IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

April 16, 2020

NO. 20-8500-013

IN THE MATTER OF UPDATED PRECAUTIONARY MEASURES FOR COURT OPERATIONS IN THE NEW MEXICO JUDICIARY DURING THE COVID-19 PUBLIC HEALTH EMERGENCY

ORDER

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

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

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

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

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

IT IS FURTHER ORDERED that 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 the date of this order 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 order, a judge must enter specific findings of fact demonstrating that the period of delay was caused by the current

public health emergency;

IT IS FURTHER ORDERED that, in light of the potential for higher than usual absenteeism and to facilitate case management processes required during the current public health emergency, the temporary 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 shall remain in place until further order of this Court;

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

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

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

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

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

2. All judges shall use telephonic or audio-visual attendance for court appearances by attorneys, litigants, witnesses, and the press unless there is an emergency need for an in-person appearance upon motion of a party. A judge may also require an in-person appearance on the judge's own initiative, without a motion by a party, provided that the judge shall confer with the parties and the chief judge of the district before proceeding with an in-person appearance. Judges 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 but an emergency need for an in-person appearance does not exist. 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;

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

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

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

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

IT IS FURTHER ORDERED that all courts shall continue to adopt 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. Filing by email or fax also shall continue to 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. Applicable provisions in the rules of procedure addressing the filing of documents in the appellate, district, metropolitan, and magistrate courts by email or fax remain temporarily suspended to the extent necessary to accommodate local procedures adopted by courts under the terms of this order for expanded filing by email or fax during the current public health emergency;

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

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 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.

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