

JUDICIAL BRANCH OF THE NAVAJO NATION

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CHIEF JUSTICE OF THE NAVAJO NATION ADMINISTRATIVE ORDER 13-2022

IN THE MATTER OF COURT OPERATIONS IN THE COURTS OF THE NAVAJO NATION DURING THE COVID-19 STATE OF EMERGENCY BY CONTINUING THE CONTINUITY OF OPERATIONS PLAN AND THE ROADMAP TO FULL CAPACITY PLAN, ELIMINATING BLANKET ADMINISTRATIVE LEAVE, REINSTATING LEAVE POLICIES AND PROCEDURES, IMPLEMENTING COVID-19 ADMINISTRATIVE LEAVE PROCEDURES, AND INSTITUTING TELEWORKING POLICIES

WHEREAS, the Chief Justice of the Navajo Nation is authorized to issue administrative orders pursuant to 7 N.N.C. § 371;

WHEREAS, the Navajo Nation Judicial Branch performs essential justice services to the public guaranteed by the laws of the Navajo Nation, which must be provided at all times and especially during times of crisis;

WHEREAS, on March 11, 2020, the Navajo Nation Commission on Emergency Management declared a public health emergency to minimize the spread and adverse impacts of the novel coronavirus (COVID-19) on the Navajo Nation and the Navajo Nation Department of Health issued an emergency public health order on March 18, 2020, to prohibit mass gatherings (social or group gatherings were limited to 10 people) and implemented other protective health precautions to address COVID-19;

WHEREAS, on March 24, 2020, the Chief Justice of the Navajo Nation directed the Navajo Nation Judicial Branch to immediately implement a number of protective measures to promote a safe environment for everyone who must visit or work in a Navajo Nation Judicial Branch

facility during the COVID-19 public health emergency, including prioritization of essential cases and strict limitations of access to Judicial Branch facilities;

WHEREAS, the Judicial Branch incorporated the four-step Diné problem solving methodology at the onset of the pandemic wherein Branch leadership used *Nítsáhákees* to think through and formulate emergency operating plans. The Branch moved into the *Nahat'á*, stage with the adoption and implementation of the Continuity of Operations Plan (COOP) on March 27, 2020, and the Roadmap to Full Capacity Plan: Covid-19 Guidelines for the Navajo Nation Judicial Branch (Roadmap) on July 22, 2020. We are now in *I'iná* and experiencing our plans in moving forward with phases to return to full capacity. We are learning from our experiences in order to improve our plans so that we may move into the next step of *Sihasin* where we achieve enhanced functions to reach full capacity as multiple vaccines and boosters to these vaccines are widely available, helping us to move toward near-normal operations;

WHEREAS, the need for protective health and safety measures in Navajo Nation Judicial Branch facilities remains a top priority to ensure that our facilities remain open to provide services and maintain rule of law in a safe environment for the Navajo Nation.

WHEREAS, there is a need to provide additional guidance and direction to the Navajo Nation Judicial Branch in light of the evolving public health emergency to ensure full capacity is reached;

WHEREAS, courts were granted discretion to begin hearing all case types as each court moved through the Roadmap by Administrative Order 32-2020 and restoring public access to Judicial Branch facilities will assist with expanding services, including in-person hearings and trials being scheduled and heard in a timely manner at the discretion of the presiding justice or judge;

WHEREAS, the Judicial Branch courts and programs have been effectively hearing cases and matters since the COVID-19 pandemic began in 2020 and the Judicial Branch employees continue to find innovative ways to address the public's needs and statutory requirements;

WHEREAS, the Judicial Conference voted on March 31, 2022, to remove administrative leave as a blanket system of authorizing leave and reinstate Judicial Branch Employee Policies and Procedures (EPP) leave policies and procedures;

WHEREAS, the Judicial Conference also voted on March 31, 2022, to request the development of an administrative leave policy that authorizes administrative leave if an employee is affected by COVID-19. Administrative leave is already authorized through the EPP and implementation of specific procedures addresses the concerns raised at the Judicial Conference in prioritizing our employee's health and safety (see Exhibit A);

WHEREAS, on April 30, 2021, the Judicial Conference approved amendments to the EPP at Section 26, which incorporated telework requirements (See Exhibit B);

NOW, THEREFORE, IT IS ORDERED that the COOP and the Roadmap are continued through this Administrative Order;

IT IS FURTHER ORDERED that the Administrative Director of Courts is the COOP Coordinator for the purposes of executing the COOP during the COVID-19 State of Emergency and is authorized to designate the COOP planning team;

IT IS FURTHER ORDERED that the courts and programs shall use the Roadmap to move towards full capacity and are required to complete assessment of the next Roadmap Phase every two weeks and move to the next Phase as guided by the Roadmap;

IT IS FURTHER ORDERED the COOP Coordinator and team will work with each court and program to return the Judicial Branch to full capacity, guided by the Roadmap, Centers for Disease Control and Prevention (CDC) and Navajo Nation Public Health Orders;

IT IS FURTHER ORDERED that the purpose of the COOP and Roadmap is to effectuate normalized operations in a safe and effective manner without undue burden to the courts and programs that provide direct services to the public;

IT IS FURTHER ORDERED that all Judicial Branch facilities shall remain open with all safety measures identified in this Administrative Order in place and operate under normal business hours to ensure the courts and programs fulfill their statutory responsibilities;

IT IS FURTHER ORDERED that all Judicial Branch facilities shall maintain a capacity of no more than the maximum number of people allowed in the facility as identified in the respective phases of the Roadmap, CDC and any applicable Navajo Nation Public Health Orders, if six feet distance between individuals is maintained, all individuals entering the facility wear a face mask, each individual signs in and out to ensure the capacity is not breached and submits to temperature checks, and any individual that fails to wear a mask at all times or whose temperature is above 100.4 degrees shall not be permitted entrance or shall be removed from the building if failing to comply with all requirements for entrance;

IT IS FURTHER ORDERED that in-person hearings or trials may resume under the sole discretion of the presiding justice or judge and that no more than one in-person hearing or trial may be scheduled at a time;

IT IS FURTHER ORDERED that all trials, hearings, meetings, or gatherings of any type at any single or connected location within a Judicial Branch facility shall not exceed the maximum number of people allowed in accordance with the Roadmap and any applicable Navajo Nation Public Health Orders, which includes judges, court personnel, jurors, attorneys, litigants, and the general public; and, must incorporate appropriate social distancing requirements as recommended by public health authorities;

IT IS FURTHER ORDERED that all judges shall have the discretion to authorize telephonic or audio-visual attendance for court appearances by attorneys, litigants, and witnesses and may take other protective measures, including the granting of continuances in appropriate cases upon motion of a party or on the court's own motion. Any criminal procedure rules requiring the presence of the defendant may be accomplished through remote, audio-visual appearance at the discretion of the judge, provided that confidential communication between the defendant and the defense counsel is made available;

IT IS FURTHER ORDERED that all courts may accept filings by email, fax, drop box, or mail from self-represented litigants as well as attorneys;

IT IS FURTHER ORDERED that administrative leave previously authorized for the purposes of addressing the pandemic is hereby withdrawn, and EPP leave policies and procedures are reinstated;

IT IS FURTHER ORDERED that administrative leave shall only be authorized pursuant to the EPP and the additional COVID-19 Administrative Leave procedures (*see* Exhibit A), adopted by this Administrative Order, effective on April 25, 2022;

IT IS FURTHER ORDERED that supervisors are designated by the Chief Justice to authorize administrative leave pursuant to the COVID-19 Administrative Leave procedures (*see* Exhibit A) as adopted by this Administrative Order;

IT IS FURTHER ORDERED that the EPP is amended by the incorporation of Telework Policy (*see* Exhibit B) and telework remains an option as recommended by the Judicial Conference in April 2021;

IT IS FURTHER ORDERED that during Phase I, teleworking shall remain the preferred method of work and should be accommodated where possible for the safety of the staff and the public in accordance with the Roadmap;

IT IS FURTHER ORDERED that increased in-person staffing patterns can occur while safely maintaining minimized face-to-face contact through the Roadmap Phases;

IT IS FURTHER ORDERED that the opening and public access to Judicial Branch facilities shall be in accordance with the Roadmap Phases;

IT IS FURTHER ORDERED that a copy of this Administrative Order shall be immediately distributed to all Judicial Branch employees by their supervisors;

IT IS FURTHER ORDERED Administrative Orders 13-2020, 14-2020, 15-2020, 21-2020, 26-2020 and 32-2020 are withdrawn and replaced by this Administrative Order;

IT IS FURTHER ORDERED that this order shall remain in effect until amended, withdrawn or rescinded by future order.

IT IS SO ORDERED

Dated this 22nd day of April, 2022.


JoAnn Jayne, Chief Justice