

# Updated Operating Protocols

## 5th District

(Effective December 9, 2020)

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.

**It is critical that the Courts immediately decrease in-person proceedings in order to protect the health and safety of all court users, court staff and judges and to further reduce the community spread of the Coronavirus. These protocols are intended to create an environment where the "normal" is a virtual appearance and in-person appearances are rare.**

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, Judge Marks' Memorandum "Revised Pandemic Procedures in the Trial Courts" dated November 13, 2020, and the Updated Operating Protocols effective November 23, 2020. Commencing December 9, 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. A Judge may not hold in-person proceedings more than one day per week, unless an exception is requested and granted by the Administrative Judge. The scheduling shall be as coordinated by Supervising Judges and Chief Clerks to assure appropriate limiting of foot traffic.
3. **In each court, there shall be a maximum of 5 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 grand juries (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 Any exceptions that were previously granted to the occupancy limits are rescinded until further notice.

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. "In-person" staffing at these reduced levels should be scheduled in a manner that limits the likelihood and adverse consequence of a positive COVID transmission in the workplace. All staff not reporting to the courthouse shall work remotely. Under no circumstance shall the number of non-judicial staff reporting to the courthouse exceed 25% to 40% of normal pre-COVID staffing.

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 to report for jury service until further notice. Pending criminal and civil jury trials will continue to conclusion.
- B. No new prospective grand jurors will be summoned to report for grand jury service unless authorized by appropriate administrative order. Existing grand juries, pursuant to Section 190.15 of the Criminal Procedure Law, may continue as a matter of law or upon application of the appropriate District Attorney to the Administrative Judge.
- C. Notwithstanding any other provision herein, no adult in custody incarcerated at a jail within the Fifth Judicial District shall be produced to any Court (Supreme, County, Family, City, Town or Village) (other than an arraignment), unless the Administrative Judge grants permission for an “in-person” appearance. Where an in-person proceeding involves an adult housed at a facility other than one located in the 5th Judicial District, that individual shall appear virtually utilizing electronic means unless the presiding judge orders otherwise 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 MUST FIRST FIND:**
  - a. THAT IT IS UNLAWFUL TO CONDUCT THE PROCEEDING VIRTUALLY; **OR**
  - b. THAT IT IS IMPRACTICAL TO CONDUCT THE PROCEEDING VIRTUALLY **AND** CRITICAL THAT THE MATTER PROCEED IMMEDIATELY:
    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 of detained defendants
    7. Arraignments where the Court receives a request for an arraignment by either the prosecution or the defense.
    8. Surrogate’s Court Citations
    9. 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.
    10. 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.
- E. **ALL OTHER MATTERS MUST BE HEARD VIRTUALLY** using Microsoft Teams video conferencing or telephone, 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 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
8. Desk Appearance Tickets
9. Other routine court matters, not expressly included in Paragraph II(D).

## 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.