and as  
3 further directed by the New Mexico Department of Health. The self-isolating judicial  
4 officer or employee may return to work after being asymptomatic for seventy-two  
5 (72) hours, provided that the judicial officer or employee has self-isolated for a  
6 minimum of fourteen (14) days, successfully passed all other safety and public  
7 health screenings required by the court; and received written approval of the chief  
8 judge of the judicial district or the chief judge's designee;

9 (ii) *Negative Test While Symptomatic.* If the test required  
10 under this Protocol is taken while symptomatic and is negative for COVID-19,  
11 engage in a period of self-isolation until asymptomatic for seventy-two (72) hours  
12 unless otherwise directed by the chief judge of the judicial district in accordance  
13 with guidance provided by the New Mexico Judicial Branch Coronavirus (COVID-  
14 19): Frequently Asked Questions and Resources for Judges, CEOs, and Employees;  
15 or

16 (iii) *Negative Test While Asymptomatic.* If the test required  
17 under this Protocol is taken when not displaying symptoms, engage in a ten (10)-day  
18 period of self-isolation from display of initial symptoms.

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

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

6           (a)     *Self-Isolation Required.* The duration of required self-isolation  
7     will depend on the non-symptom reason for denied access as follows:

8           (i)     *Contact with Covid-Positive Household Member.* If a  
9     judicial officer or employee lives with a person who tests positive for COVID-19,  
10    the judicial officer or employee shall engage in a fourteen (14)-day period of self-  
11    isolation unless otherwise directed by the chief judge of the judicial district in  
12    accordance with guidance provided by the New Mexico Judicial Branch Coronavirus  
13    (COVID-19): Frequently Asked Questions and Resources for Judges, CEOs, and  
14    Employees;

15           (ii)    *Contact with Positive or Presumptive Positive Non-*  
16    *Household Member.* If a judicial officer or employee has contact with a non-  
17    household member who tests positive or is presumptive positive for COVID-19, the  
18    judicial officer or employee shall engage in a ten (10)-day period of self-isolation;

1           (b) *Testing Required.* Obtain a test for COVID-19 in accordance  
2 with the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently Asked  
3 Questions and Resources for Judges, CEOs, and Employees and disclose the results  
4 of the test to the chief judge of the judicial district or the chief judge’s designee; and

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

8           5. Any judicial employee engaged in a period of self-isolation required  
9 under these Emergency Court Protocols who is not able or permitted to work from  
10 home shall use annual and sick leave or, if eligible, leave provided under the New  
11 Mexico Judicial Branch Pandemic, Communicable Disease Emergency, including  
12 the Coronavirus (COVID-19) Policy and Emergency Leave.

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

14           1. The suspension of all out-of-state travel on work-related business by  
15 judicial officers and judicial employees of the New Mexico Judiciary shall remain  
16 in effect until further order of the Court for any judicial officer or judicial employee  
17 who is not fully vaccinated as defined in the New Mexico Judicial Branch  
18 Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges,  
19 CEOs, and Employees.

1           2.     All judicial officers and judicial employees who are not fully  
2 vaccinated as defined in the New Mexico Judicial Branch Coronavirus (COVID-19):  
3 Frequently Asked Questions and Resources for Judges, CEOs, and Employees are  
4 strongly discouraged from traveling out-of-state on personal business.

5           3.     Any judicial officer or judicial employee who is not fully vaccinated as  
6 defined in the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently  
7 Asked Questions and Resources for Judges, CEOs, and Employees and who engages  
8 in out-of-state travel shall report the nature, extent, and details of the travel to the  
9 chief judge of the judicial district before traveling or, if advance notice of the out-  
10 of-state travel is not possible because of unforeseen, emergency circumstances, as  
11 soon as possible after the travel begins. The chief judge may deny any leave request  
12 for out-of-state travel.

13           4.     Except as otherwise permitted in this Protocol, any judicial officer or  
14 judicial employee who arrives in New Mexico from an out-of-state or international  
15 location shall engage in a ten (10)-day period of self-isolation upon return to New  
16 Mexico before returning to the workplace, provided that return to work after a seven  
17 (7)-day period of self-isolation is permitted if the judicial officer or judicial  
18 employee takes a test for COVID-19 five (5) days after returning to New Mexico,

1 receives a negative test result, and is asymptomatic when returning to work .

2           5.     Except as otherwise permitted in this Protocol, if a judicial officer or  
3 judicial employee has contact with any person, including a household member, who  
4 arrives in New Mexico from an out-of-state or international location, the judicial  
5 officer or judicial employee shall engage in a ten (10)-day period of self-isolation  
6 from the date of contact with that person before returning to the workplace, provided  
7 that return to work after a seven (7)-day period of self-isolation is permitted if the  
8 judicial officer or judicial employee takes a test for COVID-19 five (5) days after  
9 contact, receives a negative test result, and is asymptomatic when returning to work.

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;

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; and

4 (d) Any out-of-state travel by a judicial officer or employee who is  
5 fully vaccinated as defined in the New Mexico Judicial Branch Coronavirus  
6 (COVID-19): Frequently Asked Questions and Resources for Judges, CEOs, and  
7 Employees.

8 7. For any judicial officer or employee who is not fully vaccinated as  
9 defined in the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently  
10 Asked Questions and Resources for Judges, CEOs, and Employees, the exceptions  
11 to self-isolation in Subsections (E)(6)(a), (b), and (c) of this Protocol shall not apply  
12 to the following:

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

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

18 8. Subject to the provisions of Subsection (E)(9) of this Protocol, any

1 judicial officer or judicial employee who engages in voluntary out-of-state travel  
2 that is not excepted under Subsection (E)(6) of this Protocol, or who has had contact  
3 with a person who has voluntarily traveled from out-of-state, shall be required to  
4 self-isolate for ten (10) days, provided that return to work after a seven (7)-day  
5 period of self-isolation is permitted if the judicial officer or judicial employee takes  
6 a test for COVID-19 five (5) days after the travel or contact, receives a negative test  
7 result, and is asymptomatic when returning to work. Any judicial officer or judicial  
8 employee who voluntarily travels out-of-state or who has had contact with a person  
9 who travels out-of-state shall not be allowed to telework during the required period  
10 of self-isolation without prior approval of their chief judge. If telework is not  
11 available or approved for a judicial employee who is required to self-isolate under  
12 this subsection, the chief judge or chief judge's designee may approve the use of  
13 available annual or sick leave for the period of self-isolation.

14 9. Any judicial officer or judicial employee who is fully vaccinated as  
15 defined in the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently  
16 Asked Questions and Resources for Judges, CEOs, and Employees shall not be  
17 required to comply with the self-isolation requirements in Subsections (E)(4), (5),  
18 and (8) of this Protocol unless the relevant travel is to or from an international



1 destination.

2 **F. Courthouse Cleaning Requirements.**

3 All courthouses and other judicial buildings operated by the New Mexico  
4 Judiciary must be maintained in accordance with the guidelines issued by the New  
5 Mexico Department of Health for the cleaning and disinfection of public facilities  
6 during the current public health emergency. *See* Cleaning and Disinfection of Public  
7 Facilities in Response to Novel Coronavirus (COVID-19) (Issued March 22, 2020).  
8 [Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020; as  
9 amended by Supreme Court Order No. 20-8500-034, effective August 14, 2020; as  
10 amended by Supreme Court Order No. 20-8500-037, effective September 4, 2020;  
11 as amended by Supreme Court Order No. 20-8500-038, effective October 16, 2020;  
12 as amended by Supreme Court Order No. 20-8500-039, effective November 13,  
13 2020; as amended by Supreme Court Order No. 20-8500-040, effective November  
14 20, 2020; as amended by Supreme Court Order No. 20-8500-042, effective  
15 December 14, 2020; as amended by Supreme Court Order No. 21-8500-003,  
16 effective February 12, 2021; as amended by Supreme Court Order No. 21-8500-004,  
17 effective March 11, 2021; as amended by Supreme Court Order No. 21-8500-007,  
18 effective May 5, 2021; as amended by Supreme Court Order No. 21-8500-008,  
19 effective May 24, 2021.]

1   **EMERGENCY COURT PROTOCOL NO. 2**

2   **Precautionary Measures for Conducting Judicial Proceedings**

3   **A.     Social Distancing and Face Mask Requirements.**

4           1.     All hearings, including trials, and all other court-organized gatherings  
5 of any type and at any location shall be held in a manner that limits the number of  
6 individuals in a single room or connected space — which includes judges, court  
7 personnel, jurors, attorneys, litigants, the press, and the general public — to allow  
8 for appropriate social distancing, as recommended by public health authorities. In  
9 any such gathering that involves face-to-face interaction with the public or that  
10 occurs in a public area of the courthouse or other judicial building, a minimum of  
11 six (6) feet in each direction must be maintained between every individual regardless  
12 of vaccination status while entering, inside, and exiting the courthouse unless an  
13 exception to this physical distancing requirement is approved by the Supreme Court  
14 Emergency Response Team for jury selections and trials pursuant to a plan submitted  
15 by a requesting court that explains how such proceedings can be safely carried out  
16 without maintaining the minimum six (6)-foot distancing requirement.

17           2.     Judicial officers and other court personnel shall wear a protective face  
18 covering at all times while participating in a judicial proceeding notwithstanding  
19 their vaccination status. *See also* Emergency Court Protocol No. 1, Section C.

20           3.     During trials and other hearings all witnesses and jurors shall wear a

1 protective face covering at all times, including while testifying or deliberating,  
2 except that a face covering may be removed for a very brief moment to allow for the  
3 identification of a party or witness provided that the party or witness does not speak  
4 while the face covering is removed. *See also* Emergency Court Protocol No. 1,  
5 Section C.

6 4. Any party may request that a witness be allowed to testify without a  
7 face covering, which may be granted in the discretion of the judge subject to the  
8 following requirements:

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

11 (b) the audio-visual connection must enable simultaneous audio-  
12 visual communication between the witness and the judge and attorneys in the  
13 courtroom for direct examination, cross-examination, and other necessary  
14 communications during the testimony of the witness;

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

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

20 (e) if the witness is a party to the case, the ability for confidential

1 communication between the testifying party and the party's attorney shall be made  
2 available; and

3 (f) the judge shall make a factual finding on the record of the  
4 necessity for allowing audio-visual testimony to further an important public policy,  
5 which may include finding that the witness is unavailable for testimony in the  
6 courtroom because of the need to protect public health during the current public  
7 health emergency.

8 **B. Format of Court Proceedings.**

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

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

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

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

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

7     **C.     Conduct of Jury Trials and Other In-Person Proceedings.**

8           1.     Civil and criminal jury trials scheduled to commence on or after  
9 November 16, 2020, are suspended until January 1, 2021, and civil and criminal jury  
10 trials shall resume by February 1, 2021. The resumption of civil and criminal jury  
11 trials shall occur in each judicial district pursuant to individualized plans submitted  
12 by the chief judge in each judicial district for approval by the Supreme Court.

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

17          3.     Each judicial district's plan for conducting jury trials and other in-  
18 person proceedings shall incorporate all of the precautionary measures in these  
19 Emergency Court Protocols, which shall include maintaining a minimum distance  
20 of six (6) feet in each direction between every individual participating in the trial

1 proceedings. Approved plans for conducting jury trials and other in-person  
2 proceedings shall not be revised without approval of the Supreme Court.

3 [Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020; as  
4 amended by Supreme Court Order No. 20-8500-039, effective November 13, 2020;  
5 as amended by Supreme Court Order No. 20-8500-042, effective December 14,  
6 2020; as amended by Supreme Court Order No. 21-8500-008, effective May 24,  
7 2021.]

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 suspension of the  
9 exercise of peremptory excusals under Rules 1-088.1, 2-106, 3-106, 5-106, 6-106,  
10 7-106, 10-162, and LR2-308(E) NMRA shall remain in place for cases filed on  
11 before December 31, 2020, and shall be lifted for all cases filed on or after January  
12 1, 2021.

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

14 The calculation of any deadlines in Rules 5-604, 6-506, 7-506, 8-506, and  
15 LR2-308 NMRA for all cases pending or filed on or after March 17, 2020, shall not  
16 include any period of time-delay caused by the current public health emergency. But  
17 to exclude a period of time from the calculation of deadlines under the terms of this  
18 Emergency Court Protocol, a judge must enter specific findings of fact  
19 demonstrating that the period of delay was caused by the current public health  
20 emergency.

1 **G. Plea and Settlement Deadlines.**

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

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

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

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

1           5.     This Emergency Court Protocol shall be effective for all cases in which  
2 a jury selection or bench trial is scheduled to commence on or after July 1, 2020.

3 **H.     Motions to Reduce Sentences.**

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

7 [Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020; as  
8 amended by Supreme Court Order No. 20-8500-039, effective November 13, 2020;  
9 as amended by Supreme Court Order No. 20-8500-042, effective December 14,  
10 2020.]