



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

2 **November 1, 2024**

3 **NO. S-1-AO-2024-00040**

4 **IN THE MATTER OF THE USE OF**
5 **SETTLEMENT CONFERENCES IN THE**
6 **DISTRICT COURTS AND IN JUVENILE**
7 **CASES IN THE SECOND JUDICIAL**
8 **DISTRICT COURT**

9 **ORDER**

10 WHEREAS, this Court issued Supreme Court Order No. 22-8500-002, *In the*
11 *Matter of the Use of Settlement Conferences in the District Courts to Streamline the*
12 *Processing of Criminal Cases During the COVID-19 Public Health Emergency,*
13 suspending the prohibition on judicial participation in plea discussions,
14 provisionally approving amendments to Rule 5-304 NMRA, and setting forth
15 guidelines for the implementation of settlement conferences to streamline the
16 processing of criminal cases in the district courts;

17 WHEREAS, this Court issued Supreme Court Order No. 22-8500-023, *In the*
18 *Matter of the Revised Requirements for the Use of Settlement Conferences in the*
19 *District Courts to Streamline the Processing of Criminal Cases,* withdrawing and
20 replacing Supreme Court Order No. 22-8500-002;

1 WHEREAS, this Court issued Order No. S-1-AO-2024-00018, *In the Matter*
2 *of the Extension of Supreme Court Order Setting Forth the Requirements for the Use*
3 *of Settlement Conferences in the District Courts*, extending Order No. 22-8500-023
4 to include all juvenile cases in the Second Judicial District Court;

5 WHEREAS, the provisional amendments to Rule 5-304 NMRA have been
6 permanently APPROVED by concurrently issued Supreme Court Order No. S-1-
7 RCR-2024-00113; and

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

11 NOW, THEREFORE, IT IS ORDERED that Supreme Court Order Nos. 22-
12 8500-023 and S-1-AO-2024-00018 are hereby WITHDRAWN and replaced by this
13 order;

14 IT IS FURTHER ORDERED that judicial participation in plea discussions is
15 permitted in the district courts to allow for the implementation of meaningful
16 criminal settlement conference programs in accordance with Rule 5-304 NMRA;

17 IT IS FURTHER ORDERED that a judge assigned to a criminal case shall
18 have the authority to assign another judge or judge pro tempore (settlement judge)
19 to participate in a settlement conference to assist the parties in resolving the case in

1 a manner that serves the interests of justice, provided that the judge who presides
2 over any phase of the criminal case shall not participate in plea discussions
3 pertaining to that criminal case;

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

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

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

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

1 3. The settlement conference shall not be recorded.

2
3 4. The State is not required to make a plea offer and the defendant is not
4 required to accept a plea offer. If the State does not intend to offer a plea and has
5 knowledge of this prior to the scheduled settlement conference, then the State must
6 notify the judge assigned to the case and opposing counsel in writing at least five (5)
7 days prior to the scheduled settlement conference. Upon notice that the State does
8 not intend to offer a plea, the judge assigned to the case shall vacate the settlement
9 conference, set the case for trial, and issue a scheduling order.

10
11 5. The settlement judge, parties, and attorneys shall not communicate any
12 of the substance of the plea discussions to a judge who is presiding or will be
13 presiding over any phase of the criminal case.

14
15 6. No statement made by a participant in the settlement conference shall
16 be admissible at the trial of a defendant in the case.

17
18 7. Unless otherwise agreed to by the parties, if plea discussions result in a
19 tentative plea agreement, the settlement judge shall not take the plea, but shall return
20 the case to the referring judge, or transfer the case to another designated judge, to
21 accept or reject the plea.

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

26
27 IT IS FURTHER ORDERED that the provisions of this order shall be
28 extended to include all juvenile cases in the Second Judicial District Court; and

29 IT IS FURTHER ORDERED that any settlement conference held pursuant to
30 this order shall be conducted by pro tempore judges approved by the Children's

1 Court of the Second Judicial District.

2 IT IS SO ORDERED.

3 WITNESS, the Honorable David K. Thomson, Chief
4 Justice of the Supreme Court of the State of New Mexico,
5 and the seal of said Court this 1st day of November, 2024.



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

I CERTIFY AND ATTEST:
A true copy was served on all parties
or their counsel of record on date filed.
Elizabeth A. Garcia
Chief Clerk of the Supreme Court
of the State of New Mexico