



## **THIRTEENTH JUDICIAL DISTRICT COURT**

### **Cibola, Sandoval, and Valencia Counties**

#### **Limited Resumption of Court Operations Plan**

The Limited Resumption of Court Operations Plan (the plan) ensures public access to the courts in the safest environment practicable during the ongoing Public Health Emergency (PHE) and is designed to be flexible in the changing PHE environment. The Chief Judge and CEO developed the plan with significant input from the district and magistrate judges, district and magistrate court managers, and the Criminal Justice Coordinating Council in each county.

Each of the counties in the Thirteenth is experiencing the PHE to different degrees. Because of this, we will resume hearings and trials in each county on a staggered basis. Valencia and Sandoval counties may resume limited in-person hearings and trials after June 16. Due to a higher prevalence of COVID-19 in Cibola County, in-person hearings may resume later, on July 6, and jury trials still later on July 13. Our plans to minimize the risk of exposure to the novel coronavirus, to manage dockets and scheduling and to resume jury trials is outlined below.

#### **I. Safety: minimizing risk of exposure to novel coronavirus**

##### **A. Hearings**

During the PHE, the Thirteenth used predominantly video hearings through Meet with some telephone hearings as well. Under this plan, most hearings will continue by video or other remote means until a widespread effective treatment or vaccine is available for COVID-19. Routine hearings including arraignments, first appearances, scheduling conferences, and motion hearings involving purely legal issues or those with minimal evidentiary issues will continue to occur only on a remote basis.

In-person hearings will remain the exception, but may expand beyond rare emergencies to include matters that are best addressed in-person. These types of hearings include hearings that involve significant documentary or physical evidence and hearings with incapacitated persons as parties or minors as parties. Matters involving many parties or complex legal issues may also be heard in-person. These matters could include pleas, sentencing, and suppression hearings for higher-profile cases, as well as some civil and family cases. Though complex cases are included in this group, typically these cases will not involve more than

three litigants and counsel. More complex matters with unusually large numbers of parties will continue to be heard remotely.

The Thirteenth proposes to give judges and hearing officers discretion to set hearings in-person when the hearing meets these criteria. In particular, we anticipate the case types will mainly involve domestic violence order of protection cases, juvenile abuse and neglect cases, select domestic relations matters, pretrial detention hearings, some criminal sentencing hearings, and preliminary hearings in criminal cases. Bench trials in all cases should be permitted in person to facilitate the presentation of evidence.

The grand jury has continued to meet and deliberate in person with six foot distancing in large courtrooms, and will continue to do so. We were unable to hold new grand jury orientation as scheduled in Cibola and Valencia counties in May. New grand jury orientation will be conducted pursuant to the jury procedures in section III below.

All in-person hearings will be conducted to minimize the number of people in any one room, in hallways and in waiting areas.

Regardless of the kind of hearing, no judge or hearing officer will have “docket call” or similar large trailing dockets where large numbers of attorneys, litigants, and visitors are likely to gather. Instead, all hearings will be provided a specific setting time and judges and hearing officers will provide adequate time between settings to allow people involved in one case to exit the courthouse before the subsequent hearing begins.

Notices of hearing for in-person proceedings will instruct individuals to call the clerk’s office (magistrate court) or judges’ chambers (district court) if an attorney, party, or witness has answers “yes” to any of the NMDOH screening questions. The clerk or judge’s office can then make arrangements for that person to appear by video or phone. All courtrooms are set up to use Meet and each has its own conference telephone extension.

With six-foot distancing, courtroom space for spectators and news media will fill up quickly. Judicial officers will grant access to video or a conference line for those not participating in a public hearing, but who are interested in attending. In addition, court hearings that generate large amounts of public interest can be broadcast internally for spectators seated in a separate courtroom or other space within the courthouse.

Certain areas of courtrooms throughout the district are not amenable to six foot distancing. In particular, counsel tables do not allow six foot distancing with more than one person seated at the table. Moveable Plexiglas dividers with pass-through slots will be used to allow for two people to sit at the table. One person

will sit at the end of the table, and the other will sit closer to the aisle between tables. Judges' staff (district) or the courtroom clerk (magistrate) will be responsible for sanitizing counsel tables and chairs after each hearing in accordance with New Mexico Department of Health (NMDOH) guidelines. Each counsel table is equipped with tissues and there is at least one trash can in the well of each courtroom accessible to the parties and attorneys.

In addition, we are implementing the following location-specific measures:

#### All Magistrate Court Locations (Cuba, Bernalillo, Grants, Los Lunas, Belen)

The courtroom clerk workstation is within six feet of the judge and within six feet of one counsel table. Plexiglas dividers will be placed in both locations. The witness stand is also within six feet of the judge, and Plexiglas dividers will be placed there as well.

#### Sandoval District Court

The witness stand is within six feet of the court reporter's workstation. To accommodate distancing, the court reporter will sit in the court monitor/bailiff workstation which is more than six feet from any other individual for hearings or trials with witnesses. The bailiff, when seated, will have a single chair placed beyond six feet from others at the side or back of the courtroom.

Treatment courts already have one permanently placed Plexiglas divider at the entrance to the treatment courts area. This area will be used for client discussions. Drug testing of adults has been partly outsourced to third party providers who are capable of maintaining distancing while testing the large numbers of adults in adult drug court and mental health treatment court. However, we also have the capacity to maintain six foot distancing while testing treatment court clients in the courthouse. Clients will be scheduled to arrive at specific times rather than as groups.

Juvenile drug court has fewer participants and staff is able to stagger testing so that only one participant need appear for testing at any one time. The testing restrooms allow for six foot distancing during observed UAs. Both staff and clients are required to wear masks. Staff members also wear gloves when conducting UAs.

#### Cibola District Court

The only additional Plexiglas necessary in the courtroom is at the counsel tables. A movable Plexiglas divider will be set up in the treatment courts office for staff to speak with clients. Drug testing of adults and juveniles has been

partly outsourced to third party providers who are capable of maintaining distancing while testing the treatment court participants. We also have the capacity to maintain six foot distancing while testing treatment court clients in the courthouse. Clients will be scheduled to arrive at specific times rather than as groups.

Valencia District Court

No additional Plexiglas is necessary in the courtroom except at the counsel tables. Movable Plexiglas dividers will be set up in the treatment courts’ office for staff to speak with clients. Both adult and juvenile drug testing may be partly outsourced to third party providers who are capable of maintaining distancing while testing the treatment court participants. We also have the capacity to maintain six foot distancing while testing treatment court clients in the courthouse. Clients will be scheduled to arrive at specific times rather than as groups.

B. Filing

Filing by email and fax for non-attorneys, and for attorneys in non-e-filed cases will continue in all locations. This service has reduced the need for self-represented litigants and attorneys to visit the courthouse in person and has functioned well within the clerk’s office. The Thirteenth will continue to advertise this service on our website, at meetings with justice community partners, and in any media announcements that result from this plan.

<u>Location</u>	<u>Filing email</u>	<u>Filing fax #</u>
Cuba Magistrate Court	<a href="mailto:cubmadmin@nmcourts.gov">cubmadmin@nmcourts.gov</a>	(505) 289-3013
Bernalillo Magistrate Court	<a href="mailto:bermadmin@nmcourts.gov">bermadmin@nmcourts.gov</a>	(505) 867-0970
Sandoval District Court	<a href="mailto:berdissuedocs@nmcourts.gov">berdissuedocs@nmcourts.gov</a>	(505) 867-5161
Grants Magistrate Court	<a href="mailto:gramadmin@nmcourts.gov">gramadmin@nmcourts.gov</a>	(505) 285-6485
Cibola District Court	<a href="mailto:gradcounter@nmcourts.gov">gradcounter@nmcourts.gov</a>	(505) 285-5775
Los Lunas Magistrate Court	<a href="mailto:llumadmin@nmcourts.gov">llumadmin@nmcourts.gov</a>	(505) 865-0369
Belen Magistrate Court	<a href="mailto:belmadmin@nmcourts.gov">belmadmin@nmcourts.gov</a>	(505) 864-9532
Valencia District Court	<a href="mailto:lludissuedocs@nmcourts.gov">lludissuedocs@nmcourts.gov</a>	(505) 865-8801

C. Scheduling: Please see Docket Management and Scheduling, in section II below.

D. Keeping Public, Employees, and Judges Safe

Public

In accordance with Supreme Court Order 20-8500-017, all people entering a courthouse in the Thirteenth Judicial District Court must wear a face covering. The Thirteenth has disposable masks at each of its eight court locations. Court security at district courts and court staff at the magistrate courts hand out disposable masks to anyone who does not already have one. All people entering the courthouse must also answer the NMDOH-approved screening questions, have their temperature checked, and provide their name and phone number for contact tracing purposes. Anyone refusing to put on a mask or who does not pass the screening questions will be denied entry and will be provided the phone number to the clerk's office or judge's chambers to address their need for court services remotely. Everyone inside the courthouse will be required to wear a mask at all times in accordance with Supreme Court orders.

Court staff wipe down filing counters and other frequently touched public surfaces every two hours in accordance with NMDOH guidelines. In each court location, we have marked six foot separations on the floor in frequently used public areas, such as elevators, near the clerk's office filing window, and outside of courtrooms and hearing rooms.

In hallways dividers or tape designate the foot traffic direction to maximize distancing. Seating in public areas has been marked off to indicate six-foot distancing. All courthouses are professionally cleaned daily, and supplies of hospital-grade cleaner are available to sanitize frequently-touched surfaces. Hand sanitizer is available to the public in small pump-bottles that staff refill from the larger containers provided at the supply depots.

Employees & Judges

All court staff were authorized to telework as of March 17, 2020. During a typical day in March through May, staff physically present in the clerk's office is 25%-33% of pre-PHE levels, with 66%-75% of staff teleworking. We anticipate the need to adjust this slightly to accommodate in-person hearings with 33%-50% of clerk staff needed in the office on any given day. Clerk's office staff at the district court locations have high cubicle barriers between workstations with six-foot distancing, and no additional barriers are necessary. In addition, with half (or

more) of staff teleworking, this will allow staff to maintain distancing while in the office, even in offices without cubicle walls.

Court reporters, court monitors, and Trial Court Administrative Assistants (TCAAs) have separate offices and can work separated from others. TCAAs in Valencia County are situated in alcoves to open offices; however, their work areas are further than six feet from other employees. Bailiffs have workstations in open office areas which are further than six feet from others.

Treatment court staff and pretrial services staff each have their own office that they can close. They will continue to work remotely, but will need to be present in the courthouse approximately 50-75% of the time. Check-ins with treatment court or pretrial clients may continue to be by telephone for routine matters when the treatment court or pretrial participant is doing well by program standards.

Finance and human resources staff will continue to telework approximately 75% of the time. Individuals with these duties have their own offices or cubicle workspaces with greater than six foot distancing from others.

## **II. Docket Management and Scheduling**

### **A. Scheduling**

There will be no “docket call” or similar settings where multiple hearings or trials are set simultaneously with the expectation that multiple parties and attorneys appear. Some trials or hearings may be set on a “trailing docket,” but parties will be instructed by the presiding judicial officer before the trial or hearing date which specific case will be heard and at which specific times. Judicial Officers should schedule hearings for longer periods of time to accommodate any party appearing remotely, and to minimize numbers of people in a courthouse at any one time.

### **B. Docket Management**

Judges will review cases awaiting trial and prioritize trials for cases with defendants in custody the longest, cases that have been awaiting trial the longest, and those cases where one party will suffer significant prejudice with further delay. Judges will confer with the other judges based in the same location to ensure they do not schedule in-person hearings at the same start times. Rather, in-person hearing start times will be offset. For example, one would start at 9:00am, a second at 9:15am, a third at 9:30am to prevent the need for many parties and attorneys to enter the courthouse at the same time.

Filings of new domestic violence criminal cases in Magistrate Court and domestic violence order of protection cases in District Court have remained steady, and even higher than normal throughout the suspension of most in-person hearings. We expect this trend to continue and hearing these cases will be a priority for magistrate judges and domestic violence commissioners. We also expect an eventual increase in landlord-tenant cases and foreclosure cases as federal law-based moratoria for these matters expires in the coming weeks. Our in-house foreclosure settlement program will be instrumental in helping to handle the anticipated increase in foreclosure cases. We also expect an upswing in domestic relations filings. Our ADR programs typically assist in domestic relations cases filed by self-represented litigants. This mediation has continued by telephone and video conference and will continue to be handled primarily remotely to assist with this anticipated rise in filings.

### III. **Jury Trials**

#### A. Location

All Magistrate Court jury trials will be held in District Court locations. Our five Magistrate courthouses are simply too small to afford six foot spacing for jury selection. In addition, most of the courtrooms in the magistrate courthouse would not accommodate six jurors, a district attorney, defense attorney, defendant, judge, courtroom clerk, witness, and victim with appropriate spacing. Therefore, any trial needed in a magistrate court will be scheduled in the nearby district court. The five magistrate courts in the Thirteenth conducted four jury trials in FY2019, a number that we can accommodate in the District Court locations. The jurors would be drawn from the District Court jury pools. As a result, Magistrate Court would not be summoning any jurors while this plan is in effect, reducing the number of citizens called to jury service.

#### B. Conduct of trials

Judges will enforce plea deadlines at least five days before the start of trial in accordance with Supreme Court orders.. This will allow court staff to contact jurors if they do not need to appear. Judges will use pretrial orders setting deadlines for jury instruction submissions, motions in limine, and for witness and exhibit lists. Judges will resolve outstanding matters before prospective jurors enter the courthouse.

The court will actively engage in public outreach to promote jury service. The court will send notices of the court's protective measures to prospective jurors, list these on our website, and advertise in local media.

### Jury Assembly

Prospective jurors will be screened by security upon entry to the courthouse, and excused from service if they do not pass screening. Prospective jurors that do not have face masks will be provided with one.

Prospective jurors that are in the vulnerable population will be excused upon request. Hand sanitizer will be available to prospective jurors at all times. The court will provide only bottled water as a refreshment to avoid potential contamination through common use of a coffee carafe.

The Sandoval County Courthouse does not have a jury assembly room, and there is only a small assembly room in Valencia County. To avoid the need to seat jurors in an assembly space, and then re-seat them in a courtroom, we will randomize the jurors that are scheduled to come in the day before the trial. On the morning of the trial, jurors will be directed to predetermined locations based on their number from the randomized list.

For example, jurors numbered 1-25 would be directed to the trial courtroom in designated seats, jurors numbered 26-40 would be directed to a neighboring courtroom. For any vacant seats, where some of the jurors numbered 1-25 do not appear for service, we will begin filling those seats with the next consecutive numbers beginning with 26 in order to fill 25 seats in the trial courtroom. We will have a blank seating chart and court staff will hand write in juror names as they check in on the seating chart. Staff will be able to quickly make copies of the seating chart and disseminate to the attorneys and the judge. Jurors seated in the adjoining courtroom will be released during voir dire of the first 25 jurors and directed to return later in the day. If those jurors are not needed, court staff will phone them and release them from service for the day.

### Jury Selection

In an effort to minimize juror time in a courthouse, judges will appropriately limit voir dire by the parties depending on the complexities of each case.

The judge will hear "for-cause" challenges after voir dire for each group, and dismiss any excused jurors immediately.

Every courtroom in the district has two or more entrances. When needed, the staff will use both entrances to escort jurors in and out of the courtrooms so that prospective jurors do not cross paths with one another.



Judges will hear peremptory challenges after voir dire has been conducted with all jurors. While the court is hearing peremptory challenges, jurors will remain socially distanced in spaces throughout the courthouse. Jurors who are not selected to serve will be promptly excused and exit the building in an organized, distanced manner.

#### Scheduling of Voir Dire

Judges will add time to planned jury selection depending on the complexity of each case. In general, we estimate that jury selection for third and fourth degree felony cases will take an additional half-day.

#### Jury Seating During Trial

In the Valencia County District Courthouse the jury boxes can accommodate six jurors in two courtrooms and seven in a third courtroom. The remaining jurors will be seated in the gallery with six foot spacing.

In Sandoval and Cibola counties the jury boxes can accommodate twelve jurors by placing a row of chairs in front of the rail of the jury box.

The presiding judge will ensure that all jurors are able to hear witness testimony clearly and to view exhibits and demonstrative aids from wherever they are seated. Courtroom technology allows digitally-presented exhibits to be broadcast to monitors in the jury box, well of the courtroom, and gallery.

#### Trial Procedure

Judges will limit opening statements and closing arguments based on the complexity of the case.

#### Recesses

Recesses will occur by separating the jurors into two groups. Each group will be put in different jury deliberation rooms or conference rooms. Staff will be assigned to assist the jury at each recess location.

#### Confidential Communication during Trial and Bench Conferences

The Thirteenth has purchased handheld radios with disposable earpieces to allow confidential communication during trial. The court will provide one pair to each counsel table, and one pair to the judge and court reporter or monitor. The plaintiff or prosecution will be provided one frequency to operate on, the defense another, and a third will be assigned for bench conferences. Judges may also choose to hold bench conferences in their chambers or other nearby conference room. An additional set can be provided for an interpreter and person needing an interpreter.

Parties and counsel will also be able to communicate by passing notes through the Plexiglas pass-through windows.

#### Deliberation

Judges will clear the courtroom of parties, attorneys, staff, and spectators to allow jurors to deliberate in the courtroom. Jurors will be excused and allowed elsewhere in the courthouse before any defendant is placed in a holding cell, and later return to deliberate.

#### **IV. Resources**

The court currently has one thermometer per court location and will soon have two per location. Once the additional thermometers arrive, the court will be better equipped for screening.

#### **V. Other Topics**

Jury yield remains a significant unknown. Our judges will abide by the jury guidelines contained in the May 7 New Mexico Supreme Court Emergency Response Team memo. However, in “normal” times the court achieves 50% or lower yield, and anticipates this yield will be lower during the PHE. Therefore, the court is likely to need some room for trial and error in the number summonsed for jury duty.