

FOURTH JUDICIAL DISTRICT

TEMPORARY/EMERGENCY CRIMINAL CASE POLICIES

During the ongoing public health emergency and consistent with the directives and orders issued by our Supreme Court, the courts (District/Magistrate/Municipal), litigants (prosecution and defense) and ancillary agencies (law enforcement/detention centers/probation offices/etc.) shall proceed with these cases according to the following policies:

1. **EMAIL AND FAX FILING OF PLEADINGS:** The courts will accept email or fax filing of pleadings in criminal cases at the following address/fax numbers:

DISTRICT COURTS

San Miguel County District Court (Las Vegas)
fax: 505-454-8611
email: lvedpublic@nmcourts.gov

Guadalupe County District Court (Santa Rosa)
fax: 575-472-4451
email: srodpublic@nmcourts.gov

MAGISTRATE COURTS

San Miguel County Magistrate Court (Las Vegas)
fax: 505-425-0422
email for attorneys: lvemcriminal@nmcourts.gov
email for self-represented parties: lvempubli@nmcourts.gov

Guadalupe County Magistrate Court (Santa Rosa)
fax: 575-472-3592
email for attorneys: sromcriminal@nmcourts.gov
email for self-represented parties: srompublic@nmcourts.gov

Mora County Magistrate Court (Mora)
fax: 575-387-9081
email for attorneys: mormcriminal@nmcourts.gov
email for self-represented parties: mormpublic@nmcourts.gov

Please allow at least 24 hours before the same is available in SOPA.

If you have filed any emergency motion, please alert the judge's staff. The clerk's office will be making every effort to do the same. Do not call the clerk's offices to check on matters. If there are longer delays in getting pleadings into SOPA we will make every effort to update you.

2. **PRE-TRIAL MOTIONS:** Now, more than ever, every motion must note the position of all parties consistent with the Rules of Criminal Procedure for the District, Magistrate and Municipal Courts. **IF THE MOTION IS UNOPPOSED, THE PARTIES SHALL SUBMIT A STIPULATED ORDER TO THE COURT FOR REVIEW AND APPROVAL AND NOT REQUEST A SETTING FOR THAT MOTION.** The movant or party responding to the motion shall provide the court with a courtesy copy of the motion or response to the court at the time the motion or response is filed. Proposed forms of orders should reflect positions of parties and shall be emailed with the motion. All pleadings **must** be signed by counsel. An unsigned pleading violates rules of procedure. Electronic signatures are acceptable.

3. **NOTICE OF HEARINGS:** The Magistrate Courts will be emailing *Notice of Hearings* to counsel of record only for all matters at this time. The District Courts will file *Notice of Hearings* via the e-file and serve system. **ATTORNEYS: YOU OR YOUR STAFF SHOULD CHECK EACH OF THESE OFTEN AS THIS WILL BE THE ONLY MODE FOR PROVIDING NOTICE OF HEARINGS/TRIALS TO YOU. IT IS INCUMBENT UPON YOU TO STAY INFORMED OF THE STATUS OF YOUR CASES AND TO NOTIFY YOUR CLIENTS OF THE DATE, TIME AND LOCATION OF ANY HEARINGS IN THEIR CASES.**

NOTE: THE COURTS CAN VERIFY THAT YOU RECEIVED AND OPENED OR DID NOT OPEN THE E-FILED NOTICE AND CAN VERIFY THAT YOU RECEIVED THE EMAIL NOTICE.

4. **JURY TRIALS:** Pursuant to Supreme Court Order 20-8500-002, no criminal jury trials will occur until after April 30, 2020 unless the party seeking to have the trial has filed a motion seeking such and demonstrating that exceptional circumstances exist such that the jury trial must occur. Absent this finding by the Court, no criminal trials will occur until after April 30, 2020.

5. HEARINGS (PREFERENCE FOR REMOTE APPEARANCE): Pursuant to Supreme Court Order 20-8500-002, which provides, in pertinent part, that, “[a]ny 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,” all hearings, to the extent possible, shall be held via remote appearance (tele-conference or video (Google Hangouts preferred) by counsel and defendant. Remote appearance is the rule rather than the exception. When a defendant is in custody, the defendant shall appear via remote telephone or video link. No later than 4 days prior to a scheduled hearing, counsel for defendant and the prosecutor shall inform themselves of whether the defendant is or is not in custody. If the defendant is in custody, no later than 72 hours prior to the scheduled hearing, counsel for the parties shall inform the court that the defendant is in custody and inform the court at which facility the defendant is held so that the remote appearance of the defendant can be provided. **[THIS IS VITALLY IMPORTANT ESPECIALLY IF THE DEFENDANT IS IN DOC CUSTODY AS DOC IS REQUIRING 48 HOURS NOTICE OF THE NEED FOR THE REMOTE APPEARANCE.]** If the status of the defendant changes between the time the court is notified that the defendant is in custody and the time of the hearing, counsel shall notify the court so that the remote appearance arrangements that have been made shall be vacated. Defendants in criminal cases, who are not incarcerated, should also appear via video or telephone. Counsel should make arrangements to have their clients appear via video or telephone.

6. NON-ESSENTIAL HEARINGS: Any hearings regarding any non-essential matters shall not be held or if currently set, shall be vacated. “Non-essential” for these purposes is defined as any hearing that is not required to be held by statute or rule of procedure by a date certain and which hearing is not absolutely necessary and will not prejudice the parties to the case. Examples of non-essential hearings include, but are not limited to, motions to suppress where the jury trial has been vacated or will not occur for several weeks or months, motions *in limine* where the trial has been vacated and will not occur for several weeks or months, motions to compel production of an item or person where the delay of the hearing on the motion will not result in the loss of relevant evidence or testimony, and any other hearing that the assigned judge, in his or her discretion, believes does not have to be held until such time as the judge believes that it is absolutely necessary to have such hearing.

7. **HEARINGS ON MOTIONS TO REVIEW/REVOKE CONDITIONS OF RELEASE:** Absent exceptional circumstances, hearings to review conditions of release or revoke conditions of release shall be held within the time limits set forth by the rule of criminal procedure applicable to the court. These hearings will also be subject to the policy concerning the preference for remote appearances of the parties and their attorneys. The issuance of arrest warrants on the prosecution's motion to revoke/review conditions of release will be left to the discretion of the presiding judge with a preference to avoid arrest unless it is absolutely necessary to protect the safety of another person or the community and in the interests of justice.

8. **PRE-TRIAL DETENTION HEARINGS:** Absent exceptional circumstances, hearings on the prosecution's motion for pre-trial detention of a defendant pursuant to NMRA Rule 5-409 shall be held in strict compliance with the time limits set forth in the rule. **Because documentary and other physical evidence may be introduced at these hearings by one or both parties, these hearings will NOT be subject to the preference for remote appearance.** All parties, including the defendant, if not in custody, shall appear in person at the hearing. Any incarcerated defendant shall not be required to appear in person unless defense counsel files a motion demanding the in-person appearance of the defendant at the hearing.

9. **EVIDENTIARY HEARINGS:** Any hearing, such as preventative detention hearing, competency evaluation challenge, probation violation adjudicatory hearing, revocation of conditions of release hearing, motion to suppress, etc., requiring the presentation of physical evidence that cannot be stipulated to prior to the hearing shall require the presence of counsel and any witnesses who are the sponsoring witness for the evidence that is being submitted. Counsel for the State and Defendant are directed to meet and confer not less than 24 hours prior to the hearing to determine if a stipulation which negates the need for the evidentiary hearing can be achieved. If such a stipulation is achieved, counsel shall immediately after reaching the stipulation, inform the TCAA/Clerk of the court for the judge presiding over the case, to inform them of the stipulation and to have the evidentiary hearing vacated. However, the hearing shall still be held pursuant to the remote hearing preference procedure outlined above so that the stipulation can be presented to the court for review and approval.

10. **PLEA HEARINGS:** Pursuant to the authority provided by Supreme Court Order 20-8500-002, all change of plea hearings shall be held via remote appearance by counsel and defendant. Provided, however, that **no plea shall be taken**

extemporaneously. Every change of plea hearing will be set only after a written, signed copy of the plea agreement and a request for setting have been provided to the court via the court's proposed text email or the magistrate email provided for filing of criminal matters.

11. SOCIAL DISTANCING IN COURT: Where in-person hearings are necessary (where time limits are at issue) the court will practice social distancing. People shall sit at least 6 feet apart at counsel tables including moving to the gallery when necessary. People sitting in the gallery shall also maintain this distance from one another.

When addressing the court or questioning witnesses, parties will approach the podium one by one. **ATTORNEYS FOR THE PARTIES SHALL MAKE EVERY EFFORT TO INFORM THE PARTIES THAT NO PARTY IS PERMITTED TO BRING FAMILY OR FRIENDS TO COURT PROCEEDINGS.**

NO ONE (ATTORNEY, DEFENDANT, OR WITNESS) SHOULD ATTEND IN PERSON IF SHOWING SIGNS OF ILLNESS.

Remote appearances are permitted in these circumstances. If your personal attendance is not necessary to a hearing, you are not required to be present and may appear by telephone or other means such as Google Hangouts. Notify the TCAA for the judge presiding over the case or the court clerk's office in advance of the hearing of your intention to appear by telephone.

12. PRE-SCREENING OF PERSONS ATTENDING HEARINGS IN PERSON: Counsel for the prosecution and for the defense shall pre-screen the defendant, any witnesses, victim(s), staff or any other person who will be attending a hearing in person at a court facility by asking them the following questions:

- A. Over the past two weeks, have you developed flu-like symptoms such as a cough, a fever, or shortness of breath?
- B. Have you traveled outside the U.S. within the last 30 days or a high-risk area as identified by the NM Department Health. (<https://cv.nmhealth.org/travel-recommendations/>)
- C. Have you been diagnosed with, or in contact with, anyone who has been diagnosed with a COVID-19 infection?

If the person answers "yes" to any of these questions, that person shall not attend the hearing. If the person who answers "yes" to any of the questions is the defendant, a witness, a victim or other person whose presence at the hearing is essential to the

prosecution or the defense, counsel for that party that requires the attendance of this person at the hearing shall make arrangements for that person to attend the hearing via remote access.

12. **HIGH RISK CATEGORIES:** If you meet or believe you fall under the criteria as outlined by the Department of Health for high-risk, such as autoimmune disorders, chronic illness, out of state/country travel quarantine, etc., please do not appear in person in Court. Communicate with opposing counsel and file any appropriate motions. We will do our best to set telephonic motions on requests to vacate when there is not full agreement on issues. However, the Court reserves the right to rule on any motions without need for a hearing.

13. **COUNSEL TO MEET AND CONFER PRIOR TO ANY HEARING:** Counsel for the parties **SHALL** meet and confer prior to any scheduled hearing to determine if a stipulation can be reached and to determine if the hearing needs to occur or if the matter can be dealt with via submission of a stipulated order. **In addition, if a hearing is necessary, the prosecution and defense should meet and confer regarding the arrangements for the appearance.**

14. **COMMUNICATION WITH DEFENDANT BY DEFENSE COUNSEL:** Counsel for defendant(s) shall maintain regular communication with their client. This is defense counsel's ethical and legal obligation especially in this national health emergency. The Courts expect defense counsel to meet this obligation and will deal with any such failure to keep a defendant apprised of dates and times of hearings accordingly. Thus, it is vitally important that defense counsel keep their clients updated regarding dates, times and locations of hearings in their cases as well as whether the hearing will be via remote access or in person.

15. **UPDATE ON WEBSITE FORTHCOMING:** The Courts are working on providing users/consumers of the courts with information and updates as they become aware of them via the Fourth Judicial District Court's web site. You should visit this web site daily or more often to stay abreast of any new information concerning the topics covered in this document and any other court operations.

16. **TRANSPORT ORDERS:** In those few cases where the personal appearance of a defendant who is in custody, proposed transport orders should be sent to the courts via the proposed text in district courts or the email for magistrate courts.

17. ATTORNEY-CLIENT VISITS WITH INCARCERATED DEFENDANTS: The San Miguel County Detention Center (SMCDC) will accommodate private, non-recorded and confidential communication between defense counsel and a defendant. However, an attorney wishing to have communication with the defendant must make an appointment through the administration at the SMCDC for such visit unless it is an emergency.

FOR THE HEALTH AND SAFETY OF YOURSELF, YOUR CLIENTS, THE PUBLIC AND OUR STAFF, DO NOT COME TO COURT EXCEPT WHEN IT IS ABSOLUTELY NECESSARY.

Thank you for your continued patience and cooperation. Please continue to monitor emails and pass along information to your colleagues and staff.

DONE AT LAS VEGAS, NEW MEXICO THIS 19TH DAY OF MARCH, 2020.

FOR THE COURT:

/S/

Gerald E. Baca

Chief District Court Judge

Fourth Judicial District Court