



[No. 5AO2020-118]

**ELEVENTH AMENDED OPERATIONAL ADMINISTRATIVE ORDER
FIFTH JUDICIAL DISTRICT
[CORRECTED]**

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order that, effective **immediately**, the following rules be put into effect in the Fifth Judicial District until rescinded.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, the RIPCO updates effective October 19, 2020, the Updated Operating Protocols effective November 23, 2020, and the Updated Operating Protocols effective December 9, 2020. The provisions in each Phase or Update listed above remain in effect unless specifically modified herein. A copy of the Updated Operating Protocols effective December 9, 2020 is attached.

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

1. Until further Administrative Order or Executive Order, residential eviction matters may proceed pursuant to the protocol established in the memoranda from Chief Administrative Judge Lawrence Marks dated October 9, 2020 and November 17, 2020 and pursuant to Administrative Orders AO/231/20 and AO/268/20. Further reference is made to Executive Order 202.72 signed by the Governor on November 3, 2020, the Tenant Safe Harbor Act (Ch. 127, L. 2020) and the CDC Agency Order filed on September 1, 2020.
2. Default judgments may be granted pursuant to CPLR 3215 provided that the granting of the default judgment is not contrary to any statute, Executive Order or Administrative Order.
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, including the attached Updated Operating Protocols effective December 9, 2020.
5. Virtual proceedings must occur via Microsoft Teams video conferencing, or telephone.
6. Occupancy of all courtrooms shall be limited to the lesser of 10 people or ½ the posted room occupancy per code. An exception shall be granted for ongoing grand juries currently in progress (in those instances, occupancy shall be limited to the lesser of 30 people or ½ the posted room occupancy per code). Any exceptions that were previously granted to the occupancy limits are rescinded until further notice.
7. Naturalization Ceremonies, wherever they occur, shall comply with the room occupancy limits stated herein.
8. Staff shall report to the courthouse as determined by his/her supervisor. In all circumstances, non-judicial staff reporting to the courthouse shall be between 25% to 40% of normal pre-COVID staffing. All staff not reporting to the courthouse shall work remotely.
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 Order signed by the Chief Administrative Judge of the Courts (AO/267/20 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 Memoranda from Chief Administrative Judge Lawrence Marks dated July 24, 2020, and October 22, 2020, and pursuant to Administrative Order AO/157/20 dated July 23, 2020, and AO/232/20 dated October 22, 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. All Foreclosure Auctions must adhere to the 5th Judicial District Foreclosure Auction Plan.

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. Except as noted in Paragraph 2 below, 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. All arraignments, other than those listed in Paragraph (II)(D) (6, 7) of the Updated Operating Protocols effective December 9, 2020 shall be administratively adjourned until further notice.
3. No new prospective grand jurors will be summoned for grand jury service until further notice. Existing grand juries are continued as provided in Administrative Order 5AO2020-112 signed by 5th District Administrative Judge James P. Murphy dated November 24, 2020.
4. The Accessible Magistrate procedure (for Adolescent Offenders) currently in place shall continue.
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 II (D)(9) of the Updated Operating Protocols effective December 9, 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, Administrative Orders, and the Updated Operating Protocols effective December 9, 2020. Except as noted in Paragraph 2 below, 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. All arraignments, other than those listed in Paragraph (II)(D)(6, 7) of the Updated Operating Protocols effective December 9, 2020 shall be administratively adjourned until further notice

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 Updated Operating Protocols for Town and Village Courts effective December 9, 2020.
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: December 21, 2020
Syracuse, New York

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

Distribution:
HON. VITO CARUSO