

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

2 **May 10, 2022**

3 **NO. 22-8500-023**

4 **IN THE MATTER OF REVISED**
5 **REQUIREMENTS FOR THE USE OF**
6 **SETTLEMENT CONFERENCES**
7 **IN THE DISTRICT COURTS**
8 **TO STREAMLINE THE PROCESSING**
9 **OF CRIMINAL CASES**

10 **ORDER**

11 WHEREAS, Order No. 22-8500-002 enumerated certain guidelines for the
12 implementation of settlement conferences to streamline the processing of criminal
13 cases in the district courts;

14 WHEREAS, under Order No. 22-8500-002, the settlement judge, parties, and
15 attorneys were prohibited from communicating any of the substance of the plea
16 discussions during a settlement conference to any other person, including a judge
17 who is presiding or will be presiding over any phase of the criminal case;

18 WHEREAS, the Court has been advised that it would be beneficial to counsel
19 for both the prosecution and the defense if they were permitted to communicate the
20 substance of the plea discussions with other members of their respective offices;

21 WHEREAS, the Court has also been advised that it would be beneficial to
22 crime victims if they were permitted to learn the substance of the plea discussions;

1 WHEREAS, Order No. 22-8500-002 further requires that a case shall be
2 returned to the assigned judge following a settlement conference and that judge shall
3 either accept or reject the plea or conduct further proceedings;

4 WHEREAS, some judicial districts may wish to implement a procedure
5 whereby, following settlement conference, the case is assigned to a judge other than
6 the originally-assigned judge to either accept or reject the plea or conduct further
7 proceedings; and

8 WHEREAS, the Court having considered the foregoing and being sufficiently
9 advised, Chief Justice C. Shannon Bacon, Justice Michael E. Vigil, Justice David K.
10 Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora, concurring;

11 NOW, THEREFORE, IT IS ORDERED that Order No. 22-8500-002 shall be
12 WITHDRAWN and REPLACED with this order, effective **May 10, 2022**;

13 IT IS FURTHER ORDERED that New Mexico's prohibition on judicial
14 participation in plea discussions remains SUSPENDED in the district courts to allow
15 for the implementation of meaningful criminal settlement conference programs;

16 IT IS FURTHER ORDERED that a judge assigned to a criminal case shall
17 have the authority to assign another judge or judge pro tempore (settlement judge)
18 to participate in a settlement conference to assist the parties in resolving the case in
19 a manner that serves the interests of justice, provided that the judge who presides
20 over any phase of the criminal case shall not participate in plea discussions

1 pertaining to that criminal case;

2 IT IS FURTHER ORDERED that prior to a case being assigned to a
3 settlement judge, the judge assigned to the case shall ensure that the parties have had
4 a meaningful opportunity to engage in discovery. To that end, each judicial district
5 may set a deadline by which all written discovery must be completed before the date
6 of the scheduled settlement conference. Each judicial district may impose a deadline
7 for written discovery that makes sense for that district, such as fifteen (15) days or
8 ten (10) days prior to the scheduled settlement conference;

9 IT IS FURTHER ORDERED that amendments to Rule 5-304 NMRA remain
10 PROVISIONALLY APPROVED until further order of the Court to allow for
11 judicial participation in plea discussions consistent with this order;

12 IT IS FURTHER ORDERED that a criminal settlement conference program
13 adopted in any judicial district shall adhere to the following non-exhaustive list of
14 guidelines:

15 1. Counsel for the prosecution and defense—each with full authority to
16 act in all matters pertaining to the settlement conference and being prepared to
17 engage in negotiations—shall appear at the settlement conference either in person at
18 the courthouse or virtually, as ordered by the settlement judge.

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20 2. The defendant need not appear at the settlement conference, but must
21 be available for consultation with defense counsel. Defendants who are not in
22 custody may appear or consult with counsel in person at the courthouse, or virtually.
23 Defendants who are in custody shall appear or consult with counsel remotely from
24 the detention facility via videoconference.

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26 3. The settlement conference shall not be recorded.

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4. The State is not required to make a plea offer and the defendant is not required to accept a plea offer. If the State does not intend to offer a plea and has knowledge of this prior to the scheduled settlement conference, then the State must notify the judge assigned to the case and opposing counsel in writing at least five (5) days prior to the scheduled settlement conference. Upon notice that the State does not intend to offer a plea, the judge assigned to the case shall vacate the settlement conference, set the case for trial, and issue a scheduling order.

5. The settlement judge, parties, and attorneys shall not communicate any of the substance of the plea discussions to a judge who is presiding or will be presiding over any phase of the criminal case.

6. No statement made by a participant in the settlement conference shall be admissible at the trial of a defendant in the case.


7. Unless otherwise agreed to by the parties, if plea discussions result in a tentative plea agreement, the settlement judge shall not take the plea, but shall return the case to the referring judge, or transfer the case to another designated judge, to accept or reject the plea.

8. If plea discussions do not result in a plea agreement, the case must be returned to the referring judge or transferred to another designated judge for further proceedings.

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 10th day of May, 2022.


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