



[No. 5AO2020-102]

**NINTH AMENDED OPERATIONAL ADMINISTRATIVE ORDER
FIFTH JUDICIAL DISTRICT**

Pursuant to the authority vested in me, and in accordance with the recent operational protocols issued by the Chief Administrative Judge for the trial courts of the Unified Court System, I hereby order that, effective immediately, the following rules be put into effect in the Fifth Judicial District until rescinded.

By way of background, the Courts of the Fifth Judicial District commenced Phase I of the Resume In-Person Court Operations (“RIPCO”) Plan on or about May 18, 2020, Phase II of the RIPCO Plan on June 3, 2020, Phase III of the RIPCO Plan on June 17, 2020, Phase IV of the RIPCO Plan on July 1, 2020, Phase IV.1 of the RIPCO Plan on August 10, 2020, **including the recent RIPCO updates effective October 19, 2020, (a Summary of the Updates is attached.)*** The provisions in each Phase listed above remain in effect unless specifically modified herein.

As hereinafter used, “Assigned Judge” shall refer to the judge assigned to hear the case on and before March 16, 2020.

A. General matters and matters applicable to more than one case type

- 1. Until further Administrative Order or Executive Order, eviction matters may proceed pursuant to the protocol established in the Memorandum from Chief Administrative Judge Lawrence Marks dated October 9, 2020 and pursuant to Administrative Order AO/231/20. Further reference is made to Executive Order 202.67 signed by the Governor on October 4, 2020 and the CDC Agency Order filed on September 1, 2020.**

***Updates are bold-faced.**

2. Until further Administrative Order or Executive Order, no default judgments shall be granted where, pursuant to CPLR 3215, the default occurred after March 16, 2020. **Notwithstanding the foregoing, a judge presiding over a matter wherein a party has defaulted may grant a default judgment where, after inquiry, the judge determines that (a) the defaulting party has received actual notice of the action or proceeding; (b) the failure of the defaulting party to respond to the action or proceeding is not due to the COVID-19 pandemic; and (c) the granting of the default judgment is not contrary to any statute, Executive Order or Administrative Order. Note: Executive Order 202.67 extends the toll on statutes of limitations (first set forth in EO 202.8 on March 20, 2020 and later extended) through November 3, 2020. Default judgments may be governed by the suspension of “any specific time limit for the commencement, filing or service of any legal action, notice, motion or other process or proceeding, as described by the procedural laws of the state.”** A judgment adverse to the party seeking relief (plaintiff, petitioner, moving party, etc.) may be granted in the event that party fails to proceed with the action or appear in court.
3. All Family Court and all County Court Judges are cross assigned to the County and Family Courts in all counties of the District.
4. The Resume In-Person Court Operations Plan (“RIPCO”) (Phase I) implemented on May 18, 2020, the RIPCO (Phase II) implemented on June 3, 2020, and all RIPCO plans and updates for any subsequent phase are incorporated herein and all provisions of this Administrative Order shall be read in conjunction with the RIPCO.
5. The Virtual Courtroom Protocol enacted by Fifth Judicial District Administrative Order No. No. 5A02020-53 signed on April 9, 2020, to the extent not inconsistent with the RIPCO Plan, remains in full force and effect and all provisions of this Administrative Order shall be read in conjunction with the Virtual Courtroom Protocol and any subsequent amendments thereto. **The transition to Microsoft Teams will begin on October 1, 2020, as follows:**
 - **Until October 1, 2020, Skype for Business must be used to conduct a virtual appearance, unless the parties agree to use Microsoft Teams.**
 - **Commencing immediately, any virtual court proceeding to be held on or after October 1, 2020, may be scheduled and held using Microsoft.**
 - **On and after October 1, 2020, ALL virtual court proceedings MUST be scheduled using Microsoft Teams.**
 - **Notwithstanding the foregoing, after November 25, 2020, all virtual court proceedings MUST be conducted using Microsoft Teams. Skype for Business will no longer be available.**
6. **Occupancy of all courtrooms shall be limited to the lesser of 25 people or ½ the posted room occupancy per code. Notwithstanding the above, in all instances the maximum occupancy of any space in the courthouse shall be limited to ½ the posted room occupancy. A Chief Clerk or judge may apply to**

the Administrative Judge for an exception for a specific courtroom or court proceeding. The Chief Clerk must be able to demonstrate that 1) the proposed occupancy limit does not exceed ½ the posted room occupancy and that 2) social distancing can be maintained with the proposed occupancy limit.

7. Naturalization Ceremonies, wherever they occur, shall comply with the room occupancy limits stated herein.
8. All Staff shall report to the courthouse as determined by his/her supervisor. All Judges and Chambers' staff should report to the courthouse. Any requests for exemptions must be approved by the Administrative Judge.
9. All Temporary Orders of Protection issued in any criminal or civil matter that has expired or is due to expire on or after March 19, 2020 "shall be extended under the same terms and conditions until the date the matter is re-calendared, unless the order is sooner terminated or modified by a judge or justice of the court that issued the order" pursuant to Administrative Order AO/73/20 signed by the Chief Administrative Judge of the Courts on March 19, 2020.
10. The Fifth Judicial District Administrative Order signed on March 20, 2020, regarding vouchers is rescinded and all vouchers submitted on or after August 17, 2020 must be individually approved by the Assigned Judge. The current practice of allowing an interim voucher is continued.
11. All filings shall be pursuant to the Administrative Orders signed by the Chief Administrative Judge of the Courts (AO/111/2020, AO/114/20, AO/115/20, AO/149/20 and any amendments thereto).
12. **The Judges should encourage or require, to the greatest extent possible, the use of virtual technology in matters that occur off court premises (depositions, discovery, etc.). Such language should be included in any scheduling orders.**

B. Supreme Civil

1. All Mental Hygiene Law proceedings in which a party is confined to a hospital or other facility shall be conducted with appearances by means of remote audiovisual technology or telephone pursuant to Administrative Order AO/72/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020.
2. Until further Administrative Order or Executive Order, Foreclosure matters may proceed pursuant to the protocol established in the Memorandum from Chief Administrative Judge Lawrence Marks dated July 24, 2020 and pursuant to Administrative Order AO/157/20 dated July 23, 2020. **Further reference is made to Executive Order 202.28 signed by the Governor on May 7, 2020, Executive Order 202.64 signed by the Governor on September 18, 2020, Executive Order 202.67 signed by the Governor on October 4, 2020, and the Laws of New York 2020, Chapters 112 and 126.**
3. **Jury Trials shall be held pursuant to the Updated RIPCO, effective October 19, 2020, with scheduling as approved by the Administrative Judge.**

C. Superior Court Criminal Cases

1. All pending criminal cases shall be addressed by the Assigned Judge and appropriately scheduled consistent with applicable Executive Orders and Administrative Orders. The issuance of the new return date shall occur on or before the currently scheduled adjourned date or within 30 days of the signing of this order, whichever is later. For Defendants not in custody, there shall be no adjournment of a matter that is greater than 60 days. For defendants in custody, there shall be no adjournment of a matter greater than 30 days.
2. Grand Juries shall be impaneled in each County pursuant to Administrative Order 130a/2020 signed on June 30, 2020.
3. ~~The Accessible Magistrate procedure (for Adolescent Offenders) currently in place shall continue.~~
4. **Jury Trials shall be held pursuant to the Updated RIPCO, effective October 19, 2020, with scheduling as approved by the Administrative Judge.**
5. **Each County, in consultation with the Sheriff, shall develop a plan for the imposition of intermittent sentences.**

D. Treatment Courts/OSP

1. Treatment courts and Opioid Stabilization Parts will be handled by the Assigned Judge upon the submission of a written Plan by the Assigned Judge to the Administrative Judge and its approval. **Reference is made to Paragraph V(C)(2)(f) of the Summary of the Updated RIPCO, effective October 19, 2020.**
2. Virtual conferences are encouraged (reference is made to Administrative Order AO/87/20 of Chief Administrative Judge Lawrence Marks dated May 1, 2020, "Problem-solving courts may conduct virtual court conferences with counsel, court staff, service providers, and, where practicable, clients").

E. Family Court

1. All matters shall be addressed by the Assigned Judge and appropriately scheduled. Virtual calendars are encouraged.
2. Judges should ensure that all Permanency Planning Hearings are timely scheduled and heard pursuant to existing Federal or State Law. Difficulties in scheduling the hearings should immediately be brought to the attention of the Supervising Judge.
3. All cases involving a youth that is currently in detention shall be reviewed by the Assigned Judge, at a minimum, at least once every fourteen days.
4. No new S (PINS), F (Support), P (Paternity), or U (UIFSA) warrants may be issued unless approved by the supervising judge. Only D (Juvenile Delinquent) warrants may be issued in the discretion of the Assigned Judge.

F. Surrogate's Court

All matters shall be calendared consistent with all Administrative Orders and Executive Orders at the discretion of the Presiding Surrogate. Virtual calendars are encouraged.

G. City Court

1. All pending criminal cases shall be addressed by the Assigned Judge and appropriately scheduled consistent with applicable Executive Orders and Administrative Orders. The issuance of the new return date shall occur on or before the currently scheduled adjourned date or within 30 days of the signing of this order, whichever is later. For Defendants not in custody, there shall be no adjournment of a matter that is greater than 60 days. For defendants in custody, there shall be no adjournment of a matter greater than 30 days.

H. Town and Village Courts

1. All matters shall be addressed by the Assigned Town or Village Judge and appropriately calendared consistent with the attached Town and Village Courts RIPCO Updates Summary.
2. After hours arraignments shall be heard by the CAP judge in counties with a CAP court according to the approved CAP Plan.
3. In a County without a CAP Part or if the CAP Part becomes unavailable for any reason, after hours arraignments shall be conducted in the authorized Town or Village Court. The Town or Village Judge shall attempt to obtain defense counsel and make a record thereof. If no defense counsel is available, then the judge shall conclude the arraignment. All other proceedings shall be handled as they were prior to the pandemic.

Dated: October 15, 2020
Syracuse, New York

/s/ James P. Murphy

Hon. James P. Murphy, JSC
Administrative Judge
Fifth Judicial District

Distribution:
HON. VITO CARUSO