

**OFFICE OF THE ADMINISTRATIVE JUDGE**  
5<sup>TH</sup> Judicial District



**MEMORANDUM**

To: Justices, Judges, and Non-Judicial Personnel

From: Hon. James P. Murphy, 5th District Administrative Judge

Date: February 22, 2022

Re: Protocols for the Expansion of Court Operations

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Throughout the entire COVID-19 pandemic, our Courts have remained open. I greatly appreciate everyone's flexibility, adaptability, and professionalism during these extremely challenging times. As we emerge from the latest omicron surge, it is important to revise the current operational protocols and procedures. In-Person proceedings are both required and warranted. We also recognize that virtual proceedings may be appropriate in certain circumstances. Throughout the pandemic, the Court system has been nimble and quick to adapt operations as conditions unfold. It is now time to expand our Court operations. The Administrative Judge may, based upon local conditions, modify these operational protocols where appropriate.

These Protocols supersede all previous Operating Protocols and are effective for all proceedings, including Town and Village Courts, on **February 25, 2022**. To the extent the provisions of these Protocols are inconsistent with provisions in any previously issued Memoranda or Administrative Orders, the provisions of these Protocols should be relied upon to guide operations.

I. Courthouse Operations

A. Scheduling

1. Calendar times shall be staggered, where necessary, so that different Courtrooms in the same building start at different times. Calendars shall be limited to the number of individuals that can socially distance in each Courtroom.
2. Each Judge may schedule In-Person proceedings at their discretion. All matters shall be scheduled to maximize Court resources, including Courtroom space, clerk availability and technology constraints. Judges should be mindful that Supervising Judges and Chief Clerks may be required to indicate specific times when and locations where matters may be scheduled by a particular Judge.
3. Occupancy of all Courtrooms shall be limited to the number of individuals that can safely socially distance in the Courtroom. The Administrative Judge may grant exceptions for specific Courtrooms and Court proceedings.

4. All Judges and all non-judicial personnel shall continue to report to work In-Person in their assigned Courthouses and Courtrooms. Any deviation from this will require approval from the Administrative Judge.
5. 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, including social distancing at all times. At this time, social distancing remains at six (6) feet for all non-criminal proceedings. Effective immediately, there is a reduction of social distancing to three (3) feet for all criminal jury trials, provided all the conditions contained in the OCA Memo dated February 10, 2022, have been met. We anticipate a reduction of social distancing to three (3) feet for additional matters in the very near future.
6. Each Courthouse, except Town and Village Court facilities, shall continue to have a space (kiosk or ante-room) available for use by litigants who are unable to appear in virtual proceedings without the use of such kiosk or ante-room.
7. Masks shall be worn at all times by every individual in all Courtrooms and in all public and private areas of the Courthouse (unless staff is eligible for the "Orange Card" exception in private areas). Failure to wear a mask will result in exclusion from the Courthouse.

## II. Court Proceedings

- A. Any virtual proceeding shall be conducted from the Courtroom, provided that a Courtroom is available. Jury Trials and Bench Trials shall take priority over all other Courtroom proceedings.
- B. Matters that must be heard In-Person:
  1. All proceedings pursuant to the Criminal Procedure Law, unless the use of electronic appearances is authorized pursuant to Criminal Procedure Law Article 182 and the defendant consents;
  2. Criminal Evidentiary Hearings and Trials;
  3. Criminal Arraignments;
  4. Criminal Bail Applications, Reviews and Writs;
  5. Temporary Orders of Protection;
  6. Re-sentencing of incarcerated defendants;
  7. Essential Sex Offender Registration Act (SORA) matters;
  8. Proceedings pursuant to Mental Hygiene Law Article 10, unless all parties consent to a virtual proceeding;
  9. Judicial Surrenders of Parental Rights;
  10. Civil Evidentiary Hearings and Trials;
  11. Family Court Evidentiary Hearings;
  12. Eviction Proceedings as authorized by law;
  13. 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;
  14. Child Protection intake cases involving removal applications;
  15. Juvenile Delinquency Cases involving remand placement applications, or modification thereof;
  16. Emergency Family Offense Petitions/Temporary Orders of Protection;
  17. Orders to Show Cause;
  18. MHL applications for an Assisted Outpatient Treatment (AOT) Plan;

19. Emergency Applications in Guardianship Matters;
20. Temporary Orders of Protection (including but not limited to matters involving domestic violence);
21. Emergency Applications related to the Coronavirus;
22. Emergency Election Law Applications;
23. Extreme Risk Protection Orders (ERPO);
24. Civil/Housing matters;
25. Applications addressing landlord lockouts (including reductions in essential services);
26. Applications addressing serious code violations;
27. Applications addressing serious repair orders;
28. Applications for post-eviction relief; and
29. General Civil Post-Note of Issue Settlement and Pre-Trial conferences;
30. The Administrative Judge or Supervising Judge may grant exceptions to the above, if necessary, to accommodate individual or unanticipated circumstances.

C. Matters that may be heard In-Person, Virtually, or a hybrid of In-Person and Virtual, at the discretion of the Presiding Judge, shall include:

1. Family Court Act Article 10 proceedings;
2. Adoptions;
3. Mental Hygiene Law Proceedings pertaining to a hospitalized adult are governed by Chief Administrative Judge Lawrence Marks’;
4. Administrative Order AO/144/21;
5. Civil Conferences other than II B (29) above;
6. Small Claims Assessment Review Proceedings;
7. Civil Motion arguments;
8. Surrogate’s Court Citations;
9. ADR where both parties are represented by counsel and counsel will be present;
10. Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program; and
11. Civil conferences other than as listed in paragraph II. B (29) above;
12. Notwithstanding II (B)(8) above, annual review hearings as provided in MHL Article 10.

Virtual and Hybrid matters shall be conducted by the Judge and non-judicial personnel from a Courtroom as such Courtroom is available using Microsoft Teams video conferencing (using the live Courtroom as the background).

D. The scheduling of Jury Trials shall be approved by the Administrative Judge or his designee. Jury Trials shall be conducted pursuant to each Court’s individual plan previously submitted by the Administrative Judge and as approved by the Deputy Chief Administrative Judge. Notwithstanding any provision of the aforementioned plans, during a Jury Trial, occupancy shall be limited to the number of people that can safely socially distance in the Courtroom. With regard to Criminal Jury Trials, priority should be given to incarcerated defendants. With regard to Civil Jury Trials, priority should be given to trials where the parties consent to a Summary Jury Trial. During Jury Trials, masks shall be worn at all times.