

**5<sup>th</sup> Judicial District**  
**Updated Operating Protocols**  
(Effective April 26, 2021)

Throughout the COVID-19 pandemic, our courts have remained open although there have been periods of time that have required modifications to court operations based upon virus metrics. Recently, the metrics (as well as the increasing number of vaccinated New Yorkers) have once again indicated an opportunity to gradually increase in-person proceedings in the courthouses. While the “new normal” remains a presumptively virtual appearance, in-person proceedings are permitted where access to justice and court operations require an in-person proceeding. The court system remains nimble and ready to quickly adapt operations as conditions warrant.

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

These Updated Protocols supersede the Updated Operating Protocols Effective February 22, 2021.

**Commencing April 26, 2021**, all court operations in the 5th Judicial District of the State of New York shall be conducted pursuant to these Updated Protocols. To the extent the provisions of this Updated Operating Protocol are inconsistent with provisions in the 5th Judicial District Eleventh Amended Administrative Order (Corrected) signed on February 19, 2021 and any previously issued Administrative Orders or memoranda, the provisions of this Protocol should be relied upon to guide operations.

**I. COURTHOUSE OPERATIONS**

**A. Scheduling**

1. Calendar times shall be staggered so that different courts (e.g. Family, Criminal, etc.) in the same building start at different times.
2. Each Judge may hold in-person proceedings on two days each week. Each judge may hold in-person proceedings on a third day each week provided that the presiding Judge first consult with the Chief Clerk and is assured that adequate staffing is available. Further additional time may be granted by the Administrative Judge after the presiding judge has submitted the request to the Supervising Judge and after the presiding judge has indicated that they have checked with the Chief Clerk and received an assurance that the chief clerk is able to accommodate the request. A judge presiding over any hearing or trial that continues to an additional day or days shall be granted additional courtroom time as needed. All scheduling shall be coordinated by the Supervising Judges and Chief Clerks to assure appropriate limiting of foot traffic and social distancing.
3. In each court, there shall be a maximum of 10 cases/proceedings scheduled in-person per hour, except as stated below in Sections (II)(B)(9) and (II)(B)(11).

B. Occupancy of all courtrooms shall be limited to the lesser of 30 people or ½ the posted room occupancy per Code. An exception shall be granted for jury trials or grand juries (in those instances, occupancy shall be limited to the lesser of 40 people or ½ the posted room occupancy per Code). The Administrative Judge may grant an exception for a specific courtroom or court proceeding.

C. The number of non-judicial staff reporting to the courthouse shall be increased or decreased in the discretion of the Administrative Judge to the number necessary to ensure safe operation. In-person staffing 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 as directed. In all circumstances, non-judicial staff reporting to the Courthouse shall be between 60% to 80% of normal pre-COVID staffing.

D. On May 24, 2021, 100% of all Judges and court staff shall report to work in their assigned locations unless a specific exception has been granted by the Administrative Judge.

E. All current safety measures and protocols will continue until further notice. Court managers and PPE Compliance Coordinators shall take steps to assure and enhance monitoring and compliance with all safety measures including masks and social distancing at all time.

F. Each county shall have a space (kiosk or ante-room) available for use by litigants who are unable to appear virtually.

## II. COURT PROCEEDINGS

A. All virtual proceedings shall be conducted from the courtroom, subject to courtroom availability.

B. Notwithstanding any other provision herein and except in the case of a criminal jury trial or criminal evidentiary hearing, a remote/virtual appearance of in-custody defendants is encouraged and preferred. However, an in-custody defendant may be transported if the correctional facility and the court are able to accommodate such transport.

C. **Matters that MAY be heard in-person** (or a hybrid of in-person and virtual) PROVIDED THAT THE PRESIDING JUDGE FIRST FINDS THAT THE MATTER CANNOT PROCEED VIRTUALLY (LEGALLY IMPERMISSIBLE OR LOGISTICALLY IMPRACTICAL).

1. Matters as designated in Exhibit A (attached)
2. Family Court Act Article 10 proceedings
3. Adoptions

4. Civil and Criminal Evidentiary Hearings and Trials. The scheduling of jury trials shall be approved by the Administrative Judge in consultation with the Deputy Chief Administrative Judge. Jury trials shall be conducted in each county pursuant to the individual plan submitted to the Administrative Judge by the Chief Clerk and pursuant to the [5<sup>th</sup> District Jury Plan] 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 lesser of 40 people or ½ the posted room occupancy per code. With regard to criminal jury trials, priority should be given to incarcerated defendants, subject to safety and security protocols. With regard to civil jury trials, priority should be given to trials where the parties consent to a Summary Jury Trial.

5. Pleas and Sentences

6. Jury Trials were authorized to commence beginning March 22nd. The scheduling of the jury trials shall be approved by the Administrative Judge in consultation with the Deputy Chief Administrative Judge. Jury trials shall be conducted in each County pursuant to the individual plan submitted to the Administrative Judge by the Chief Clerk and pursuant to the 5<sup>th</sup> District Jury Plan as previously approved by the Deputy Chief Administrative Judge. Notwithstanding any provision of the aforementioned Plans, courtroom occupancy shall be limited to the lesser of 40 people or ½ the posted room occupancy per Code.

7. Surrogate's Court Citations

8. Eviction proceedings as authorized by law.

9. Treatment court and Judicial Diversion appearances. Notwithstanding the provisions of Section (I)(A)(3), there may be a maximum of 10 treatment court or Judicial Diversion cases scheduled every 30 minutes provided that the occupancy of the courtroom does not exceed the lesser of 30 people or ½ the posted room occupancy per code.

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.

11. Traffic violation appearances may be heard in-person upon a finding by the presiding judge that it is impractical to conduct the appearance virtually. Notwithstanding the provisions of Section (I)(A)(3), subject to the courtroom occupancy limits identified in Section (I)(B) above, there may be a maximum of 10 traffic violation appearances scheduled every 15 minutes, provided that the occupancy of the courtroom does not exceed the lesser of 30 people or ½ the posted room occupancy per code.

**D. ALL OTHER MATTERS MUST BE PRESUMPTIVELY HEARD VIRTUALLY** from a courtroom (if available) using Microsoft Teams video conferencing, or telephone, including but not limited to:

1. General civil conferences, particularly those with counsel only
2. Motion arguments
3. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20)
4. ADR where both parties are represented by counsel and counsel will be present.
5. Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program
6. Small Claims Assessment Review Proceedings
7. Other routine court matters, not expressly included in Paragraph II(C)

## 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 deceased due to COVID.