

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

2 **March 24, 2022**

3 **NO. 22-8500-018**

4 **IN THE MATTER OF THE AMENDMENT**
5 **OF NEW MEXICO JUDICIARY PUBLIC**
6 **HEALTH EMERGENCY PROTOCOL NO. 1**
7 **TO REMOVE TRAVEL RESTRICTIONS;**
8 **PROTOCOLS NO. 1 AND NO. 2 TO INCORPORATE**
9 **BY REFERENCE THE REQUIREMENTS OUTLINED**
10 **IN THE NEW MEXICO JUDICIAL BRANCH**
11 **WORKPLACE SAFETY COVID-19 FAQs;**
12 **PROTOCOL NO. 2 TO REMOVE TRAFFIC CASES**
13 **FROM THE PRESUMPTION THAT CRIMINAL**
14 **CASES SHOULD BE HELD IN PERSON; AND PROTOCOLS**
15 **NO. 2 AND NO. 3 TO ESTABLISH A PRESUMPTION**
16 **THAT REMOTELY HELD COURT PROCEEDINGS**
17 **SHOULD BE CONDUCTED THROUGH AN AUDIO-VIDEO**
18 **CONNECTION, ABSENT COMPELLING CIRCUMSTANCES**

19
20
21 **ORDER**

22 WHEREAS, this matter having come before the Court upon recommendation
23 to amend the New Mexico Judiciary’s Emergency Court Protocol No. 1 to remove
24 travel restrictions for judicial officers and employees; to amend the New Mexico
25 Judiciary’s Emergency Court Protocols No. 1 and No. 2 to incorporate by reference
26 the requirements and procedures outlined in the New Mexico Judicial Branch
27 Workplace Safety COVID-19 FAQs, formerly known as the New Mexico Judicial
28 Branch Coronavirus (COVID-19): Frequently Asked Questions and Resources for
29 Judges, CEOs, and Employees; to amend the New Mexico Judiciary’s Emergency
30 Court Protocol No. 2 to remove traffic cases from the presumption that criminal

1 cases should be held in person; and to amend the New Mexico Judiciary's
2 Emergency Court Protocols No. 2 and No. 3 to establish a presumption that remotely
3 held court proceedings should be conducted through an audio-video connection and
4 should not be conducted using solely telephonic means, absent compelling
5 circumstances; Chief Justice Michael E. Vigil, Justice C. Shannon Bacon, Justice
6 David K. Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora
7 concurring;

8 NOW, THEREFORE, IT IS ORDERED that the recommendation is
9 ADOPTED and the amendment of Emergency Court Protocol No. 1, Emergency
10 Court Protocol No. 2, and Emergency Court Protocol No. 3 is APPROVED,
11 **effective March 24, 2022.**

12 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 24th day of March, 2022.

Sally A. Paez, Acting Clerk of Court
Supreme Court of New Mexico

A handwritten signature in black ink that reads "Sally A. Paez".

Sally A. Paez, Acting 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; Scope of Protocols.**
- B. Health Screening and Self-Isolation Procedures.**
- C. Face Mask Requirements.**
- D. Courthouse Cleaning Requirements.**
- E. Regular Testing of Unvaccinated Judicial Officers and Employees.**
- F. Vaccination Requirements for New Employees.**
- G. Falsification of Vaccination Card or COVID-19 Test Results.**
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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.**
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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, in accordance with these Emergency Court Protocols and in
7 accordance with the New Mexico Judicial Branch Workplace Safety COVID-19
8 FAQs, formerly known as the New Mexico Judicial Branch Coronavirus (COVID-
9 19): Frequently Asked Questions and Resources for Judges, CEOs, and Employees,
10 to ensure that the courts fulfill their constitutional and statutory responsibilities to
11 all New Mexicans.

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

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

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

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

3 4. These Emergency Court Protocols shall apply to all appellate, district,
4 metropolitan, magistrate, probate, and municipal courts in the State of New Mexico
5 and the Administrative Office of the Courts, and all references in the Emergency
6 Court Protocols to the chief judge of the judicial district shall, when applicable,
7 include the presiding judge of a probate or municipal court, the chief judge of the
8 Bernalillo County Metropolitan Court, chief judge of the Court of Appeals for judges
9 and employees of the New Mexico Court of Appeals, and the Chief Justice for
10 Justices and employees of the Supreme Court or Administrative Office of the Courts.

11 **B. Health Screening and Self-Isolation Procedures.**

12 1. ***Screening Requirements.*** Any person wishing to enter a courthouse or
13 other building operated or occupied by the New Mexico Judiciary shall comply with
14 the screening requirements in this Protocol and the New Mexico Judicial Branch
15 Workplace Safety COVID-19 FAQs, formerly known as the New Mexico Judicial
16 Branch Coronavirus (COVID-19): Frequently Asked Questions and Resources for
17 Judges, CEOs, and Employees, which shall include all attorneys and employees of
18 any other governmental entity housed within a building operated or occupied by the
19 New Mexico Judiciary. In addition to the regular security screening that courts
20 conduct, all courts shall screen any person wishing to enter a courthouse or other

1 building operated or occupied by the New Mexico Judiciary and deny access to
2 anyone, including any judicial officer, judicial employee, juror, witness, attorney,
3 litigant, or other person, as appropriate, based on the answers to the screening
4 questions required by the Supreme Court for entry to courthouses and other judicial
5 buildings, which are posted on the New Mexico Judiciary website on the New
6 Mexico Courts - Coronavirus (COVID-19) Information webpage at nmcourts.gov.
7 All screening question forms submitted by judicial officers and judicial employees
8 are confidential, shall be retained for two (2) weeks, and shall then be destroyed.

9 2. **Daily Log.** All courts shall maintain a daily log of all persons, including
10 judicial officers and judicial employees, entering a courtroom and retain the log in
11 accordance with the New Mexico Judicial Branch Workplace Safety COVID-19
12 FAQs, formerly known as the New Mexico Judicial Branch Coronavirus (COVID-
13 19): Frequently Asked Questions and Resources for Judges, CEOs, and Employees.

14 3. **Positive Test Result.** Upon receipt of notice that a judicial officer or
15 employee has received a positive test result for COVID-19, the chief judge of the
16 judicial district in which the judicial officer or employee works shall ensure that the
17 positive test result is reported and that all requirements for contact tracing and self-
18 isolation are followed in compliance with the New Mexico Judicial Branch
19 Workplace Safety COVID-19 FAQs, formerly known as the New Mexico Judicial
20 Branch Coronavirus (COVID-19): Frequently Asked Questions and Resources for

1 Judges, CEOs, and Employees.

2 4. ***On-Site Access Controls.*** Any judicial officer or employee who is
3 denied access to a courthouse or other building operated or occupied by the New
4 Mexico Judiciary because of the results of the screening requirements in these
5 Emergency Court Protocols or who is displaying symptoms associated with COVID-
6 19 while working on site, working remotely, or during off-duty hours shall comply
7 with the requirements and procedures set forth in the New Mexico Judicial Branch
8 Workplace Safety COVID-19 FAQs, formerly known as the New Mexico Judicial
9 Branch Coronavirus (COVID-19): Frequently Asked Questions and Resources for
10 Judges, CEOs, and Employees, as applicable.

11 5. ***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 comply with the requirements and procedures set forth in
15 the New Mexico Judicial Branch Workplace Safety COVID-19 FAQs, formerly
16 known as the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently
17 Asked Questions and Resources for Judges, CEOs, and Employees.

18

1 **C. Face Mask Requirements.**

2 1. The use of a protective face covering that covers the nose and mouth
3 shall be required by any member of the public, including jurors, witnesses, parties,
4 attorneys, sheriffs, and other participants while in a courtroom or jury assembly area
5 of a courthouse, judicial building, or other physical space used, occupied, or operated
6 as a courtroom or jury assembly area by the New Mexico Judiciary, provided that
7 this order shall not apply to the following individuals:

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

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

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

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

15 2. All judicial officers and judicial employees, regardless of vaccination
16 status, shall be required to wear a protective face covering while in a courtroom or
17 jury assembly area, or while interacting with the public on the grounds of a
18 courthouse, judicial building, or other physical space used, occupied, or operated by

1 the New Mexico Judiciary, unless the judicial officer or employee provides written
2 proof that the person has been advised by a health care provider not to wear a face
3 covering.

4 3. Any judicial officer or employee who does not wear a mask or face
5 covering as required by these Emergency Court Protocols will be subject to a
6 minimum three (3)-day suspension without pay. If a judicial employee who violated
7 the masking requirement is fully vaccinated, and the violation was the employee's
8 first offense, the chief judge or administrative authority has the discretion to choose
9 a lesser disciplinary action based upon the totality of the circumstances, provided
10 that the chief judge or administrative authority must counsel the judicial employee
11 on the importance of masking. The chief judge or administrative authority may
12 exercise this discretion retroactively by imposing lesser disciplinary action for a
13 violation that occurred prior to the effective date of Order Number 2021-8500-024,
14 which amended this protocol. Any violation of the masking requirements must be
15 reported immediately to the Human Resources Director of the Administrative Office
16 of the Courts, and prior to a lesser disciplinary action being imposed. If the same
17 fully vaccinated judicial employee violates the masking requirements a second or
18 subsequent time, the violation shall result in the minimum three (3)-day suspension

1 without pay.

2 4. 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. The use of two cloth masks
6 is no longer authorized as a double mask under these Emergency Court Protocols.

7 5. The use of two (2) protective face coverings, i.e., double-masking, or
8 the use of one KN95 or one KF94 mask, is required for impaneled jurors, and any
9 such coverings shall comply with all design requirements approved by the Supreme
10 Court and posted to the New Mexico Judiciary’s website.

11 **D. Courthouse Cleaning Requirements.**

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

1 accordance with guidance provided by the New Mexico Judicial Branch Workplace
2 Safety COVID-19 FAQs, formerly known as the New Mexico Judicial Branch
3 Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges,
4 CEOs, and Employees, up to and including termination of a judicial employee, and
5 the immediate reporting of the judicial officer to the Supreme Court and the
6 Administrative Office of the Courts.

7 **F. Vaccination Requirements for New Employees.**

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

15 **G. Falsification of Vaccination Card or COVID-19 Test Results.**

16 For purposes of these protocols and the New Mexico Judicial Branch
17 Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges,
18 CEOs, and Employees, a judicial employee who falsifies or knowingly provides a

1 falsified vaccination record or documentation, or who falsifies or knowingly
2 provides falsified COVID-19 test results will be subject to immediate termination
3 pursuant to the New Mexico Judicial Branch Personnel Rules. Any judicial officer
4 who falsifies or knowingly provides a falsified vaccination record or documentation,
5 or who falsifies or knowingly provides falsified COVID-19 test results shall be
6 immediately reported to the Supreme Court, the Supreme Court Emergency
7 Response Team, and the Judicial Standards Commission.

8 **H. Air Purifiers.**

9 The Administrative Office of the Courts shall secure air purifiers for all courts
10 to further protect members of the public and judicial officers and employees during
11 the COVID-19 public health emergency. Air purifiers must be operated during
12 business hours.

13 [Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020; as
14 amended by Supreme Court Order No. 20-8500-034, effective August 14, 2020; as
15 amended by Supreme Court Order No. 20-8500-037, effective September 4, 2020;
16 as amended by Supreme Court Order No. 20-8500-038, effective October 16, 2020;
17 as amended by Supreme Court Order No. 20-8500-039, effective November 13,
18 2020; as amended by Supreme Court Order No. 20-8500-040, effective November
19 20, 2020; as amended by Supreme Court Order No. 20-8500-042, effective

1 December 14, 2020; as amended by Supreme Court Order No. 21-8500-003,
2 effective February 12, 2021; as amended by Supreme Court Order No. 21-8500-004,
3 effective March 11, 2021; as amended by Supreme Court Order No. 21-8500-007,
4 effective May 5, 2021; as amended by Supreme Court Order No. 21-8500-008,
5 effective May 24, 2021; as amended by Supreme Court Order No. 21-8500-009,
6 effective June 7, 2021; as amended by Supreme Court Order No. 21-8500-015,
7 effective June 29, 2021; as amended by Supreme Court Order No. 21-8500-016,
8 effective July 16, 2021; as amended by Supreme Court Order No. 21-8500-020,
9 effective August 9, 2021; as amended by Supreme Court Order No. 21-8500-021,
10 effective August 23, 2021; as amended by Supreme Court Order No. 21-8500-024,
11 effective October 29, 2021; as amended by Supreme Court Order No. 22-8500-003,
12 effective January 18, 2022; as amended by Supreme Court Order No. 22-8500-010,
13 effective March 21, 2022; as amended by Supreme Court Order No. 22-8500-018,
14 effective March 24, 2022.]

1
2 **EMERGENCY COURT PROTOCOL NO. 2**

3 **Precautionary Measures for Conducting Judicial Proceedings**

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

5 1. All hearings, including trials, and all other court-organized gatherings
6 of any type and at any location shall be held in a manner that limits the number of
7 individuals in a single room or connected space — which includes judges, court
8 personnel, jurors, attorneys, litigants, the press, and the general public — to allow
9 for appropriate social distancing, as recommended by public health authorities and
10 outlined in the New Mexico Judicial Branch Workplace Safety COVID-19 FAQs,
11 formerly known as the New Mexico Judicial Branch Coronavirus (COVID-19):
12 Frequently Asked Questions and Resources for Judges, CEOs, and Employees. In
13 any such gathering that involves face-to-face interaction with the public or that
14 occurs in a public area of the courthouse or other judicial building, a minimum of
15 three (3) feet in each direction must be maintained between every individual
16 regardless of vaccination status while entering, inside, and exiting the courthouse
17 unless an exception to this physical distancing requirement is approved by the
18 Supreme Court Emergency Response Team for specified in-person proceedings
19 pursuant to a plan submitted by a requesting court that explains how such
20 proceedings can be safely carried out without maintaining the minimum three (3)-
 foot distancing requirement.

1 2. Judicial officers and other court personnel shall wear a protective face
2 covering at all times while participating in a judicial proceeding notwithstanding
3 their vaccination status unless an exception to this masking requirement is approved
4 by the Supreme Court Emergency Response Team for specified in-person
5 proceedings pursuant to a plan submitted by a requesting court that explains how
6 such proceedings can be safely carried out without maintaining the masking
7 requirement. *See also* Emergency Court Protocol No. 1, Section C.

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

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

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

19 (b) the audio-visual connection must enable simultaneous audio-
20 visual communication between the witness and the judge and attorneys in the

1 courtroom for direct examination, cross-examination, and other necessary
2 communications during the testimony of the witness;

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

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

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

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

16 **B. Format of Court Proceedings.**

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

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

- 1 (a) bench trials;
- 2 (b) competency hearings;
- 3 (c) plea hearings;
- 4 (d) preliminary hearings;
- 5 (e) pretrial detention hearings;
- 6 (f) probation revocation hearings for out-of-custody defendants
- 7 when jail time is sought; and
- 8 (g) sentencing hearings.

9 3. The presumption is that all criminal traffic hearings, including traffic
10 bench trials, shall be conducted remotely unless the presiding judge, in consultation
11 with the chief judge of the judicial district, orders otherwise.

12 4. The presumption is that the following proceedings in civil cases shall
13 be conducted in person unless the presiding judge, in consultation with the chief
14 judge of the judicial district, orders otherwise:

- 15 (a) kinship guardianship hearings;
- 16 (b) order of protection hearings;
- 17 (c) hearings in cases with a PQ case number designation in the
18 Judiciary's case management system;
- 19 (d) hearings in cases with a Sequestered case number designation in
20 the Judiciary's case management system; and

1 (e) termination of parental rights hearings.

2 5. Civil bench trials may be held in person at the discretion of the chief
3 judge of the judicial district.

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

7 7. The presumption is that hearings before the Disciplinary Board shall be
8 conducted in person, provided that hearings before the Disciplinary Board may be
9 held by video connection if disciplinary counsel, respondent, respondent's counsel,
10 if represented, and the members of the assigned hearing committee or board panel
11 agree to conduct the proceeding remotely.

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

15 9. Except as provided in Subsections (B)(1)-(8) of this Protocol, the
16 presumption is that all other court proceedings shall be conducted remotely through
17 audio-video connection for court appearances by all attorneys, litigants, and
18 witnesses, unless the judge presiding over the proceeding, in consultation with the
19 chief judge of the judicial district, orders otherwise. The presiding judge may
20 approve a telephonic appearance if a participant is unable to appear through audio-

1 visual means or under other compelling circumstances as determined by the
2 presiding judge.

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

6 11. Audio-video or telephonic hearings shall be held in a manner that
7 allows the press and members of the public to observe the proceeding.

8 12. Any criminal procedure rules requiring the presence of the defendant
9 may be accomplished through remote, audio-visual appearance in the discretion of
10 the judge, provided that confidential communication between the defendant and
11 defense counsel is made available.

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

13 1. All in-person proceedings shall occur in each judicial district pursuant
14 to individualized plans submitted by the chief judge in each judicial district for
15 approval by the Supreme Court.

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

20 3. Each judicial district's plan for conducting jury trials and other in-

1 person proceedings shall incorporate all of the precautionary measures in these
2 Emergency Court Protocols, which shall include maintaining a minimum distance
3 of three (3) feet in each direction between every individual participating in the trial
4 proceedings. Approved plans for conducting jury trials and other in-person
5 proceedings shall not be revised without approval of the Supreme Court.

6 [Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020; as
7 amended by Supreme Court Order No. 20-8500-039, effective November 13, 2020;
8 as amended by Supreme Court Order No. 20-8500-042, effective December 14,
9 2020; as amended by Supreme Court Order No. 21-8500-008, effective May 24,
10 2021; as amended by Supreme Court Order No. 21-8500-015, effective June 29,
11 2021, with the expansion of in-person proceedings to commence on or before July
12 19, 2021; as amended by Supreme Court Order No. 22-8500-010, effective March
13 21, 2022; as amended by Supreme Court Order No. 22-8500-018, effective March
14 24, 2022.]

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 audio-video or telephonic 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 1. To facilitate case management processes in the district, metropolitan,
8 and magistrate courts during the initial phases of the current public health
9 emergency, a suspension of the exercise of peremptory excusals under Rules 1-
10 088.1, 2-106, 3-106, 5-106, 6-106, 7-106, 10-162, and LR2-308(E) NMRA was
11 imposed for cases filed on or before December 31, 2020, and was lifted for all cases
12 filed on or after January 1, 2021.

13 2. To streamline the processing of criminal cases in the district courts
14 during the ongoing public health emergency, the suspension of the exercise of
15 peremptory excusals under Rule 5-106 NMRA shall be reinstated for criminal cases
16 in the district courts effective January 18, 2022. The suspension shall remain in place
17 for one year and shall be lifted on January 18, 2023.

18 3. To streamline the processing of criminal cases in other courts during
19 the ongoing public health emergency, the suspension of the exercise of peremptory
20 excusals in metropolitan court and the magistrate courts under Rules 6-106 and 7-

1 106 NMRA shall be reinstated for criminal cases in those courts effective February
2 1, 2022, and shall remain in place for one year, to be lifted February 1, 2023.

3 4. During the suspension of the exercise of preemptory excusals under
4 Rules 5-106, 6-106, 7-106, 10-162, and LR2-308(E) NMRA, if a party to a criminal
5 case in the district court believes that the presiding judge should be excused for
6 cause, that party may submit a written petition to the Chief Justice of the Supreme
7 Court, requesting that the Chief Justice effect the excusal.

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

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

16 **G. Plea and Settlement Deadlines.**

17 1. In criminal and civil proceedings in which a jury or bench trial has been
18 scheduled by a district, magistrate, or metropolitan court, a plea agreement or a
19 settlement agreement between the parties that would eliminate the need for a trial
20 shall be submitted for the court's consideration by a deadline set in the court's

1 discretion that will allow the court sufficient time to take action on the plea
2 agreement or settlement agreement no later than five (5) business days before the
3 scheduled date for jury selection or commencement of a bench trial.

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

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

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

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

18 **H. Motions to Reduce Sentences.**

19 The deadline for filing a motion to reduce a sentence under Rule 5-801(A)
20 NMRA may be waived by the court upon a showing of an extraordinary change in

1 circumstances caused by the current public health emergency.
2 [Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020; as
3 amended by Supreme Court Order No. 20-8500-039, effective November 13, 2020;
4 as amended by Supreme Court Order No. 20-8500-042, effective December 14,
5 2020; as amended by Supreme Court Order No. 22-8500-003, effective January 18,
6 2022; as amended by Supreme Court Order No. 22-8500-010, effective March 21,
7 2022; as amended by Supreme Court Order No. 22-8500-018, effective March 24,
8 2022.]