

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

2 **November 14, 2022**

3
4 **NO. 22-8500-017**

5 **IN THE MATTER OF A PILOT PROJECT**
6 **IN THE SANTA FE COUNTY**
7 **MAGISTRATE COURT AND THE**
8 **BERNALILLO COUNTY**
9 **METROPOLITAN COURT TO INSTITUTE**
10 **MANDATORY STATUS HEARINGS IN**
11 **OUT-OF-CUSTODY CASES PENDING**
12 **PRELIMINARY EXAMINATION**
13

14 **AMENDED ORDER**

15 WHEREAS, this Court previously recognized in Order No. 21-8500-026
16 that compliance with the deadlines governing criminal cases has been impacted by
17 the COVID-19 public health emergency, and as a result, most jurisdictions have a
18 backlog of criminal cases, including the First and Second Judicial District Courts,
19 the Santa Fe County Magistrate Court, and the Bernalillo County Metropolitan
20 Court;

21 WHEREAS, this Court may exercise its equitable powers and the power of
22 superintending control over pleading and practice in the New Mexico Judiciary to

1 implement measures to facilitate the timely resolution of criminal cases by
2 increasing judicial efficiency and eliminating wasted time and resources;

3 WHEREAS, under Rules 6-202(A)(1) and 7-202(A)(1) NMRA, a preliminary
4 examination must be held within a reasonable time but no later than sixty (60) days
5 for a defendant who is not in custody;

6 WHEREAS, criminal cases for out-of-custody defendants are often resolved
7 through a stipulated waiver, plea agreement, or other settlement agreement,
8 including resolution through a diversionary program;

9 WHEREAS, a mandatory status hearing between the prosecuting authorities
10 and the defendant and defense counsel prior to the preliminary examination would
11 present an earlier opportunity for the parties to resolve the case by the
12 aforementioned means;

13 WHEREAS, earlier resolution of criminal cases would serve to reduce the
14 backlog of criminal case on the preliminary examination docket, thus promoting
15 judicial economy;

16 WHEREAS, resolution of criminal cases prior to the deadline to hold a
17 preliminary examination pursuant to Rules 6-202(A)(1) and 7-202(A)(1) NMRA
18 will eliminate the need, under Rules 6-202(B)(3)-(4) and 7-202(B)(3)-(4) NMRA,
19 for witnesses, including law enforcement officers to appear in court; and

1 WHEREAS, in light of the foregoing, and the Court being sufficiently
2 advised, Chief Justice Michael E. Vigil, Justice C. Shannon Bacon, Justice David K.
3 Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora concurring;

4 NOW, THEREFORE, IT IS ORDERED that in all criminal proceedings filed
5 on or after April 18, 2022, where the defendant is not in custody pending a
6 preliminary examination in the Santa Fe County Magistrate Court or the Bernalillo
7 County Metropolitan Court, a mandatory status hearing with the parties and the
8 defendant appearing in person shall be held not less than thirty (30) days after the
9 latest of the events listed in Rule 6-202(A)(1) NMRA or Rule 7-202(A)(1) NMRA,
10 respectively. The Santa Fe Magistrate Court and the Bernalillo County Metropolitan
11 Court shall conduct mandatory status hearings in accordance with the following
12 procedures:

- 13 1. The mandatory status hearing shall be in person, unless the chief judge of
14 the magistrate or the metropolitan court orders otherwise.
- 15 2. The prosecution shall promptly make available to the defendant any
16 discovery that is in the possession of the State and shall file a certification
17 with the court attesting and enumerating the specific items of discovery
18 and recordings provided to the defendant no less than five (5) business
19 days prior to the mandatory status hearing. The prosecution is under a

1 continuing duty to disclose additional discovery as it becomes available to
2 the State. If the State fails to comply with this requirement, the court may
3 impose sanctions, including dismissal without prejudice.

4 3. Prior to the mandatory status hearing, the State shall inform the defendant
5 and defense counsel of any and all offers to resolve the case. Nothing
6 prohibits the defense from making any offers to the State to resolve the
7 case prior to the mandatory status hearing.

8 4. The defendant shall appear in person at the mandatory status hearing. If a
9 defendant fails to appear for the mandatory status hearing, a bench warrant
10 shall be issued, and any future setting shall be vacated.

11 5. If the parties enter into a stipulated waiver of preliminary examination,
12 plea agreement, or other resolution that would eliminate the need for a
13 preliminary examination, the parties shall submit the waiver, plea
14 agreement, or other resolution for the trial court's consideration prior to,
15 but no later than the status hearing. The court will not accept a waiver,
16 plea agreement, or other resolution after the mandatory status hearing.

17 6. If no agreement is reached to resolve the case by the mandatory status
18 hearing, the preliminary examination hearing shall proceed no later than
19 sixty (60) days after the latest of the events enumerated in Rules 6-

1 202(A)(1) and 7-202(A)(1) NMRA. Continuance of the status hearing or
2 preliminary examination shall be granted only in exceptional
3 circumstances at the discretion of the judge presiding over the matter and
4 only after approval of the chief judge of the magistrate or metropolitan
5 court. If exceptional circumstances are found, the court may add no more
6 than thirty (30) days to the original rule.

7 7. If the State does not conduct a preliminary examination within sixty (60)
8 days after the latest of the events enumerated in Rule 7-202(A)(1) NMRA
9 or Rule 6-202(A)(1) NMRA, the court will dismiss the case without
10 prejudice. The prosecution should act in good faith in refileing its case and
11 is encouraged not to refile the case until the prosecution acquires
12 additional discovery, including offense/incident/investigation reports
13 completed by the primary investigating officer; all lapel and dash camera
14 video from the primary investigating officer; and, any handwritten
15 statements provided to or taken by an investigating officer. Upon refileing
16 its case, the prosecution shall file a certification with the Court listing the
17 discovery items and affirming compliance with acquiring additional
18 discovery.

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IT IS SO ORDERED.



WITNESS, the Honorable C. Shannon Bacon, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 14th day of November, 2022.

A handwritten signature in cursive script that reads "Elizabeth A. Garcia".

Elizabeth A. Garcia, Chief Clerk of the Supreme Court
of the State of New Mexico