

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

2 **October 29, 2021**

3 **NO. 21-8500-024**

4 **IN THE MATTER OF THE AMENDMENT**
5 **OF THE NEW MEXICO JUDICIARY PUBLIC**
6 **HEALTH EMERGENCY PROTOCOLS FOR**
7 **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 Protocol No. 1, including amendments to impose mandatory sanctions for the
14 falsification of a COVID-19 vaccination record or test result by a judicial officer or
15 judicial employee, and the Court having considered the recommendation and being
16 sufficiently advised, Chief Justice Michael E. Vigil, Justice C. Shannon Bacon,
17 Justice David K. Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora
18 concurring;

19 NOW, THEREFORE, IT IS ORDERED that the recommendation is
20 ADOPTED and the amendment of Emergency Court Protocol No. 1 is APPROVED,
21 effective October 29, 2021.

22 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 29th day of October, 2021.


Jennifer L. Scott, 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.**
- G. Regular Testing of Unvaccinated Judicial Officers and Employees.**
- H. Vaccination Requirements for New Employees.**
- I. Falsification of Vaccination Card or COVID-19 Test Results**

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

7 3. Any person, other than a judicial officer or judicial employee, who
8 engages in or returns from non-international travel may enter a courthouse, provided
9 that the person successfully passes all other safety and public health screenings
10 required by the court and otherwise complies with all other applicable directives
11 from public health authorities. Travel to or from an international destination requires
12 a ten (10)-day period of self-isolation upon return to New Mexico before entrance
13 to a courthouse is permitted.

14 4. 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 using the Emergency Response Team's
18 electronic Google Form within two (2) hours of receiving notification of the positive
19 test result.

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

7 **C. Face Mask Requirements.**

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

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

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

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

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

2 2. All judicial officers and judicial employees, regardless of vaccination
3 status, shall be required to wear a protective face covering while in or on the grounds
4 of a courthouse, judicial building, or other physical space used, occupied, or operated
5 by the New Mexico Judiciary except when the judicial officer or employee is in that
6 person’s private office with no one else present or if that judicial officer or employee
7 provides written proof that the person has been advised by a health care provider not
8 to wear a face covering.

9 3. Any judicial officer or employee who does not wear a mask or face
10 covering as required by these Emergency Court Protocols will be subject to a
11 minimum three (3)-day suspension without pay. If a judicial employee who violated
12 the masking requirement is fully vaccinated, and the violation was the employee's
13 first offense, the chief judge or administrative authority has the discretion to choose
14 a lesser disciplinary action based upon the totality of the circumstances, provided
15 that the chief judge or administrative authority must counsel the judicial employee
16 on the importance of masking. The chief judge or administrative authority may
17 exercise this discretion retroactively by imposing lesser disciplinary action for a
18 violation that occurred prior to the effective date of Order Number 2021-8500-024,

1 which amended this protocol. Any violation of the masking requirements must be
2 reported immediately to the Human Resources Director of the Administrative Office
3 of the Courts, and prior to a lesser disciplinary action being imposed. If the same
4 fully vaccinated judicial employee violates the masking requirements a second or
5 subsequent time, the violation shall result in the minimum three (3)-day suspension
6 without pay.

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

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

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

14 1. ***Telework.*** The onsite performance of job duties is the presumptive
15 working arrangement for all judicial officers and employees. The chief judge or
16 administrative authority in each judicial district may permit judicial employees to
17 work from home if they can effectively perform their designated functions remotely,
18 provided that adequate personnel continue to remain on site for court operations that
19 must take place inside the courthouse. Any COVID-19 related teleworking

1 arrangements may be permitted by a chief judge or administrative authority pursuant
2 to this order and the guidance provided by the New Mexico Judicial Branch
3 Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges,
4 CEOs, and Employees.

5 2. ***On-Site Access Controls.*** Any judicial officer or employee who is
6 denied access to a courthouse or other building operated or occupied by the New
7 Mexico Judiciary because of the results of the screening requirements in these
8 Emergency Court Protocols or who is displaying symptoms associated with COVID-
9 19 while working on site, working remotely, or during off-duty hours shall be
10 required to comply with Subsection (D)(3) or (D)(4) of this Protocol as applicable.

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

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

19 (b) ***Self-Isolation Required; Telework if Permitted.*** Engage in a

1 period of self-isolation as required under this Protocol and work from home during
2 the period of self-isolation to the extent that work can be performed remotely with
3 the permission of the chief judge or other administrative authority of the affected
4 individual, with the duration of the required self-isolation determined as follows:

5 (i) *Positive Test.* If the test required under this Protocol is
6 taken while symptomatic or asymptomatic and is positive for COVID-19, engage in
7 a period of self-isolation of at least fourteen (14) days from the date of the test and
8 as further directed by the New Mexico Department of Health. The self-isolating
9 judicial officer or employee may return to work after being asymptomatic for
10 seventy-two (72) hours without the use of fever-reducing medicine, provided that
11 the judicial officer or employee has self-isolated for a minimum of fourteen (14)
12 days, successfully passed all other safety and public health screenings required by
13 the court; and received written approval of the chief judge of the judicial district or
14 the chief judge's designee using the Supreme Court Emergency Response Team
15 *Returning to Work for Those that Have Had COVID-19* form;

16 (ii) *Negative Test While Symptomatic.* If the test required
17 under this Protocol is taken while symptomatic and is negative for COVID-19,
18 engage in a period of self-isolation until asymptomatic for seventy-two (72) hours

1 without the use of fever-reducing medicine unless otherwise directed by the chief
2 judge of the judicial district in accordance with guidance provided by the New
3 Mexico Judicial Branch Coronavirus (COVID-19): Frequently Asked Questions and
4 Resources for Judges, CEOs, and Employees; or

5 (iii) *Negative Test While Asymptomatic*. If the test required
6 under this Protocol is taken by an unvaccinated judicial officer or judicial employee
7 when not displaying symptoms, engage in a ten (10)-day period of self-isolation
8 from display of initial symptoms; and if taken by a fully vaccinated judicial officer
9 or judicial employee when not displaying symptoms, return to the workplace after
10 being symptom-free for seventy two (72)-hours without the use of fever-reducing
11 medicine.

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

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

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

1 (i) *Contact with Covid-Positive Household Member.* If a
2 judicial officer or employee lives with a person who tests positive for COVID-19,
3 the judicial officer or employee shall engage in a period of self-isolation in
4 accordance with guidance provided by the New Mexico Judicial Branch Coronavirus
5 (COVID-19): Frequently Asked Questions and Resources for Judges, CEOs, and
6 Employees;

7 (ii) *Contact with Positive or Presumptive Positive Non-*
8 *Household Member.* If a judicial officer or employee has contact with a non-
9 household member who tests positive or is presumptive positive for COVID-19, the
10 judicial officer or employee shall engage in a period of self-isolation in accordance
11 with guidance provided by the New Mexico Judicial Branch Coronavirus (COVID
12 19): Frequently Asked Questions and Resources for Judges, CEOs, and Employees;

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

17 (c) *Telework if Permitted.* Work from home to the extent that their
18 work can be performed remotely with the permission of the chief judge or other

1 administrative authority of the affected individual.

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

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

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

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

18 3. Any judicial officer or judicial employee who is not fully vaccinated as
19 defined in the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently

1 Asked Questions and Resources for Judges, CEOs, and Employees and who engages
2 in out-of-state travel shall report the nature, extent, and details of the travel to the
3 chief judge of the judicial district before traveling or, if advance notice of the out-
4 of-state travel is not possible because of unforeseen, emergency circumstances, as
5 soon as possible after the travel begins. The chief judge may deny any leave request
6 for out-of-state travel.

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

14 5. Except as otherwise permitted in this Protocol, if a judicial officer or
15 judicial employee has contact with any person, including a household member, who
16 arrives in New Mexico from an out-of-state or international location, the judicial
17 officer or judicial employee shall engage in a ten (10)-day period of self-isolation
18 from the date of contact with that person before returning to the workplace, provided

1 that return to work after a seven (7)-day period of self-isolation is permitted if the
2 judicial officer or judicial employee takes a test for COVID-19 five (5) days after
3 contact, receives a negative test result, and is asymptomatic when returning to work.

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

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

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

12 (c) Out-of-state travel by a judicial officer or employee who is
13 outside the state for twenty-four (24) hours or less to attend to non-discretionary
14 parenting responsibilities, such as travel for custody or visitation exchanges or to
15 transport a child to or from school or college; and

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

1 Employees.

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

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

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

12 8. Subject to the provisions of Subsection (E)(9) of this Protocol, any
13 judicial officer or judicial employee who engages in voluntary out-of-state travel
14 that is not excepted under Subsection (E)(6) of this Protocol, or who has had contact
15 with a person who has voluntarily traveled from out-of-state, shall be required to
16 self-isolate for ten (10) days, provided that return to work after a seven (7)-day
17 period of self-isolation is permitted if the judicial officer or judicial employee takes
18 a test for COVID-19 five (5) days after the travel or contact, receives a negative test

1 result, and is asymptomatic when returning to work. Any judicial officer or judicial
2 employee who voluntarily travels out-of-state or who has had contact with a person
3 who travels out-of-state shall not be allowed to telework during the required period
4 of self-isolation without prior approval of their chief judge. If telework is not
5 available or approved for a judicial employee who is required to self-isolate under
6 this subsection, the chief judge or chief judge's designee may approve the use of
7 available annual or sick leave for the period of self-isolation.

8 9. Any judicial officer or judicial employee who is 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 shall not be
11 required to comply with the self-isolation requirements in Subsections (E)(4), (5),
12 and (8) of this Protocol unless the relevant travel is to or from an international
13 destination.

14 **F. Courthouse Cleaning Requirements.**

15 All courthouses and other judicial buildings operated by the New Mexico
16 Judiciary must be maintained in accordance with the guidelines issued by the New
17 Mexico Department of Health for the cleaning and disinfection of public facilities
18 during the current public health emergency. *See* Cleaning and Disinfection of Public

1 Facilities in Response to Novel Coronavirus (COVID-19) (Issued March 22, 2020).

2 **G. Regular Testing of Unvaccinated Judicial Officers and Employees.**

3 Any judicial officer or judicial employee who is not fully vaccinated as
4 defined in the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently
5 Asked Questions and Resources for Judges, CEOs, and Employees shall be required
6 to test for COVID-19 every seven (7) days unless and until that judicial officer or
7 judicial employee becomes fully vaccinated. Judicial employees required to test
8 under this subsection shall be granted thirty (30) minutes of administrative leave to
9 take the weekly test. All testing required under this subsection shall be done in
10 accordance with procedures set forth in the New Mexico Judicial Branch
11 Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges,
12 CEOs, and Employees. Any judicial officer or judicial employee who refuses to
13 submit to weekly testing under this subsection shall not be permitted to enter any
14 courthouse or other judicial building and shall not be permitted to telework. Any
15 judicial officer or judicial employee who does not comply with the testing
16 requirements in this paragraph shall be subject to required corrective action in
17 accordance with guidance provided by the New Mexico Judicial Branch Coronavirus
18 (COVID-19): Frequently Asked Questions and Resources for Judges, CEOs, and

1 Employees, up to and including termination of a judicial employee, and the
2 immediate reporting of the judicial officer to the Supreme Court and the
3 Administrative Office of the Courts.

4 **H. Vaccination Requirements for New Employees.**

5 All offers of employment with the New Mexico Judiciary made on or after
6 August 16, 2021, shall include as a condition of employment that the new employee
7 shall be fully vaccinated - as defined in the New Mexico Judicial Branch Coronavirus
8 (COVID-19): Frequently Asked Questions and Resources for Judges, CEOs, and
9 Employees - before the new employee's first day of employment. All judicial
10 entities shall include the mandatory vaccination requirement in this section in
11 postings for all new job openings.

12 **I. Falsification of Vaccination Card or COVID-19 Test Results.**

13 For purposes of these protocols and the New Mexico Judicial Branch
14 Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges,
15 CEOs, and Employees, a judicial employee who falsifies or knowingly provides a
16 falsified vaccination record or documentation, or who falsifies or knowingly
17 provides falsified COVID-19 test results will be subject to immediate termination
18 pursuant to the New Mexico Judicial Branch Personnel Rules. Any judicial officer

1 who falsifies or knowingly provides a falsified vaccination record or documentation,
2 or who falsifies or knowingly provides falsified COVID-19 test results shall be
3 immediately reported to the Supreme Court, the Supreme Court Emergency
4 Response Team, and the Judicial Standards Commission.

5 [Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020; as
6 amended by Supreme Court Order No. 20-8500-034, effective August 14, 2020; as
7 amended by Supreme Court Order No. 20-8500-037, effective September 4, 2020;
8 as amended by Supreme Court Order No. 20-8500-038, effective October 16, 2020;
9 as amended by Supreme Court Order No. 20-8500-039, effective November 13,
10 2020; as amended by Supreme Court Order No. 20-8500-040, effective November
11 20, 2020; as amended by Supreme Court Order No. 20-8500-042, effective
12 December 14, 2020; as amended by Supreme Court Order No. 21-8500-003,
13 effective February 12, 2021; as amended by Supreme Court Order No. 21-8500-004,
14 effective March 11, 2021; as amended by Supreme Court Order No. 21-8500-007,
15 effective May 5, 2021; as amended by Supreme Court Order No. 21-8500-008,
16 effective May 24, 2021; as amended by Supreme Court Order No. 21-8500-009,
17 effective June 7, 2021; as amended by Supreme Court Order No. 21-8500-015,
18 effective June 29, 2021; as amended by Supreme Court Order No. 21-8500-016,
19 effective July 16, 2021; as amended by Supreme Court Order No. 21-8500-020,
20 effective August 9, 2021; as amended by Supreme Court Order No. 21-8500-021,

- 1 effective August 23, 2021; as amended by Supreme Court Order No. 21-8500-024,
- 2 effective October 29, 2021.]

1 proceedings pursuant to a plan submitted by a requesting court that explains how
2 such proceedings can be safely carried out without maintaining the masking
3 requirement. *See also* Emergency Court Protocol No. 1, Section C.

4 3. During trials and other hearings all witnesses and jurors shall wear a
5 protective face covering at all times, including while testifying or deliberating,
6 except that a face covering may be removed for a very brief moment to allow for the
7 identification of a party or witness provided that the party or witness does not speak
8 while the face covering is removed. *See also* Emergency Court Protocol No. 1,
9 Section C.

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

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

15 (b) the audio-visual connection must enable simultaneous audio-
16 visual communication between the witness and the judge and attorneys in the
17 courtroom for direct examination, cross-examination, and other necessary
18 communications during the testimony of the witness;

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

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

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

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

12 **B. Format of Court Proceedings.**

13 1. All criminal and civil jury trials shall proceed in person.

14 2. The presumption is that the following proceedings in criminal cases
15 shall be conducted in person unless the presiding judge, in consultation with the chief
16 judge of the judicial district, orders otherwise:

- 17 a. bench trials;
- 18 b. competency hearings;
- 19 c. plea hearings;
- 20 d. preliminary hearings;

- 1 e. pretrial detention hearings;
- 2 f. probation revocation hearings for out-of-custody defendants
- 3 when jail time is sought; and
- 4 g. sentencing hearings.

5 3. The presumption is that the following proceedings in civil cases shall
6 be conducted in person unless the presiding judge, in consultation with the chief
7 judge of the judicial district, orders otherwise:

- 8 a. kinship guardianship hearings;
- 9 b. order of protection hearings;
- 10 c. hearings in cases with a PQ case number designation in the
- 11 Judiciary's case management system;
- 12 d. hearings in cases with a Sequestered case number designation in
- 13 the Judiciary's case management system; and
- 14 e. termination of parental rights hearings.

15 4. Civil bench trials may be held in person at the discretion of the chief
16 judge of the judicial district.

17 5. Oral arguments in the Supreme Court and Court of Appeals shall be
18 held in person if the participating judicial officers, court staff, and attorneys are fully
19 vaccinated. All other proceedings before the appellate courts shall be held remotely.

20 6. The presumption is that hearings before the Disciplinary Board shall be

1 conducted in person, provided that hearings before the Disciplinary Board may be
2 held by video connection if disciplinary counsel, respondent, respondent's counsel,
3 if represented, and the members of the assigned hearing committee or board panel
4 agree to conduct the proceeding remotely.

5 7. Municipal court hearings may be held in person if the Supreme Court
6 has approved a municipal court plan for conducting in-person proceedings in
7 accordance with the precautionary measures set forth in these Protocols.

8 8. Except as provided in Subsections (B)(1)-(7) of this Protocol, the
9 presumption is that all other court proceedings shall be conducted remotely through
10 telephonic or audio-video connection for court appearances by all attorneys,
11 litigants, and witnesses, unless the judge presiding over the proceeding, in
12 consultation with the chief judge of the judicial district, orders otherwise.

13 9. A judge may continue to take other protective measures, including the
14 granting of continuances upon motion of any party or the judge's own motion, in
15 appropriate cases when remote appearances are not feasible.

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

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

1 defense counsel is made available.

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

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

16 [Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020; as
17 amended by Supreme Court Order No. 20-8500-039, effective November 13, 2020;
18 as amended by Supreme Court Order No. 20-8500-042, effective December 14,
19 2020; as amended by Supreme Court Order No. 21-8500-008, effective May 24,
20 2021; as amended by Supreme Court Order No. 21-8500-015, effective June 29,

- 1 2021, with the expansion of in-person proceedings to commence on or before July
- 2 19, 2021.]

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.]