

**NEW MEXICO JUDICIARY  
PUBLIC HEALTH EMERGENCY PROTOCOLS**

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## **EMERGENCY COURT PROTOCOL NO. 1**

### **Precautionary Measures For Operating Courthouses and Other Judicial Buildings**

#### **A. Continuity of Court Operations; Scope of Protocols.**

1. All New Mexico state courts shall remain open and operating under regular business hours, in accordance with these Emergency Court Protocols and in accordance with the Judicial Officers & Judicial Employees Workplace Safety COVID-19 Quick Guide, formerly known as the New Mexico Judicial Branch Workplace Safety COVID-19 FAQs and the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges, CEOs, and Employees, to ensure that the courts fulfill their constitutional and statutory responsibilities to all New Mexicans.

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

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

(a) notice is posted at the closed courthouse with the locations and

phone numbers of the nearest magistrate and district courts; and,

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

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

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

1. *Screening Requirements.* Any person wishing to enter a courthouse or other building operated or occupied by the New Mexico Judiciary shall comply with the screening requirements in this Protocol and the Judicial Officers & Judicial Employees Workplace Safety COVID-19 Quick Guide, formerly known as the New Mexico Judicial Branch Workplace Safety COVID-19 FAQs and the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges, CEOs, and Employees, which shall include all attorneys and employees of any other governmental entity housed within a building operated or

occupied by the New Mexico Judiciary. In addition to the regular security screening that courts conduct, all courts shall screen any person reporting as a juror or potential juror, or other person, as appropriate, based on the answers to the Juror Screening Questions required by the Supreme Court for entry to courthouses and other judicial buildings, which are posted on the New Mexico Judiciary website on the New Mexico Courts - Coronavirus (COVID-19) Information webpage at [nmcourts.gov](http://nmcourts.gov). All screening question forms submitted by jurors or potential jurors are confidential, shall be retained for two (2) weeks, and shall then be destroyed.

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

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

Mexico Judiciary because they are displaying symptoms associated with COVID-19 while working on site, working remotely, or during off-duty hours, shall comply with the requirements and procedures set forth in the Judicial Officers & Judicial Employees Workplace Safety COVID-19 Quick Guide, formerly known as the New Mexico Judicial Branch Workplace Safety COVID-19 FAQs and the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges, CEOs, and Employees, as applicable.

4. ***Requirements if On-Site Access Denied Because of Symptoms.*** If denied access to a courthouse or other building operated or occupied by the New Mexico Judiciary because of symptoms associated with COVID-19, the judicial officer or employee shall comply with the requirements and procedures set forth in Judicial Officers & Judicial Employees Workplace Safety COVID-19 Quick Guide, formerly known as the New Mexico Judicial Branch Workplace Safety COVID-19 FAQs and the New Mexico Judicial Branch Coronavirus (COVID-19): Frequently Asked Questions and Resources for Judges, CEOs, and Employees.

**C. Face Mask Requirements.**

1. The use of a protective face covering that covers the nose and mouth shall be required by any member of the public, including jurors, witnesses, parties,

attorneys, sheriffs, and other participants while in a courtroom or jury assembly area of a courthouse, judicial building, or other physical space used, occupied, or operated as a courtroom or jury assembly area by the New Mexico Judiciary, provided that this order shall not apply to the following individuals:

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

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

(c) at the discretion of the trial court, a witness may testify without a mask if the fact finder has a difficult time hearing testimony and the witness maintains three (3) feet social distancing; or,

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

*See also* Emergency Court Protocol No. 2, Subsections A(2), (3) and (4).

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

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

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

without pay.

4. Protective face coverings required by these Emergency Court Protocols shall comply with all design requirements approved by the Supreme Court and set forth in Judicial Officers & Judicial Employees Workplace Safety COVID-19 Quick Guide.

5. The use of two (2) protective face coverings, i.e., double-masking, or the use of one KN95 or one KF94 mask, is required for impaneled jurors, and any such coverings shall comply with all design requirements approved by the Supreme Court and set forth in Judicial Officers & Judicial Employees Workplace Safety COVID-19 Quick Guide.

**D. Courthouse Cleaning Requirements.**

All courthouses and other judicial buildings operated by the New Mexico Judiciary must be maintained in accordance with the guidelines issued by the New Mexico Department of Health.

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

For purposes of these protocols, a judicial employee who falsifies or knowingly provides a falsified vaccination record or documentation, or who falsifies or knowingly provides falsified COVID-19 test results will be subject to immediate



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

**F. Air Purifiers.**

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

[Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020; as amended by Supreme Court Order No. 20-8500-034, effective August 14, 2020; as amended by Supreme Court Order No. 20-8500-037, effective September 4, 2020; as amended by Supreme Court Order No. 20-8500-038, effective October 16, 2020; as amended by Supreme Court Order No. 20-8500-039, effective November 13, 2020; as amended by Supreme Court Order No. 20-8500-040, effective November 20, 2020; as amended by Supreme Court Order No. 20-8500-042, effective December 14, 2020; as amended by Supreme Court Order No. 21-8500-003, effective February 12, 2021; as amended by Supreme Court Order No. 21-8500-004,

effective March 11, 2021; as amended by Supreme Court Order No. 21-8500-007, effective May 5, 2021; as amended by Supreme Court Order No. 21-8500-008, effective May 24, 2021; as amended by Supreme Court Order No. 21-8500-009, effective June 7, 2021; as amended by Supreme Court Order No. 21-8500-015, effective June 29, 2021; as amended by Supreme Court Order No. 21-8500-016, effective July 16, 2021; as amended by Supreme Court Order No. 21-8500-020, effective August 9, 2021; as amended by Supreme Court Order No. 21-8500-021, effective August 23, 2021; as amended by Supreme Court Order No. 21-8500-024, effective October 29, 2021; as amended by Supreme Court Order No. 22-8500-003, effective January 18, 2022; as amended by Supreme Court Order No. 22-8500-010, effective March 21, 2022; as amended by Supreme Court Order No. 22-8500-018, effective March 24, 2022; as amended by Supreme Court Order No. 22-8500-037, effective December 9, 2022.]

## EMERGENCY COURT PROTOCOL NO. 2

### Precautionary Measures for Conducting Judicial Proceedings

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

1. All hearings, including trials, and all other court-organized gatherings of any type on judicial property shall be held in a manner that limits the number of individuals in a single room or connected space — which includes judges, court personnel, jurors, attorneys, litigants, the press, and the general public — to allow for appropriate social distancing. In any such gathering that involves face-to-face interaction with the public or that occurs in a public area of the courthouse or other judicial building, a minimum of three (3) feet in each direction must be maintained between every individual regardless of vaccination status while entering, inside, and exiting the courthouse unless an exception to this physical distancing requirement is approved by the Supreme Court Emergency Response Team for specified in-person proceedings pursuant to a plan submitted by a requesting court that explains how such proceedings can be safely carried out without maintaining the minimum three (3)-foot distancing requirement.

2. Judicial officers and other court personnel shall wear a protective face covering at all times while the public is present and while participating in a judicial proceeding or court-organized gathering notwithstanding their vaccination status unless an exception to this masking requirement is approved by the Supreme Court

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

3. During trials and other hearings, all witnesses and jurors shall wear a protective face covering at all times, including while testifying or deliberating, except that a face covering may be removed for a very brief moment to allow for the identification of a party or witness provided that the party or witness does not speak while the face covering is removed. At the discretion of the trial court, a witness may testify without a mask if the fact finder has a difficult time hearing testimony and the witness maintains social distancing.

*See also* Emergency Court Protocol No. 1, Section C.

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

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

(b) the audio-visual connection must enable simultaneous audio-visual communication between the witness and the judge and attorneys in the courtroom for direct examination, cross-examination, and other necessary

communications during the testimony of the witness;

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

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

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

**B. Format of Court Proceedings.**

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

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

(a) bench trials;

(b) competency hearings;

(c) plea hearings;

- (d) preliminary hearings;
- (e) pretrial detention hearings;
- (f) probation revocation hearings for out-of-custody defendants

when jail time is sought; and

- (g) sentencing hearings.

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

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

- (a) kinship guardianship hearings;
- (b) order of protection hearings;
- (c) hearings in cases with a PQ case number designation in the

Judiciary's case management system;

- (d) hearings in cases with a Sequestered case number designation in

the Judiciary's case management system; and

- (e) termination of parental rights hearings.

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

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

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

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

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

10. A judge may continue to take other protective measures, including the

granting of continuances upon motion of any party or the judge's own motion, in appropriate cases when remote appearances are not feasible.

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

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

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

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

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

3. Each judicial district's plan for conducting jury trials and other in-person proceedings shall incorporate all of the precautionary measures in these Emergency Court Protocols, which shall include maintaining a minimum distance of three (3) feet in each direction between every individual participating in the trial



proceedings. [Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020; as amended by Supreme Court Order No. 20-8500-039, effective November 13, 2020; as amended by Supreme Court Order No. 20-8500-042, effective December 14, 2020; as amended by Supreme Court Order No. 21-8500-008, effective May 24, 2021; as amended by Supreme Court Order No. 21-8500-015, effective June 29, 2021, with the expansion of in-person proceedings to commence on or before July 19, 2021; as amended by Supreme Court Order No. 22-8500-010, effective March 21, 2022; as amended by Supreme Court Order No. 22-8500-018, effective March 24, 2022; as amended by Supreme Court Order No. 22-8500-037, effective December 9, 2022.]

## **EMERGENCY COURT PROTOCOL NO. 3**

### **Temporary Procedural Requirements for Judicial Proceedings**

#### **A. Filing by Email and Fax.**

1. All courts shall maintain local procedures for accepting filings by email or by fax from self-represented litigants to minimize the need for self-represented litigants to enter a courthouse to file a document.

2. Filing by email or fax also shall be permitted by attorneys in those case-types that are not eligible for electronic filing through the New Mexico Judiciary's File and Serve system.

3. Applicable provisions in the rules of procedure addressing the filing of documents in the appellate, district, metropolitan, and magistrate courts by email or fax shall remain temporarily suspended to the extent necessary to accommodate local procedures used by courts for expanded filing by email or fax during the current public health emergency.

#### **B. Exhibits in Remote Proceedings.**

1. No later than forty-eight (48) hours before the start of any hearing held by telephonic or audio-video connection at which a party plans to offer documentary exhibits for admission, unless otherwise directed by the court, the offering party shall submit the following to the court with a copy to the opposing parties:

- (a) the proffered exhibits; and

(b) an exhibit list that indicates whether the parties stipulate or object to the admission of each proffered exhibit and, if opposed, the grounds for any objections.

2. If it appears that one or more proffered exhibits will be opposed, the presiding judge may hold an evidentiary hearing prior to the hearing at which the exhibits are sought to be admitted in order to resolve objections to the admission of exhibits.

3. The admission of exhibits opposed on foundational or authentication grounds may be conditionally admitted pending witness testimony, but purely legal objections to the admission of an exhibit may be resolved before the hearing for which the exhibits are sought to be admitted.

#### **C. Identification Issues in Remote Criminal Proceedings.**

If a party anticipates challenging the identification of a defendant at a hearing to be held by audio-video or telephonic connection, that party shall notify the court and opposing counsel at least forty-eight (48) hours before the hearing so that the court and opposing counsel have adequate time to prepare and make arrangements for conducting the hearing in a manner conducive to addressing and resolving a challenge to the identity of the defendant.

#### **D. Peremptory Excusal of Judges.**

1. To facilitate case management processes in the district, metropolitan,

and magistrate courts during the initial phases of the current public health emergency, a suspension of the exercise of peremptory excusals under Rules 1-088.1, 2-106, 3-106, 5-106, 6-106, 7-106, 10-162, and LR2-308(E) NMRA was imposed for cases filed on or before December 31, 2020, and was lifted for all cases filed on or after January 1, 2021.

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

3. To streamline the processing of criminal cases in other courts during the ongoing public health emergency, the suspension of the exercise of peremptory excusals in metropolitan court and the magistrate courts under Rules 6-106 and 7-106 NMRA shall be reinstated for criminal cases in those courts effective February 1, 2022, and shall remain in place for one year, to be lifted February 1, 2023.

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

**E. Deadlines for Trials in Criminal Cases.**

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

**F. Plea and Settlement Deadlines.**

1. In criminal and civil proceedings in which a jury or bench trial has been scheduled by a district, magistrate, or metropolitan court, a plea agreement or a settlement agreement between the parties that would eliminate the need for a trial shall be submitted for the court's consideration by a deadline set in the court's discretion that will allow the court sufficient time to take action on the plea agreement or settlement agreement no later than five (5) business days before the scheduled date for jury selection or commencement of a bench trial.

2. A request for the court to approve an untimely plea agreement or settlement agreement shall not be granted except upon a written finding by the judge of extraordinary circumstances that excuse the untimely submission of the agreement. If the court denies a request to accept an untimely plea agreement or

settlement agreement, the case shall proceed to trial on the scheduled date.

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

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

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

**G. Motions to Reduce Sentences.**

The deadline for filing a motion to reduce a sentence under Rule 5-801(A) NMRA may be waived by the court upon a showing of an extraordinary change in circumstances caused by the current public health emergency.

[Approved by Supreme Court Order No. 20-8500-025, effective July 6, 2020; as amended by Supreme Court Order No. 20-8500-039, effective November 13, 2020; as amended by Supreme Court Order No. 20-8500-042, effective December 14, 2020; as amended by Supreme Court Order No. 22-8500-003, effective January 18, 2022; as amended by Supreme Court Order No. 22-8500-010, effective March 21, 2022; as amended by Supreme Court Order No. 22-8500-018, effective March 24,

2022; as amended by Supreme Court Order No. 22-8500-037, effective December 9, 2022.]