

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

2   **January 14, 2022**

3   **NO. 22-8500-002**

4   **IN THE MATTER OF THE USE OF**  
5   **SETTLEMENT CONFERENCES**  
6   **IN THE DISTRICT COURTS**  
7   **TO STREAMLINE THE PROCESSING**  
8   **OF CRIMINAL CASES**  
9   **DURING THE COVID-19**  
10 **PUBLIC HEALTH EMERGENCY**

11  
12  
13   **ORDER**

14           WHEREAS, compliance with the deadlines governing criminal cases has  
15 been impacted by the COVID-19 public health emergency;

16           WHEREAS, the Court recognizes that settlement conferences may be helpful  
17 tools in streamlining the processing of criminal cases in the district courts;

18           WHEREAS, the Court having considered the foregoing and being sufficiently  
19 advised, Chief Justice Michael E. Vigil, Justice C. Shannon Bacon, Justice David K.  
20 Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora, concurring;

21           NOW, THEREFORE, IT IS ORDERED that New Mexico’s prohibition on  
22 judicial participation in plea discussions is hereby immediately SUSPENDED in the  
23 district courts to allow for the implementation of meaningful criminal settlement  
24 conference programs;

25           IT IS FURTHER ORDERED that a judge assigned to a criminal case shall

1 have the authority to assign another judge or judge pro tempore (settlement judge)  
2 to participate in a settlement conference to assist the parties in resolving the case in  
3 a manner that serves the interests of justice, provided that the judge who presides  
4 over any phase of the criminal case shall not participate in plea discussions  
5 pertaining to that criminal case;

6 IT IS FURTHER ORDERED that prior to a case being assigned to a  
7 settlement judge, the judge assigned to the case shall ensure that the parties have had  
8 a meaningful opportunity to engage in discovery. To that end, each judicial district  
9 may set a deadline by which all written discovery must be completed before the date  
10 of the scheduled settlement conference. Each judicial district may impose a deadline  
11 for written discovery that makes sense for that district, such as fifteen days or ten  
12 days prior to the scheduled settlement conference;

13 IT IS FURTHER ORDERED that amendments to Rule 5-304 NMRA shall  
14 be PROVISIONALLY APPROVED until further order of the Court, to allow for  
15 judicial participation in plea discussions consistent with this order;

16 IT IS FURTHER ORDERED that a criminal settlement conference program  
17 adopted in any judicial district shall adhere to the following non-exhaustive list of  
18 guidelines:

19 1. Counsel for the prosecution and defense—each with full authority to  
20 act in all matters pertaining to the settlement conference and being prepared to  
21 engage in negotiations—shall appear at the settlement conference either in person at  
22 the courthouse or virtually, as ordered by the settlement judge.

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2. The defendant need not appear at the settlement conference, but must be available for consultation with defense counsel. Defendants who are not in custody may appear or consult with counsel in person at the courthouse, or virtually. Defendants who are in custody shall appear or consult with counsel remotely from the detention facility via videoconference.

3. The settlement conference shall not be recorded.

4. The State is not required to make a plea offer and the defendant is not required to accept a plea offer. If the State does not intend to offer a plea and has knowledge of this prior to the scheduled settlement conference, then the State must notify the judge assigned to the case and opposing counsel in writing at least five (5) days prior to the scheduled settlement conference. Upon notice that the State does not intend to offer a plea, the judge assigned to the case shall vacate the settlement conference, set the case for trial, and issue a scheduling order.

5. The settlement judge, parties, and attorneys shall not communicate any of the substance of the plea discussions to a judge who is presiding or will be presiding over any phase of the criminal case, or to any other person.

6. No statement made by a participant in the settlement conference shall be admissible at the trial of a defendant in the case.


7. Unless otherwise agreed to by the parties, if plea discussions result in a tentative plea agreement, the settlement judge shall not take the plea, but shall return the case to the assigned judge to accept or reject the plea.

8. If plea discussions do not result in a plea agreement, the case must be returned to the assigned judge for further proceedings.

IT IS SO ORDERED.



WITNESS, the Honorable Michael E. Vigil, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 14th day of January, 2022.

  
Jennifer L. Scott, Chief Clerk of the Supreme Court  
of the State of New Mexico