



[No. 5AO2020-86]

**EIGHTH AMENDED OPERATIONAL ADMINISTRATIVE ORDER
FIFTH JUDICIAL DISTRICT**

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I hereby order that, effective immediately, the following rules be put into effect in the Fifth Judicial District until rescinded.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, and Phase IV.1 of the RIPCO Plan on August 10, 2020 (Summary Attached). The provisions in each Phase listed above remain in effect unless specifically modified herein.

As hereinafter used, “Assigned Judge” shall refer to the judge assigned to hear the case on and before March 16, 2020.

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

1. Until further Administrative Order or Executive Order, eviction matters may proceed pursuant to the newly issued Administrative Order AO/160/20 from Chief Administrative Judge Lawrence Marks dated August 12, 2020, and the accompanying Memorandum from Judge Marks, copies of which are attached. Administrative Order AO/127/20 is superseded. Among other restrictions, AO/160/20 provides that no residential eviction “shall be scheduled or re-scheduled to take place [before] October 1, 2020.” Further reference is made to the Administrative Order AO/68/20 signed by the Chief Administrative Judge of the Courts on March 16, 2020; Executive Order 202.8 signed by the Governor on March 20, 2020, Executive Order 202.14 signed by the Governor on April 7, 2020 and Executive Order 202.28 signed by the Governor on May 7, 2020, Executive Order 202.48 signed by the Governor on July 6, 2020; and Executive Order 202.55 signed

by the Governor on August 5, 2020, suspending “any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as described by the procedural laws of the state.”

2. Until further Administrative Order or Executive Order, no default judgments shall be granted where, pursuant to CPLR 3215, the default occurred after March 16, 2020. Furthermore, no default judgment requiring the defendant’s notice pursuant to CPLR 3215(g) shall be granted, unless the application was heard prior to March 17, 2020 and proper notice was given. Notwithstanding the above, a judgment adverse to the party seeking relief (plaintiff, petitioner, moving party, etc.) may be granted in the event that party fails to proceed with the action or appear in court.
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 any RIPCO plans for any subsequent phase are incorporated herein and all provisions of this Administrative Order shall be read in conjunction with the RIPCO.
5. The Virtual Courtroom Protocol enacted by Fifth Judicial District Administrative Order No. No. 5A02020-53 signed on April 9, 2020, to the extent not inconsistent with the RIPCO Plan, remains in full force and effect and all provisions of this Sixth Amended Administrative Order shall be read in conjunction with the Virtual Courtroom Protocol and any subsequent amendments thereto.
6. Occupancy of ALL courtrooms and meeting rooms in Court Facilities and other rooms where court functions occur shall be limited to the lesser of 25 people or ½ the posted room occupancy per code unless the necessary parties in an action require that more than 25 people be in a courtroom. Notwithstanding the above in all instances the maximum occupancy of any space in the courthouse shall be limited to ½ the posted room occupancy. To the greatest extent possible, all room occupants shall remain six feet apart.
7. Naturalization Ceremonies, wherever they occur, shall comply with the room occupancy limits stated herein.
8. All Staff shall report to the courthouse as determined by his/her supervisor. All Judges and Chambers’ staff should report to the courthouse. Any requests for exemptions must be approved by the Administrative Judge.
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 Orders signed by the Chief Administrative Judge of the Courts (AO/111/2020, AO/114/20, AO/115/20, AO/149/20 and any amendments thereto).

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 Memorandum from Chief Administrative Judge Lawrence Marks dated July 24, 2020 and pursuant to Administrative Order AO/157/20 dated July 23, 2020. Further reference is made to Administrative Order AO/68/20 signed by the Chief Administrative Judge of the Courts on March 16, 2020; Executive Order 202.8 signed by the Governor on March 20, 2020, Executive Order 202.14 signed by the Governor on April 7, 2020 and Executive Order 202.28 signed by the Governor on May 7, 2020, Executive Order 202.48 signed by the Governor on July 6, 2020; and Executive Order 202.55 signed by the Governor on August 5, 2020.

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. 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. Grand Juries shall be impaneled in each County pursuant to Administrative Order 130a/2020 signed on June 30, 2020.
3. The Accessible Magistrate procedure (for Adolescent Offenders) currently in place shall continue.

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.
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 and Administrative Orders. 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.

H. Town and Village Courts

1. All matters shall be addressed by the Assigned Town or Village Judge and appropriately calendared.
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: August 13, 2020
Syracuse, New York

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

Distribution:
HON. VITO CARUSO

Attachment A

5th DISTRICT PHASE IV.1 SUMMARY

Phase 4.1 Return to In-Person Court Operations Plan ("RIPCO") commences August 10, 2020

- All measures contained in the Amended RIPCO Plan dated May 14, 2020 will continue and be enhanced during Phase 4.1. All measures contained in the Memoranda of John McConnell and Nancy Barry dated February 28, 2020, March 6, 2020, May 15, 2020, May 29, 2020, June 8, 2020, and June 17, 2020 are incorporated herein. Screening for court visitors and Judges/Court employees shall be conducted pursuant to the June 30, 2020 and July 10, 2020 protocols.
- Phase 4.1, like Phases II, III & IV, operates with certain presumptions
 - A. Incarcerated Individuals - 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.
 - B. Notwithstanding the presumptions as stated below, virtual appearances shall be utilized to the greatest extent possible where a virtual appearance is legally permissible and logistically possible.**
 - C. **Matters that shall presumptively be heard in-person** - a Judge may deviate from the presumptions that a matter be heard in-person **on their own initiative** or based upon a request from a party or attorney.
 1. Superior Civil
 - a. Trials
 - b. Evidentiary hearings and inquests
 - c. All appearances and conferences where at least one party is self-represented
 2. Superior Criminal (Incarcerated Defendants shall appear virtually, unless otherwise ordered)
 - a. Trials
 - b. Evidentiary hearings
 - c. Non-custodial arraignments
 - d. Waivers of Indictment, Pleas and Sentences for defendants at liberty
 - e. Motion argument
 - f. Treatment court and Judicial Diversion where the Judge determines that an appearance is necessary to protect the health and safety of a defendant
 - g. Instances where the defendant cannot be located or communicated with
 - h. Grand Jury proceedings
 3. Family Court
 - a. All evidentiary hearings (priority given to matters filed first)
 - b. Child Support proceedings
 - c. Permanency Hearings
 - d. Article 10 Consents, Admissions and Surrenders
 4. Surrogates' Court
 - a. Citations and Show Cause orders
 - b. Bench trials
 - c. Evidentiary hearings
 - d. All appearances and conferences where at least one party is self-represented
 5. City Court Civil
 - a. Bench trials
 - b. Evidentiary hearings
 - c. Small claims matters, including the small claims arbitration program, for matters
 6. City Court Criminal
 - a. Bench trials
 - b. Preliminary Hearings

- c. Evidentiary hearings
 - d. Appearance Ticket arraignments for Appearance
 - e. Vehicle & Traffic Appearances
 - f. Pleas and Sentences for defendants at liberty
 - g. Motion arguments
 - h. Arraignments of defendants accused of a violation of any provision of Article 31 of the Vehicle and Traffic Law (VTL 1190 et seq.)
 - i. Treatment court where the Judge determines that an appearance is necessary to protect the health and safety of a defendant.
- D. **Matters that shall presumptively be heard virtually** - a Judge may deviate from the presumptions that a matter be heard virtually for compelling reasons **on their own initiative** or based upon a request from a party or attorney. If a request to appear in-person is granted, the Administrative Judge shall be notified.
1. Superior Civil
 - a. All conferences, including foreclosures, where all parties are represented by counsel
 - b. Motion arguments where all parties are represented by counsel
 - c. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (NOTE: Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20 requires that Mental Hygiene Law proceedings in which a petitioner or other necessary party is confined to a hospital be conducted with appearances by means of remote audiovisual technology or by telephone and therefore a request to deviate from the presumption should not be entertained).
 - d. All other proceedings not listed in (C)(1) above
 2. Superior Criminal
 - a. Conferences
 - b. Waivers of Indictment, pleas and sentences where the defendant is incarcerated
 3. Family Court
 - a. Conferences
 - b. Juvenile Delinquency Proceedings
 - c. Person In Need of Supervision Proceedings
 - d. Adoptions
 - e. Appearances calendars
 - f. All other proceedings not listed in (C)(3) above
 4. Surrogates' Court
 - a. Conferences where all parties are represented by counsel
 - b. Motion Arguments where all parties are represented by counsel
 - c. Adoptions
 - d. All other proceedings not listed in (C)(4) above
 5. City Court Civil
 - a. Conferences
 - b. Motion arguments
 - c. All other proceedings not listed in (C)(5) above
 6. City Court Criminal
 - a. Conferences
 - b. Pleas and sentences where the defendant is incarcerated
 - c. All other proceedings not listed in in (C)(6) above

• **Courts should note the following:**

- All virtual matters shall be held via Skype for Business. Included in the Skype invitation is a call-in number for lawyers and litigants that do not have access to Skype for Business video. In the event that a self-represented

litigant is unable to access Skype for Business, arrangements shall be made at the courthouse for the litigant to appear virtually.

- Housing matters may proceed pursuant to the protocol established in the Memorandum from Chief Administrative Judge Lawrence Marks dated June 18, 2020 and pursuant to Administrative Order AO/127/20 (“Evictions matters in which all parties are represented by counsel shall be eligible for calendaring for virtual settlement conferences”), as amended by the Memorandum from Chief Administrative Judge Lawrence Marks dated July 7, 2020. Further guidance regarding eviction matters may be found in the Memorandum of Jessica Cherry, Assistant Deputy Counsel dated July 10, 2020.
- Foreclosure matters may proceed pursuant to the protocol established in the Memorandum from Chief Administrative Judge Lawrence Marks dated July 24, 2020 and pursuant to Administrative Order AO/157/20 dated July 23, 2020.
- Default judgments shall not be granted where, pursuant to CPLR 3215, the default occurred after March 16, 2020. Furthermore, no default judgment requiring the defendant’s notice pursuant to CPLR 3215(g) shall be granted, unless the application was heard prior to March 17, 2020 and proper notice was given (5th Judicial District’s Seventh Amended Administrative Order). Notwithstanding the above, a judgment adverse to the party seeking relief (plaintiff, petitioner, moving party, etc.) may be granted in the event that party fails to proceed with the action or appear in court.
- ADR shall be conducted virtually (Chief Administrative Judge Lawrence Marks’ AO/87/20).
- Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program will occur virtually.
- Small Claims Assessment Review proceedings shall be conducted virtually.
- Plans to conduct civil and criminal jury trials shall be developed and implemented as approved by the Deputy Chief Administrative Judge. Civil Jury Summonses shall be mailed in Term 10 and Criminal Jury Summonses shall be mailed in Term 11.

Attachment B

Town and Village Courts Phase 4.1

In the Town and Village Courts, as in the state paid courts, each phase has added additional matters which can be handled by the courts. The return to in person operations has been slow and deliberate, allowing for pull backs if the virus progresses. The following is a bullet point list of all matters that can be handled by Town and Village Courts beginning in Phase 4.1, provided your re-opening Plan has been approved by the Coordinating Judge. Matters which could be handled in Phases 1 - 4 are included so that this list is an exhaustive list of everything that can be handled.

- Phase 4.1 matters are in **bold** letters.
- If a matter is not included in this list, the Town and Village Courts may not handle it at this time.
- At all times, the capacity of the courtroom cannot exceed 25% of capacity.
- Proper PPE must be worn by all present.
- Social distancing must be followed.

Criminal Matters:

- Off hour arraignments. In CAP counties, they will occur in person at the CAP. In VAP counties, they will continue virtually. In all other counties, they will occur in person at the town/village court.
- Preliminary hearings. Judges may conduct in-person preliminary hearings.
- Bench Trials and Hearings. Scheduled one at a time.
- In person arraignments on Appearance Tickets or Criminal Summons where counsel, either District Attorney or defense counsel, has requested arraignment.
- **IN PERSON ARRAIGNMENTS ON APPEARANCE TICKETS WRITTEN BEFORE AUGUST 1, 2020.**
- Judges may hold in-person pleas and sentences.
- In person appearances regarding appeals.
- In-person motion argument.
- Judges are encouraged to more robustly conference criminal matters virtually/telephonically and if acceptable dispositions are reached, plea affidavits (pleas on paper) are strongly encouraged. Please work with your ADA and defense counsel on procedure. This will not only limit the foot traffic in your courts, it will also give you an opportunity to address the backlog of cases.

Civil Matters:

- Bench Trials and Hearings. Scheduled one at a time.
- Small Claims matters
- Town Code Violations
- Landlord/Tenant and Eviction matters in accordance with Judge Marks' Administrative Order-127. **UPDATES REGARDING HOUSING MATTERS WILL BE FORTHCOMING IN THE NEAR FUTURE.**

Vehicle and Traffic Matters:

- **IN PERSON VTL TICKET RETURNS WHERE TICKET WRITTEN BEFORE AUGUST 1, 2020.**
- Within ethical guidelines, Judges are encouraged to cooperate with their local prosecutor and public defender/assigned counsel office/local Bar Association to establish a mail-in dispositional

process that would allow a defendant charged with a VTL infraction to elect to proceed without a personal appearance in order to mitigate the effects of the COVID-19 outbreak, and to control in-person traffic within the Courthouses.

