

Updated Operating Protocols

5th District

For the past many months, the Unified Court System has permitted in-person proceedings in accordance with the Governor's un-PAUSE New York plan. Foot traffic in the courthouses has been gradually increased to correspond with an improvement in the metrics measuring the spread of the Coronavirus. Recently, the metrics have indicated the need to once again reduce foot traffic in the courthouses to protect the health and safety of litigants, lawyers, court staff and judges. Chief Administrative Judge Lawrence Marks' Memorandum dated November 13, 2020 is incorporated herein and this document is intended to provide enhanced guidance thereto.

In any District, the Administrative Judge may, based upon local conditions, enact more restrictive operational protocols deemed appropriate by the Administrative Judge.

This Plan should be considered an update to the Return to In-Person Court Operations Plan effective October 19, 2020 and to Judge Marks' Memorandum "Revised Pandemic Procedures in the Trial Courts" dated November 13, 2020. Commencing **Monday, November 23, 2020** all court operations in the 5th Judicial District of the State of New York shall be conducted pursuant to these updated protocols.

I. COURTHOUSE OPERATIONS

A. Scheduling

1. Calendar times shall be staggered so that different courts (e.g. Family, Criminal, etc.) located in the same building start at different times.
2. No more than 50% of the number of courtrooms in a facility will be in use at the same time. If there is a conflict that cannot be resolved by the Chief Clerk working with Chambers, the Supervising Judge or Administrative Judge shall be notified.
3. No more than 50% of the judges/referees/magistrates of one court type (Family Court, Criminal Court, Civil Court) may hold in-person calendars at any one time.
4. **In each court, there shall be a maximum of 10 cases/proceedings scheduled in-person per hour.**

B. 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 where occupancy shall be limited to the lesser of 26 people or ½ the posted room occupancy per code). Any exceptions that were previously granted to the occupancy limits are rescinded until further notice.

C. The number of non-judicial staff reporting to the courthouse shall be reduced in the discretion of the Administrative Judge to the minimum number necessary to ensure safe operation and to ensure sufficient "remote" staff is available to replace the staff reporting to the courthouse in the event there is a workplace Coronavirus exposure. All staff not reporting to the courthouse shall work remotely.

D. All current safety measures and protocols will continue. Court Managers and PPE Compliance Coordinators shall take steps to enhance monitoring and compliance with all safety measures.

II. COURT PROCEEDINGS

A. No new prospective trial jurors (criminal or civil) will be summoned for jury service until further notice.

B. No new prospective grand jurors will be summoned for grand jury service until further notice. Existing grand juries, pursuant to Section 190.15 of the Criminal Procedure Law, may be extended, upon application of the appropriate District Attorney to the Administrative Judge.

C. Notwithstanding any other provision herein, where an in-person proceeding involves an incarcerated individual, that individual shall appear virtually utilizing electronic means unless the presiding judge orders otherwise for compelling reasons after appropriate application is made.

- D. Matters that **MAY** be heard in-person (or a hybrid of in-person and virtual) **PROVIDED THAT THE PRESIDING JUDGE FIRST FIND THAT IT IS UNLAWFUL OR IMPRACTICAL TO CONDUCT THE PROCEEDING VIRTUALLY:**
1. Matters as designated in Exhibit A (attached)
 2. Family Court Act Article 10 evidentiary hearings
 3. Permanency Hearings
 4. Criminal Preliminary Hearings
 5. Pleas and Sentences
 6. Arraignments
- E. Matters that **MAY** be heard in-person (or a hybrid of in-person and virtual)
1. Treatment Court and Judicial Diversion appearances where the presiding judge determines, in consultation with the Administrative Judge, that an appearance in an acute case is necessary to protect the health and safety of a defendant.
 2. Any proceeding involving a self-represented litigant(s) where the presiding judge determines that holding the proceeding via Microsoft Teams denies the self-represented litigant(s) meaningful access to the proceeding and where the presiding judge determines that the matter can be heard in-person consistent with all OCA safety protocols.
- F. ALL other matters **MUST** be heard virtually using Microsoft Teams, including but not limited to:
1. Bench Trials in Civil and Criminal cases. (For compelling reasons, the presiding judge may forward a request for permission to conduct a bench trial in-person to the Administrative Judge. If deemed appropriate, the Administrative Judge will forward the request to the Deputy Chief Administrative Judge, whose permission is required if the matter is to be held in-person.)
 2. Evidentiary Hearings in Civil and Criminal Cases. (For compelling reasons, the presiding judge may forward a request for permission to conduct a hearing trial in-person to the Administrative Judge. If deemed appropriate, the Administrative Judge will forward the request to the Deputy Chief Administrative Judge, whose permission is required if the matter is to be held in-person.)
 3. Motion arguments
 4. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20)
 5. ADR where both parties are represented by counsel and counsel will be present.
 6. Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program
 7. Small Claims Assessment Review proceedings

Exhibit A

- A. Criminal matters
 - 1. arraignments
 - 2. bail applications, reviews and writs
 - 3. temporary orders of protection
 - 4. resentencing of retained and incarcerated defendants
 - 5. essential sex offender registration act (SORA) matters

- B. Family Court
 - 1. child protection intake cases involving removal applications
 - 2. juvenile delinquency cases involving remand placement applications, or modification thereof
 - 3. emergency family offense petitions/temporary orders of protection
 - 4. orders to show cause

- C. Supreme Court
 - 1. MHL applications for an assisted outpatient treatment (AOT) plan
 - 2. emergency applications in guardianship matters
 - 3. temporary orders of protection (including but not limited to matters involving domestic violence)
 - 4. emergency applications related to the coronavirus
 - 5. emergency Election Law applications
 - 6. extreme risk protection orders (ERPO)

- D. Civil/Housing matters
 - 1. applications addressing landlord lockouts (including reductions in essential services)
 - 2. applications addressing serious code violations
 - 3. applications addressing serious repair orders
 - 4. applications for post-eviction relief

- E. Surrogate's Court - Any matter involving an individual who passed away due to COVID-related causes.