

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

2   **February 12, 2021**

3                   **NO. 21-8500-003**

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**

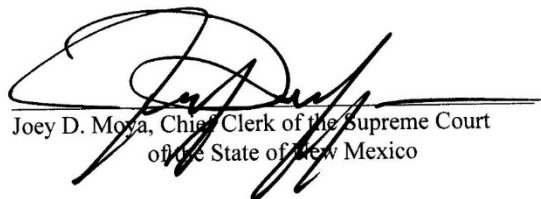
11                   WHEREAS, this matter having come on for consideration by the Court upon  
12                   recommendation to adopt amendments to New Mexico Judiciary Emergency Court  
13                   Protocol No. 1 to clarify travel, telework, testing, self-isolation, and face mask  
14                   requirements, 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 Protocol No. 1 is APPROVED,  
20                   effective immediately.

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 12th day of February, 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 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 anyone, including judicial officers and judicial employees,  
12 entering and while in a courthouse, judicial building, or other physical space used,  
13 occupied, or operated by the New Mexico Judiciary, provided that this order shall  
14 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 when in that person’s private office with no one else present.

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

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

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

13 1. ***Telework.*** The chief judge or administrative authority in each judicial  
14 district may permit judicial employees to work from home if they can effectively  
15 perform their designated functions remotely, provided that adequate personnel  
16 continue to remain on site for court operations that must take place inside the  
17 courthouse.

18 2. ***On-Site Access Controls.*** Any judicial officer or employee who is  
19 denied access to a courthouse or other building operated or occupied by the New

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

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

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

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



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

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

17                   (iii) *Negative Test **While Asymptomatic.*** If the test required  
18 under this Protocol is taken when not displaying symptoms, engage in a fourteen

1 (14)-day period of self-isolation from display of initial symptoms.

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

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

7 (a) *Self-Isolation Required.* Engage in a fourteen (14)-day period of  
8 self-isolation unless otherwise directed by the chief judge of the judicial district in  
9 accordance with guidance provided by the New Mexico Judicial Branch Coronavirus  
10 (COVID-19): Frequently Asked Questions and Resources for Judges, CEOs, and  
11 Employees;

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

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

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

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

7           1.     The suspension of all out-of-state travel on work-related business by  
8 judicial officers and judicial employees of the New Mexico Judiciary shall remain  
9 in effect until further order of the Court.

10          2.     All judicial officers and judicial employees are strongly discouraged  
11 from traveling out-of-state on personal business.

12          3.     Any judicial officer or judicial employee who engages in out-of-state  
13 travel shall report the nature, extent, and details of the travel to the chief judge of the  
14 judicial district before traveling or, if advance notice of the out-of-state travel is not  
15 possible because of unforeseen, emergency circumstances, as soon as possible after  
16 the travel begins. The chief judge may deny any leave request for out-of-state travel.

17          4.     Except as otherwise permitted in this Protocol, any judicial officer or  
18 judicial employee who arrives in New Mexico from an out-of-state or international  
19 location shall engage in a fourteen (14)-day period of self-isolation upon return to

1 New Mexico before returning to the workplace.

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 fourteen (14)-day period of self-  
6 isolation from the date of contact with that person before returning to the workplace.

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

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

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

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

1           7.     The exceptions to self-isolation in Subsections (E)(6)(a), (b), and (c) of  
2 this Protocol shall not apply to the following:

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

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

8           8.     Any judicial officer or judicial employee who engages in voluntary out-  
9 of-state travel that is not excepted under Subsection (E)(6) of this Protocol, or who  
10 has had contact with a person who has voluntarily traveled from out-of-state, shall  
11 be required to self-isolate for fourteen (14) days. Any judicial officer or judicial  
12 employee who voluntarily travels out-of-state or who has had contact with a person  
13 who travels out-of-state shall not be allowed to telework during the fourteen (14)  
14 day period of self-isolation without prior approval of their chief judge. If telework  
15 is not available or approved for a judicial employee who is required to self-isolate  
16 under this subsection, the chief judge or chief judge's designee may approve the use  
17 of available annual or sick leave for the period of self-isolation.

18 **F.     Courthouse Cleaning Requirements.**

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



1 face covering, which may be granted in the discretion of the judge subject to the  
2 following requirements:

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

5 (b) the audio-visual connection must enable simultaneous audio-  
6 visual communication between the witness and the judge and attorneys in the  
7 courtroom for direct examination, cross-examination, and other necessary  
8 communications during the testimony of the witness;

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

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

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

17 (f) the judge shall make a factual finding on the record of the  
18 necessity for allowing audio-visual testimony to further an important public policy,  
19 which may include finding that the witness is unavailable for testimony in the  
20 courtroom because of the need to protect public health during the current public



1 health emergency.

2 **B. Format of Court Proceedings.**

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

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

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

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

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

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

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

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

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

17 [Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020; as  
18 amended by Supreme Court Order No. 20-8500-039, effective November 13, 2020;  
19 as amended by Supreme Court Order No. 20-8500-042, effective December 14,  
20 2020.]



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 Decmeber 14,  
10 2020.]