

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

2 **March 04, 2022**

3 **NO. 22-8500-010**

4 **IN THE MATTER OF THE AMENDMENT**
5 **OF NEW MEXICO JUDICIARY PUBLIC**
6 **HEALTH EMERGENCY PROTOCOL NO. 1 TO**
7 **REVISE THE MASKING REQUIREMENTS,**
8 **NO. 2 TO REVISE THE SOCIAL DISTANCING**
9 **REQUIREMENT, AND NO. 3 TO**
10 **STREAMLINE THE PROCESSING OF CRIMINAL**
11 **CASES IN THE METROPOLITAN AND MAGISTRATE**
12 **COURTS DURING THE COVID-19**
13 **PUBLIC HEALTH EMERGENCY**

14 **ORDER**

16 WHEREAS, this matter having come before the Court upon recommendation
17 to amend the New Mexico Judiciary’s Emergency Court Protocol No. 1 to revise the
18 face mask requirements for members of the public, including jurors, witnesses,
19 parties, attorneys, sheriffs, and other participants, to require face masks while in a
20 courtroom or jury assembly area of a courthouse, judicial building, or other physical
21 space used, occupied, or operated as a courtroom or jury assembly area by the New
22 Mexico Judiciary, and to require judicial officers and employees to wear face masks
23 while in a courtroom or jury assembly area, or while interacting with the public on
24 the grounds of a courthouse, judicial building, or other physical space used,
25 occupied, or operated by the New Mexico Judiciary, and to allow impaneled jurors
26 to use one KN95 or KF94 mask instead of double-masking, and to amend the New
27 Mexico Judiciary’s Emergency Court Protocol No. 2 to revise the social distancing

1 requirement so that a minimum of three (3) feet in each direction must be maintained
2 between every individual regardless of vaccination status while entering, inside, and
3 exiting the courthouse, and to amend the New Mexico Judiciary's Emergency Court
4 Protocol No. 3 to reinstate the suspension of the exercise of peremptory excusals for
5 criminal cases in the metropolitan and magistrate courts for a period of one year,
6 effective February 1, 2022, to be lifted February 1, 2023, and to permit a party to a
7 criminal case in the metropolitan and magistrate courts to petition the Chief Justice
8 to effect the excusal of a presiding judge for cause, Chief Justice Michael E. Vigil,
9 Justice C. Shannon Bacon, Justice David K. Thomson, Justice Julie J. Vargas, and
10 Justice Briana H. Zamora concurring;

11 NOW, THEREFORE, IT IS ORDERED that the recommendation is
12 ADOPTED and the amendment of Emergency Court Protocol No. 1, Emergency
13 Court Protocol No. 2, and Emergency Court Protocol No. 3, is APPROVED,
14 **effective March 21, 2022;**

15 IT IS FURTHER ORDERED that each judicial district shall update its plan
16 for conducting jury trials and other in-person proceedings to incorporate the changes
17 to the Emergency Court Protocols consistent with this order, including the number
18 of jury trials expected and any off-site voir dire, pursuant to Emergency Court
19 Protocol No. 2, Subparagraph (C)(3), by **March 21, 2022;** and


20 IT IS FURTHER ORDERED that the Administrative Office of the Courts

1 shall secure air purifiers for all courts to further protect members of the public and
2 judicial officers and employees during the COVID-19 public health emergency. Air
3 purifiers must be operated during business hours.

4 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 4th day of March, 2022.



Jennifer L. Scott, 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.**
- G. Regular Testing of Unvaccinated Judicial Officers and Employees.**
- H. Vaccination Requirements for New Employees.**
- I. Falsification of Vaccination Card or COVID-19 Test Results.**
- J. Air Purifiers.**

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. 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 maintain a daily log of all persons, including judicial
4 officers and judicial employees, entering a courtroom. The daily log shall include
5 the name, telephone number, and date of entry for each person on the log. The daily
6 log shall be retained for four (4) weeks.

7 3. Any person, other than a judicial officer or judicial employee, who
8 engages in or returns from non-international travel may enter a courthouse, provided
9 that the person successfully passes all other safety and public health screenings
10 required by the court and otherwise complies with all other applicable directives
11 from public health authorities. Travel to or from an international destination requires
12 a ten (10)-day period of self-isolation upon return to New Mexico before entrance
13 to a courthouse is permitted.

14 4. Upon receipt of notice that a judicial officer or employee has received
15 a positive test result for COVID-19, the chief judge of the judicial district in which
16 the judicial officer or employee works shall ensure the positive test result is reported
17 to the Human Resources Division of the Administrative Office of the Courts, using
18 the Emergency Response Team’s electronic Google Form within two (2) hours of
19 receiving notification of the positive test result.

1 5. For purposes of these Emergency Court Protocols, “self-isolation”
2 refers to the voluntary physical separation of a judicial officer or employee in that
3 person’s residence or other place of lodging. Any judicial officer or employee who
4 is self-isolating shall comply with all directives of the New Mexico Department of
5 Health and shall not return to a courthouse or other building operated or occupied
6 by the Judiciary until completing the required period of self-isolation.

7 **C. Face Mask Requirements.**

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

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

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

18 (c) anyone who is unconscious, incapacitated, or otherwise unable

1 to remove a face covering without assistance.

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

3 2. All judicial officers and judicial employees, regardless of vaccination
4 status, shall be required to wear a protective face covering while in a courtroom or
5 jury assembly area, or while interacting with the public on the grounds of a
6 courthouse, judicial building, or other physical space used, occupied, or operated by
7 the New Mexico Judiciary, unless the judicial officer or employee provides written
8 proof that the person has been advised by a health care provider not to wear a face
9 covering.

10 3. Any judicial officer or employee who does not wear a mask or face
11 covering as required by these Emergency Court Protocols will be subject to a
12 minimum three (3)-day suspension without pay. If a judicial employee who violated
13 the masking requirement is fully vaccinated, and the violation was the employee's
14 first offense, the chief judge or administrative authority has the discretion to choose
15 a lesser disciplinary action based upon the totality of the circumstances, provided
16 that the chief judge or administrative authority must counsel the judicial employee
17 on the importance of masking. The chief judge or administrative authority may
18 exercise this discretion retroactively by imposing lesser disciplinary action for a

1 violation that occurred prior to the effective date of Order Number 2021-8500-024,
2 which amended this protocol. Any violation of the masking requirements must be
3 reported immediately to the Human Resources Director of the Administrative Office
4 of the Courts, and prior to a lesser disciplinary action being imposed. If the same
5 fully vaccinated judicial employee violates the masking requirements a second or
6 subsequent time, the violation shall result in the minimum three (3)-day suspension
7 without pay.

8 4. Protective face coverings required by these Emergency Court Protocols
9 shall comply with all design requirements approved by the Supreme Court and
10 posted to the New Mexico Judiciary's website, which shall include any directives
11 for double-masking by judicial officers and employees. The use of two cloth masks
12 is no longer authorized as a double mask under these Emergency Court Protocols.

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

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

18 1. **Telework.** The onsite performance of job duties is the presumptive

1 working arrangement for all judicial officers and employees. The chief judge or
2 administrative authority in each judicial district may permit judicial employees to
3 work from home if they can effectively perform their designated functions remotely,
4 provided that adequate personnel continue to remain on site for court operations that
5 must take place inside the courthouse. Any COVID-19 related teleworking
6 arrangements may be permitted by a chief judge or administrative authority pursuant
7 to this order and the guidance provided by the New Mexico Judicial Branch
8 Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges,
9 CEOs, and Employees.

10 2. ***On-Site Access Controls.*** Any judicial officer or employee who is
11 denied access to a courthouse or other building operated or occupied by the New
12 Mexico Judiciary because of the results of the screening requirements in these
13 Emergency Court Protocols or who is displaying symptoms associated with COVID-
14 19 while working on site, working remotely, or during off-duty hours shall be
15 required to comply with Subsection (D)(3) or (D)(4) of this Protocol as applicable.

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

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

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

10 (i) *Positive Test.* If the test required under this Protocol is
11 taken while symptomatic or asymptomatic and is positive for COVID-19, engage in
12 a period of self-isolation of at least fourteen (14) days from the date of the test and
13 as further directed by the New Mexico Department of Health. The self-isolating
14 judicial officer or employee may return to work after being asymptomatic for
15 seventy-two (72) hours without the use of fever-reducing medicine, provided that
16 the judicial officer or employee has self-isolated for a minimum of fourteen (14)
17 days, successfully passed all other safety and public health screenings required by
18 the court; and received written approval of the chief judge of the judicial district or

1 the chief judge’s designee using the Supreme Court Emergency Response Team
2 *Returning to Work for Those that Have Had COVID-19* form;

3 (ii) *Negative Test While Symptomatic*. If the test required
4 under this Protocol is taken while symptomatic and is negative for COVID-19,
5 engage in a period of self-isolation until asymptomatic for seventy-two (72) hours
6 without the use of fever-reducing medicine unless otherwise directed by the chief
7 judge of the judicial district in accordance with guidance provided by the New
8 Mexico Judicial Branch Coronavirus (COVID-19): Frequently Asked Questions and
9 Resources for Judges, CEOs, and Employees; or

10 (iii) *Negative Test While Asymptomatic*. If the test required
11 under this Protocol is taken by an unvaccinated judicial officer or judicial employee
12 when not displaying symptoms, engage in a ten (10)-day period of self-isolation
13 from display of initial symptoms; and if taken by a fully vaccinated judicial officer
14 or judicial employee when not displaying symptoms, return to the workplace after
15 being symptom-free for seventy two (72)-hours without the use of fever-reducing
16 medicine.

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

18 If denied access to a courthouse or other building operated or occupied by the New

1 Mexico Judiciary because of answers to screening questions regarding
2 circumstances other than symptoms associated with COVID-19, the judicial officer
3 or employee shall do the following:

4 (a) *Self-Isolation Required.* The duration of required self-isolation
5 will depend on the non-symptom reason for denied access as follows:

6 (i) *Contact with Covid-Positive Household Member.* If a
7 judicial officer or employee lives with a person who tests positive for COVID-19,
8 the judicial officer or employee shall engage in a period of self-isolation 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 (ii) *Contact with Positive or Presumptive Positive Non-*
13 *Household Member.* If a judicial officer or employee has contact with a non-
14 household member who tests positive or is presumptive positive for COVID-19, the
15 judicial officer or employee shall engage in a period of self-isolation in accordance
16 with guidance provided by the New Mexico Judicial Branch Coronavirus (COVID
17 19): Frequently Asked Questions and Resources for Judges, CEOs, and Employees;

18 (b) *Testing Required.* Obtain a test for COVID-19 in accordance

1 with the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently Asked
2 Questions and Resources for Judges, CEOs, and Employees and disclose the results
3 of the test to the chief judge of the judicial district or the chief judge’s designee; and

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

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

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

13 1. The suspension of all out-of-state travel on work-related business by
14 judicial officers and judicial employees of the New Mexico Judiciary shall remain
15 in effect until further order of the Court for any judicial officer or judicial employee
16 who is not fully vaccinated as defined in the New Mexico Judicial Branch
17 Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges,
18 CEOs, and Employees.

19 2. All judicial officers and judicial employees who are not fully

1 vaccinated as defined in the New Mexico Judicial Branch Coronavirus (COVID-19):
2 Frequently Asked Questions and Resources for Judges, CEOs, and Employees are
3 strongly discouraged from traveling out-of-state on personal business.

4 3. Any judicial officer or judicial employee who is not fully vaccinated as
5 defined in the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently
6 Asked Questions and Resources for Judges, CEOs, and Employees and who engages
7 in out-of-state travel shall report the nature, extent, and details of the travel to the
8 chief judge of the judicial district before traveling or, if advance notice of the out-
9 of-state travel is not possible because of unforeseen, emergency circumstances, as
10 soon as possible after the travel begins. The chief judge may deny any leave request
11 for out-of-state travel.

12 4. Except as otherwise permitted in this Protocol, any judicial officer or
13 judicial employee who arrives in New Mexico from an out-of-state or international
14 location shall engage in a ten (10)-day period of self-isolation upon return to New
15 Mexico before returning to the workplace, provided that return to work after a seven
16 (7)-day period of self-isolation is permitted if the judicial officer or judicial
17 employee takes a test for COVID-19 five (5) days after returning to New Mexico,
18 receives a negative test result, and is asymptomatic when returning to work.

1 5. Except as otherwise permitted in this Protocol, if a judicial officer or
2 judicial employee has contact with any person, including a household member, who
3 arrives in New Mexico from an out-of-state or international location, the judicial
4 officer or judicial employee shall engage in a ten (10)-day period of self-isolation
5 from the date of contact with that person before returning to the workplace, provided
6 that return to work after a seven (7)-day period of self-isolation is permitted if the
7 judicial officer or judicial employee takes a test for COVID-19 five (5) days after
8 contact, receives a negative test result, and is asymptomatic when returning to work.

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

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

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

17 (c) Out-of-state travel by a judicial officer or employee who is
18 outside the state for twenty-four (24) hours or less to attend to non-discretionary

1 parenting responsibilities, such as travel for custody or visitation exchanges or to
2 transport a child to or from school or college; and

3 (d) Any out-of-state travel by a judicial officer or employee who is
4 fully vaccinated as defined in the New Mexico Judicial Branch Coronavirus
5 (COVID-19): Frequently Asked Questions and Resources for Judges, CEOs, and
6 Employees.

7 7. For any judicial officer or employee who is not fully vaccinated as
8 defined in the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently
9 Asked Questions and Resources for Judges, CEOs, and Employees, the exceptions
10 to self-isolation in Subsections (E)(6)(a), (b), and (c) of this Protocol shall not apply
11 to the following:

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

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

17 8. Subject to the provisions of Subsection (E)(9) of this Protocol, any
18 judicial officer or judicial employee who engages in voluntary out-of-state travel

1 that is not excepted under Subsection (E)(6) of this Protocol, or who has had contact
2 with a person who has voluntarily traveled from out-of-state, shall be required to
3 self-isolate for ten (10) days, provided that return to work after a seven (7)-day
4 period of self-isolation is permitted if the judicial officer or judicial employee takes
5 a test for COVID-19 five (5) days after the travel or contact, receives a negative test
6 result, and is asymptomatic when returning to work. Any judicial officer or judicial
7 employee who voluntarily travels out-of-state or who has had contact with a person
8 who travels out-of-state shall not be allowed to telework during the required period
9 of self-isolation without prior approval of their chief judge. If telework is not
10 available or approved for a judicial employee who is required to self-isolate under
11 this subsection, the chief judge or chief judge's designee may approve the use of
12 available annual or sick leave for the period of self-isolation.

13 9. Any judicial officer or judicial employee who is fully vaccinated as
14 defined in the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently
15 Asked Questions and Resources for Judges, CEOs, and Employees shall not be
16 required to comply with the self-isolation requirements in Subsections (E)(4), (5),
17 and (8) of this Protocol unless the relevant travel is to or from an international
18 destination.

1 **F. Courthouse Cleaning Requirements.**

2 All courthouses and other judicial buildings operated by the New Mexico
3 Judiciary must be maintained in accordance with the guidelines issued by the New
4 Mexico Department of Health for the cleaning and disinfection of public facilities
5 during the current public health emergency. *See* Cleaning and Disinfection of Public
6 Facilities in Response to Novel Coronavirus (COVID-19) (Issued March 22, 2020).

7 **G. Regular Testing of Unvaccinated Judicial Officers and Employees.**

8 Any judicial officer or judicial employee who is not fully vaccinated as
9 defined in the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently
10 Asked Questions and Resources for Judges, CEOs, and Employees shall be required
11 to test for COVID-19 every seven (7) days unless and until that judicial officer or
12 judicial employee becomes fully vaccinated. Judicial employees required to test
13 under this subsection shall be granted thirty (30) minutes of administrative leave to
14 take the weekly test. All testing required under this subsection shall be done in
15 accordance with procedures set forth in the New Mexico Judicial Branch
16 Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges,
17 CEOs, and Employees. Any judicial officer or judicial employee who refuses to
18 submit to weekly testing under this subsection shall not be permitted to enter any

1 courthouse or other judicial building and shall not be permitted to telework. Any
2 judicial officer or judicial employee who does not comply with the testing
3 requirements in this paragraph shall be subject to required corrective action in
4 accordance with guidance provided by the New Mexico Judicial Branch Coronavirus
5 (COVID-19): Frequently Asked Questions and Resources for Judges, CEOs, and
6 Employees, up to and including termination of a judicial employee, and the
7 immediate reporting of the judicial officer to the Supreme Court and the
8 Administrative Office of the Courts.

9 **H. Vaccination Requirements for New Employees.**

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

17 **I. Falsification of Vaccination Card or COVID-19 Test Results.**

18 For purposes of these protocols and the New Mexico Judicial Branch

1 Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges,
2 CEOs, and Employees, a judicial employee who falsifies or knowingly provides a
3 falsified vaccination record or documentation, or who falsifies or knowingly
4 provides falsified COVID-19 test results will be subject to immediate termination
5 pursuant to the New Mexico Judicial Branch Personnel Rules. Any judicial officer
6 who falsifies or knowingly provides a falsified vaccination record or documentation,
7 or who falsifies or knowingly provides falsified COVID-19 test results shall be
8 immediately reported to the Supreme Court, the Supreme Court Emergency
9 Response Team, and the Judicial Standards Commission.

10 **J. Air Purifiers.**

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

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

1 2020; as amended by Supreme Court Order No. 20-8500-040, effective November
2 20, 2020; as amended by Supreme Court Order No. 20-8500-042, effective
3 December 14, 2020; as amended by Supreme Court Order No. 21-8500-003,
4 effective February 12, 2021; as amended by Supreme Court Order No. 21-8500-004,
5 effective March 11, 2021; as amended by Supreme Court Order No. 21-8500-007,
6 effective May 5, 2021; as amended by Supreme Court Order No. 21-8500-008,
7 effective May 24, 2021; as amended by Supreme Court Order No. 21-8500-009,
8 effective June 7, 2021; as amended by Supreme Court Order No. 21-8500-015,
9 effective June 29, 2021; as amended by Supreme Court Order No. 21-8500-016,
10 effective July 16, 2021; as amended by Supreme Court Order No. 21-8500-020,
11 effective August 9, 2021; as amended by Supreme Court Order No. 21-8500-021,
12 effective August 23, 2021; as amended by Supreme Court Order No. 21-8500-024,
13 effective October 29, 2021; as amended by Supreme Court Order No. 22-8500-003,
14 effective January 18, 2022; as amended by Supreme Court Order No. 22-8500-010,
15 effective March 21, 2022.]

1 by the Supreme Court Emergency Response Team for specified in-person
2 proceedings pursuant to a plan submitted by a requesting court that explains how
3 such proceedings can be safely carried out without maintaining the masking
4 requirement. *See also* Emergency Court Protocol No. 1, Section C.

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

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

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

16 (b) the audio-visual connection must enable simultaneous audio-
17 visual communication between the witness and the judge and attorneys in the
18 courtroom for direct examination, cross-examination, and other necessary
19 communications during the testimony of the witness;

20 (c) no other person shall be present in the room with the witness

1 while the witness is unmasked;

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

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

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

13 **B. Format of Court Proceedings.**

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

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

18 a. bench trials;

19 b. competency hearings;

20 c. plea hearings;

- 1 d. preliminary hearings;
- 2 e. pretrial detention hearings;
- 3 f. probation revocation hearings for out-of-custody defendants
- 4 when jail time is sought; and
- 5 g. sentencing hearings.

6 3. The presumption is that the following proceedings in civil cases shall
7 be conducted in person unless the presiding judge, in consultation with the chief
8 judge of the judicial district, orders otherwise:

- 9 a. kinship guardianship hearings;
- 10 b. order of protection hearings;
- 11 c. hearings in cases with a PQ case number designation in the
- 12 Judiciary’s case management system;
- 13 d. hearings in cases with a Sequestered case number designation in
- 14 the Judiciary’s case management system; and
- 15 e. termination of parental rights hearings.

16 4. Civil bench trials may be held in person at the discretion of the chief
17 judge of the judicial district.

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

1 6. The presumption is that hearings before the Disciplinary Board shall be
2 conducted in person, provided that hearings before the Disciplinary Board may be
3 held by video connection if disciplinary counsel, respondent, respondent’s counsel,
4 if represented, and the members of the assigned hearing committee or board panel
5 agree to conduct the proceeding remotely.

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

9 8. Except as provided in Subsections (B)(1)-(7) of this Protocol, the
10 presumption is that all other court proceedings shall be conducted remotely through
11 telephonic or audio-video connection for court appearances by all attorneys,
12 litigants, and witnesses, unless the judge presiding over the proceeding, in
13 consultation with the chief judge of the judicial district, orders otherwise.

14 9. A judge may continue to take other protective measures, including the
15 granting of continuances upon motion of any party or the judge’s own motion, in
16 appropriate cases when remote appearances are not feasible.

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

19 11. Any criminal procedure rules requiring the presence of the defendant
20 may be accomplished through remote, audio-visual appearance in the discretion of

1 the judge, provided that confidential communication between the defendant and
2 defense counsel is made available.

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

4 1. All in-person proceedings shall occur in each judicial district pursuant
5 to individualized plans submitted by the chief judge in each judicial district for
6 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 three (3) 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; as amended by Supreme Court Order No. 21-8500-008, effective May 24,

1 2021; as amended by Supreme Court Order No. 21-8500-015, effective June 29,
2 2021, with the expansion of in-person proceedings to commence on or before July
3 19, 2021; as amended by Supreme Court Order No. 22-8500-010, effective March
4 21, 2022.]

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 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.]