

# Memorandum

**To:** Criminal Defense Attorneys Practicing in the Fourth Judicial District

**CC:** Hon. Abigail Aragon, Hon. Flora Gallegos, Hon. Melanie Rivera, Hon. Christian Montano, Hon. Christopher Baca, Robert Duran, Darlene Baca, Cynthia Garza, Carol Muniz

**From:** Gerald E. Baca, Chief District Court Judge, Fourth Judicial District

**Date:** 4/17/2020

**Re:** Supreme Court Orders 20-8500-006, 20-8500-12, and 20-8500-13

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As you all hopefully know by now, the Supreme Court has issued updated orders concerning court operations during the current public health emergency. Copies of some of the orders are attached to this memo for your review. It is my intention that the courts within the Fourth Judicial District strictly adhere to these orders as well as to any other orders issued by the New Mexico Supreme Court.

There shall be **NO** in-person hearings held in any of the courts within the Fourth Judicial District unless it is an emergency and it has been authorized by me. All hearings shall be held via telephone conference or audio-visual link (Google Meet is the preferred platform for audio-visual conferences). This means that no attorney, witness, victim, press or any other person shall appear in person at the court holding the hearing.

The prosecution and defense shall arrange with the defendant, the victim, their respective witnesses, and any other person to attend the hearing via telephone conference or audio-visual conference. These people can be physically located at the prosecutor's office, the defense attorney's office or some other location as long as they have the ability to attend the hearing via the medium used to hold the hearing. This includes evidentiary hearings where physical evidence/exhibits will be introduced into the record.

In the event of an evidentiary hearing, the attorneys who intend to introduce exhibits/evidence into the record shall, not later than 48 hours prior to the hearing, provide the court and all counsel of record with copies of the exhibits that they intend to use at the hearing. The copies of the exhibits can be provided, via email, to the TCAA for the district judge presiding over the hearing or the Court Manager (via the attorney email address recently created for this purpose) for the magistrate who is presiding over the hearing.

*April 17, 2020*

The exhibits shall be pre-marked. The prosecution shall use numbers and the defense shall use letters to identify their respective exhibits. The exhibit, if a document, shall be legible; and if a photograph, shall be such that the thing being depicted is easily and readily visible. Counsel shall use their best discretion and professional judgment to limit the number of exhibits submitted to those that are necessary to establish their point. Duplicative exhibits shall not be allowed.

A telephone conference should suffice for most hearings and will be the preferred method by which hearings shall be held. However, where the judge is called upon to make credibility determinations, a video conference shall be required. Video conferences shall be the preferred medium in plea hearings, but a plea hearing may be held, in the discretion of the presiding judge, via tele-conference. However, ALL sentencing hearings shall be conducted via video conference.

For hearings that are held via telephone conference, the party that requested the hearing shall be responsible for setting up the conference call. For hearings requiring a video conference, the court shall set up the video conference via Google Meet. Thus, all attorneys practicing in the Fourth Judicial District should “load” the Google Meet platform on their cell phone or computer so that they are able to attend hearings held by the court using this platform.

Thank you for your continued cooperation in these trying times. Keep yourselves safe and well.

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

2 **March 23, 2020**

3 **NO. 20-8500-006**

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

9  
10 **ORDER**

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

17 WHEREAS, the need for protective health measures in New Mexico  
18 courthouses remains a top priority for the New Mexico Judiciary to ensure that  
19 courts can remain open to provide essential public safety services and maintain the  
20 rule of law in a safe environment for all New Mexicans; and

21 WHEREAS, in light of the evolving public health emergency, and the Court  
22 wishing to provide additional guidance and direction to the New Mexico Judiciary  
23 for limiting in-person appearances and gatherings of individuals in courthouse and  
24 being sufficiently advised, Chief Justice Judith K. Nakamura, Justice Barbara J.

1 Vigil, Justice Michael E. Vigil, Justice C. Shannon Bacon, and Justice David K.  
2 Thomson concurring:

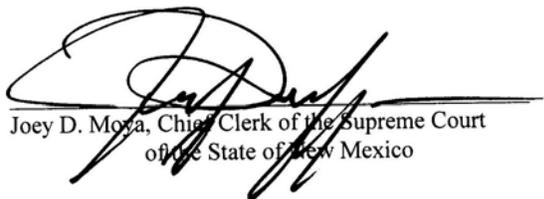
3 NOW, THEREFORE, IT IS ORDERED that this Court's March 17, 2020,  
4 Order No. 20-8500-002, at page 4, lines 16 through 23, which granted judges  
5 expanded discretion to authorize telephonic and audio-visual attendance for court  
6 appearances is AMENDED, effective immediately, as set forth in this order to  
7 authorize court appearances by remote methods to fullest extent possible. All  
8 judges are now required to use telephonic or audio-visual attendance for court  
9 appearances by attorneys, litigants, witnesses, and the press, unless there is an  
10 emergency need for an in-person appearance. The parties may, by motion, request  
11 in-person appearances where necessary. If a judge identifies a need for an in-  
12 person appearance on the judge's own initiative, prior to proceeding with the in-  
13 person appearance, the judge shall confer with the parties and the chief judge of  
14 the district. Judges 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 under the  
17 circumstances. Any criminal procedure rules requiring the presence of the  
18 defendant may continue to be accomplished through remote, audio-visual  
19 appearance, provided that confidential communication between the defendant and  
20 defense counsel is made available;

1 IT IS FURTHER ORDERED that Order No. 20-8500-002, at page 4, lines 8  
2 through 14, which limited the gathering of individuals in locations within the  
3 courthouse to no more that twenty-five (25) people is AMENDED, effective  
4 immediately, as set forth in this order to further restrict the size of gatherings in  
5 courthouses. All gatherings of individuals in a single, connected location within a  
6 courthouse or other building are now further limited to no more than fifteen (15)  
7 people - which includes judges, court personnel, jurors, attorneys, litigants, the  
8 general public, and the press - to facilitate appropriate social distancing as  
9 recommended by public health authorities. The chief judge of the district may  
10 extend a gathering of individuals in a courthouse to a maximum of twenty-five  
11 (25) if there is an emergency need to do so; and

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



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 23rd day of March, 2020.

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

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

2   **April 10, 2020**

3                   **NO. 20-8500-012**

4                   **IN THE MATTER OF THE AMENDMENT**  
5                   **OF CERTAIN PROCEDURAL REQUIREMENTS**  
6                   **FOR ALL JUDICIAL PROCEEDINGS AND CASE TYPES**  
7                   **DURING THE COVID-19 PUBLIC HEALTH EMERGENCY**

8   **ORDER**

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10                   WHEREAS, this matter having come before the Court upon  
11 recommendation to implement certain reforms to enhance the effectiveness of  
12 remote hearings held by audio-visual connection and to facilitate motions to reduce  
13 sentences during the current public health emergency, and the Court having  
14 considered the recommendation and being sufficiently advised, Chief Justice  
15 Judith K. Nakamura, Justice Barbara J. Vigil, Justice Michael E. Vigil, Justice C.  
16 Shannon Bacon, and Justice David K. Thomson concurring;

17                   NOW, THEREFORE, IT IS ORDERED that all courts shall institute local  
18 procedures to implement the following requirements for hearings to be held by  
19 telephonic or audio-visual connection:

20                   1. For all proceedings and case types, if a party plans to offer  
21 documentary exhibits for admission at the hearing, the offering party shall submit  
22 the proffered exhibits to the court, with a copy to the opposing party, no later than

1 forty-eight (48) hours before the start of the hearing, unless otherwise directed by  
2 the court, along with an exhibit list that indicates whether the parties stipulate or  
3 object to the admission of each proffered exhibit and the grounds for any  
4 objections. 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. The admission of exhibits opposed on foundational or authentication  
8 grounds may be conditionally admitted pending witness testimony, but purely legal  
9 objections to the admission of an exhibit may be resolved before the hearing for  
10 which the exhibits are sought to be admitted; and

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

17 IT IS FURTHER ORDERED that the deadline for filing a motion to reduce  
18 a sentence under Rule 5-801(A) NMRA may be waived by the court upon a  
19 showing of an extraordinary change in circumstances caused by the current public  
20 health emergency;

21 IT IS FURTHER ORDERED that this order shall be referred by the Clerk to  
22 the appropriate rules committees to consider whether any of the temporary,  
23 emergency procedures authorized under this order may warrant recommendations  
24 to the Court for permanent rule amendments that would govern court proceedings  
25 occurring after the current public health emergency has passed; and

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IT IS FURTHER ORDERED that this order shall remain in effect until

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amended or withdrawn by future order of this Court.

IT IS SO ORDERED.

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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 10th day of April, 2020.

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A handwritten signature in black ink, appearing to read "Joey D. Moya", is written over a horizontal line.

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

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

2   **April 16, 2020**

3                   **NO. 20-8500-013**

4                   **IN THE MATTER OF UPDATED**  
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, since the declaration of a public health emergency caused by  
11                   the COVID-19 pandemic, this Court has issued a series of administrative orders to  
12                   amend court procedures and implement enhanced courthouse cleaning protocols  
13                   and other precautionary measures within the New Mexico Judiciary designed to  
14                   protect the rights of all New Mexicans and minimize the risks posed by the current  
15                   public health emergency for anyone who must visit or work in New Mexico  
16                   courthouses; and

17                   WHEREAS, the Court has continued to monitor the evolving public health  
18                   crisis, including the latest recommendations and directives from public health  
19                   authorities, and the Court wishing to consolidate and update precautionary  
20                   measures for the New Mexico Judiciary to promote the continued operation of the  
21                   New Mexico Judiciary in a safe and effective manner and being sufficiently  
22                   advised, Chief Justice Judith K. Nakamura, Justice Barbara J. Vigil, Justice

1 Michael E. Vigil, Justice C. Shannon Bacon, and Justice David K. Thomson  
2 concurring;

3 NOW, THEREFORE, IT IS ORDERED that the provisions of this order  
4 shall replace the provisions contained in Order No. 20-8500-002 and Order No.  
5 20-8500-006, effectively immediately;

6 IT IS FURTHER ORDERED that the suspension of civil and criminal jury  
7 trials previously ordered by this Court until April 30, 2020, shall be extended to  
8 May 29, 2020, subject to the individual discretion of the judges presiding in such  
9 cases to go forward with a jury trial, upon motion of a party, to avoid serious harm  
10 to the interests of the litigants or for other exceptional circumstances. A judge may  
11 go forward with a criminal jury trial on the judge's own initiative and without  
12 motion of a party to avoid serious harm to the interests of the litigants or for other  
13 exceptional circumstances upon approval of the chief judge and in consultation  
14 with the Chief Justice;

15 IT IS FURTHER ORDERED that the calculation of any deadlines in Rules  
16 5-604, 6-506, 7-506, 8-506, and LR2-308 NMRA for all cases pending or filed on  
17 or after the date of this order shall not include any period of time-delay caused by  
18 the current public health emergency. But to exclude a period of time from the  
19 calculation of deadlines under the terms of this order, a judge must enter specific  
20 findings of fact demonstrating that the period of delay was caused by the current

1 public health emergency;

2 IT IS FURTHER ORDERED that, in light of the potential for higher than  
3 usual absenteeism and to facilitate case management processes required during the  
4 current public health emergency, the temporary suspension of the exercise of  
5 peremptory excusals under Rules 1-088.1, 2-106, 3-106, 5-106, 6-106, 7-106, 10-  
6 162, and LR2-308(E) NMRA shall remain in place until further order of this  
7 Court;

8 IT IS FURTHER ORDERED that all New Mexico state courts shall  
9 continue to remain open and operating under regular business hours to ensure that  
10 the courts fulfill their constitutional and statutory responsibilities to all New  
11 Mexicans;

12 IT IS FURTHER ORDERED that there shall be no blanket cancellation of  
13 cases or types of proceedings by New Mexico courts, except to the extent ordered  
14 by this Court;

15 IT IS FURTHER ORDERED that all court proceedings shall continue to be  
16 conducted in accordance with the following protective measures to minimize  
17 public health risks:

18 1. All trials that are not required to be suspended under the terms of this  
19 order, all hearings, and other court-organized gatherings of any type and at any  
20 location shall be held in a manner that limits the gathering of individuals in a  
21 single, connected location within a courthouse or other building to no more than  
22 fifteen (15) people — which includes judges, court personnel, jurors, attorneys,  
23 litigants, the press, and the general public — to facilitate appropriate social

1 distancing as recommended by public health authorities. The chief judge of the  
2 district may extend a gathering of individuals in a courthouse to a maximum of  
3 twenty-five (25) if there is an emergency need to do so;

4  
5 2. All judges shall use telephonic or audio-visual attendance for court  
6 appearances by attorneys, litigants, witnesses, and the press unless there is an  
7 emergency need for an in-person appearance upon motion of a party. A judge may  
8 also require an in-person appearance on the judge's own initiative, without a  
9 motion by a party, provided that the judge shall confer with the parties and the  
10 chief judge of the district before proceeding with an in-person appearance. Judges  
11 may continue to take other protective measures, including the granting of  
12 continuances upon motion of any party or the judge's own motion, in appropriate  
13 cases when remote appearances are not feasible but an emergency need for an in-  
14 person appearance does not exist. Any criminal procedure rules requiring the  
15 presence of the defendant may be accomplished through remote, audio-visual  
16 appearance in the discretion of the judge, provided that confidential  
17 communication between the defendant and defense counsel is made available;

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19 3. To address additional processes that facilitate the limitations on the  
20 gathering of groups of people in the courthouse and other protective measures  
21 already directed by this Court, the chief judge in each judicial district is  
22 encouraged to continue consulting with the criminal justice coordinating council in  
23 that district as the need arises; and

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25 4. During the current public health emergency and until further order of  
26 the Court, courts shall not use Court Call or other similar services that require the  
27 parties to pay for the service if the telephonic or audio-visual proceeding is a  
28 public health proceeding or is a proceeding in which a party is a self-represented  
29 litigant, a governmental entity, represented by a civil legal services organization, or  
30 represented by an attorney providing pro bono legal services;

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32 IT IS FURTHER ORDERED that the chief judge or administrative authority  
33 in each judicial district may continue to permit judicial employees to work from  
34 home if they can effectively perform their designated functions remotely, provided  
35 that adequate personnel continue to remain on site for court operations that must  
36 take place inside the courthouse, and shall encourage employees who remain on

1 site to wear face masks as recommended by public health authorities;

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

13 IT IS FURTHER ORDERED that all courts shall screen visitors to  
14 courthouses and deny access to any juror, witness, attorney, litigant, or other  
15 person (1) who reports a fever, cough, shortness of breath or other symptoms that  
16 have developed in the past fourteen (14) days that are identified by public health  
17 authorities as indicative of a possible COVID-19 infection, (2) who reports out-of-  
18 state travel in the past fourteen (14) days or who resides with a household member  
19 who has engaged in such out-of-state travel, or (3) who reports a diagnosis, or  
20 close contact with anyone who has a diagnosis, of a COVID-19 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

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IT IS FURTHER ORDERED that Order No. 20-8500-002 and Order No. 20-8500-006 are WITHDRAWN and this order shall remain in effect until amended or withdrawn by future order of the Court.

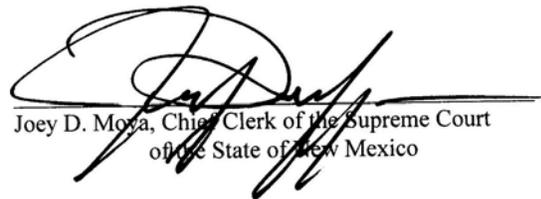
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IT IS SO ORDERED.



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 16th day of April, 2020.

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

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