

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

2 **March 17, 2020**

3 **NO. 20-8500-002**

4 **IN THE MATTER OF**
5 **PRECAUTIONARY MEASURES**
6 **FOR COURT OPERATIONS IN THE**
7 **NEW MEXICO JUDICIARY DURING THE**
8 **COVID-19 PUBLIC HEALTH EMERGENCY**

9 **ORDER**

10 WHEREAS, the New Mexico Judiciary performs a vital function in our
11 community to uphold the rule of law and provide essential justice services to the
12 public guaranteed by the Constitution and laws of the United States and State of
13 New Mexico, which must be provided at all times and especially during times of
14 crisis;

15 WHEREAS, on March 11, 2020, the Governor of New Mexico issued an
16 executive order declaring a public health emergency in New Mexico to minimize
17 the spread and adverse impacts of the novel coronavirus (COVID-19) in New
18 Mexico, and the Secretary of the New Mexico Department of Health issued an
19 emergency public health order on March 12, 2020, to prohibit mass gatherings of
20 one hundred (100) or more individuals and implement other protective health
21 precautions to address COVID-19;

22 WHEREAS, the emergency public health order issued by the New Mexico

1 Department of Health specifically excludes courthouses as an independent branch
2 of our state government, but the New Mexico Judiciary nonetheless is committed
3 to the safe operation of our courthouses during the current public health
4 emergency;

5 WHEREAS, on March 12, 2020, the Supreme Court of New Mexico
6 directed the New Mexico Judiciary to immediately implement a number of
7 protective measures to promote a safe environment for everyone who must visit or
8 work in New Mexico state courthouses during the COVID-19 public health
9 emergency, including an immediate suspension of out-of-state travel for work-
10 related business by all judges and judicial employees, a suspension of civil jury
11 trials, and strict limits on the gathering of individuals in courthouses to no more
12 than twenty-five (25) people; and

13 WHEREAS, the need for protective health measures in New Mexico
14 courthouses remains a top priority for the New Mexico Judiciary to ensure that
15 courts can remain open to provide essential public safety services and maintain the
16 rule of law in a safe environment for all New Mexicans, and the Court wishing to
17 provide additional guidance and direction to the New Mexico Judiciary in light of
18 the evolving public health emergency and being sufficiently advised, Chief Justice
19 Judith K. Nakamura, Justice Barbara J. Vigil, Justice Michael E. Vigil, Justice C.
20 Shannon Bacon, and Justice David K. Thomson concurring;

1 NOW, THEREFORE, IT IS ORDERED that all prior protective measures
2 for court operations directed by this Court since the declaration of a public health
3 emergency shall remain in effect until modified or withdrawn by order of the
4 Court;

5 IT IS FURTHER ORDERED that all criminal jury trials arising under the
6 Rules of Criminal Procedure for the District, Metropolitan, and Magistrate Courts
7 that have not yet commenced shall be suspended until April 30, 2020, subject to
8 the individual discretion of the judges presiding in such cases to go forward with a
9 jury trial, upon motion of a party, to avoid serious harm to the interests of the
10 litigants or for other exceptional circumstances. A judge may go forward with a
11 criminal jury trial on the judge's own initiative and without motion of a party upon
12 approval of the chief judge and in consultation with the Chief Justice. The
13 provisions in Rules 5-604, 6-506, 7-506, 8-506, and LR2-308 NMRA shall be
14 suspended to the extent that the time limitations in those rules are exceeded due to
15 the delay from the suspension of a criminal jury trial under this order;

16 IT IS FURTHER ORDERED that, in light of the potential for higher than
17 usual absenteeism and to facilitate case management processes required during the
18 current public health emergency, the exercise of peremptory excusals under Rules
19 1-088.1, 2-106, 3-106, 5-106, 6-106, 7-106, and 10-162 NMRA shall be
20 temporarily suspended, effective immediately and until further order of this Court;

1 IT IS FURTHER ORDERED that all New Mexico state courts shall remain
2 open and shall continue to operate under regular business hours to ensure that the
3 courts fulfill their constitutional and statutory responsibilities to all New Mexicans;

4 IT IS FURTHER ORDERED that there shall be no blanket cancellation of
5 cases or types of proceedings by New Mexico courts that are not already
6 authorized by this Court, and all court proceedings shall be conducted in
7 accordance with the following protective measures to minimize public health risks:

8 1. All trials that are not required to be suspended under the terms of this
9 order, all hearings, and other court-organized gatherings of any type and at any
10 location shall be held in a manner that limits the gathering of individuals in a
11 single, connected location within a courthouse or other building to no more than
12 twenty-five (25) people — which includes judges, court personnel, jurors,
13 attorneys, litigants, and the general public — to facilitate appropriate social
14 distancing as recommended by public health authorities;

15
16 2. All judges shall have the discretion to authorize telephonic or audio-
17 visual attendance for court appearances by attorneys, litigants, and witnesses and
18 may take other protective measures, including the granting of continuances in
19 appropriate cases, upon motion of a party or on the court's own motion. Any
20 criminal procedure rules requiring the presence of the defendant may be
21 accomplished through remote, audio-visual appearance in the discretion of the
22 judge, provided that confidential communication between the defendant and
23 defense counsel is made available; and

24
25 3. To address additional processes that facilitate the limitations on the
26 gathering of groups of people in the courthouse and other protective measures
27 already directed by this Court, the chief judge in each judicial district is
28 encouraged to consult with the criminal justice coordinating council in that district
29 as the need arises;

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31 IT IS FURTHER ORDERED that the chief judge or administrative authority
32 in each judicial district may permit judicial employees to work from home if they

1 can effectively perform their designated functions remotely, provided that adequate
2 personnel remain on site to continue court operations that must take place inside
3 the courthouse;

4 IT IS FURTHER ORDERED that all courts may adopt local procedures for
5 accepting filings by email or by fax from self-represented litigants to minimize the
6 need for self-represented litigants to enter a courthouse to file a document. Filing
7 by email or fax also may be permitted by attorneys in those case-types that are not
8 eligible for electronic filing through the New Mexico Judiciary's File and Serve
9 system. Applicable provisions in the rules of procedure addressing the filing of
10 documents in the appellate, district, metropolitan, and magistrate courts by email
11 or fax are temporarily suspended to the extent necessary to accommodate local
12 procedures adopted by courts under the terms of this order for expanded filing by
13 email or fax during the current public health emergency;

14 IT IS FURTHER ORDERED that all courts shall screen visitors to
15 courthouses and deny access to any juror, witness, attorney, litigant, or other
16 person who (1) reports a fever, cough, or shortness of breath that has developed in
17 the past fourteen (14) days, (2) reports travel in the past fourteen (14) days to a
18 high risk area as defined by the New Mexico Department of Health, or (3) reports a
19 diagnosis, or close contact with anyone who has a diagnosis, of a COVID-19
20 infection;

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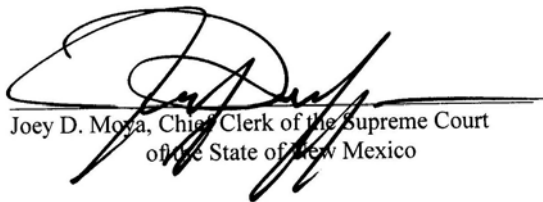
IT IS FURTHER ORDERED that probate courts and municipal courts in New Mexico may close if the building in which a court operates is closed by county or municipal authorities or if the presiding judge in the court chooses to do so, provided a notice is posted at the closed courthouse with the locations and phone numbers of the nearest magistrate and district courts and provided that the public and the chief district judge in the judicial district is given advance notice of any such closure; and

IT IS FURTHER ORDERED that this order shall remain in effect until amended or withdrawn by future order of the Court.

IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 17th day of March, 2020.



Joey D. Moza, Chief Clerk of the Supreme Court
of the State of New Mexico