

Updated Operating Protocols

Effective June 30, 2021

District 8

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. With the expiration of the Declaration of Emergency, additional in-person appearances are both required and warranted. While Civil Courts continue to operate with the “normal” being a presumptively virtual appearance, in-person proceedings are required where access to justice and court operations necessitate an in-person proceeding. The court system remains nimble and ready to quickly adapt operations as conditions warrant.

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

This Plan supersedes all prior Updated Operating Protocols. Commencing, June 30, 2021 all court operations in the 8th Judicial District of the State of New York shall be conducted pursuant to this Plan. To the extent the provisions of this Updated Operating Protocol are inconsistent with provisions in the 8th Judicial District Amended Administrative Orders governing the health emergency and any previously issued memoranda, the provisions of this Protocol should be relied upon to guide operations. The provisions of the Administrative Order stating anyone who asks for assigned counsel is presumptively eligible is rescinded.

I. Courthouse Operations

A. Scheduling

1. Calendar times shall be staggered by courtroom by floor so all courtrooms do not begin at the same time.
2. Each Judge may schedule in-person proceedings in their discretion and in consultation with the Supervising Judges and Chief Clerks. All matters shall be scheduled to maximize court resources, including courtroom space, clerk availability, court reporter availability and technology constraints. Judges should be mindful that Supervising Judges and Chief Clerks may be required to indicate times and locations when matters may be scheduled by a particular judge.
3. **Treatment courts** in the 8th Judicial District shall limit personal appearances using a combination of virtual and in person proceedings as outlined in the Treatment Protocols for the 8th Judicial District.

- B. Occupancy of all courtrooms shall be limited to the lesser of **one-half of the posted room occupancy** per code or the number of people that can safely socially distance in the courtroom. The Administrative Judge may grant an exception for a specific courtroom or court proceeding.

- C. All Judges and court staff shall report to work in their assigned courthouses.

- 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 including social distancing at all time.
- E. 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, as such courtroom is available.
- B. Matters that must be heard in-person:
 - 1. All arraignments , preliminary hearings and other proceedings pursuant to the Criminal Procedure Law, unless outside of business hours and the use of electronic appearances is authorized pursuant to Criminal Procedure Law Article 182 and the defendant consents. (This statute allows limited virtual proceedings in Erie, Niagara, Chautauqua and Cattaraugus counties only);
 - 2. Proceedings pursuant to Mental Hygiene Law Article 10;
 - 3. Judicial Surrenders of Parental Rights.
- C. Matters that may be heard in-person, or a hybrid of in-person and virtual, (except as to those matters listed in Paragraph [II][B]), in the discretion of the Presiding Judge:
 - 1. Matters as designated in Exhibit A;
 - 2. Family Court Act Article 10 proceedings;
 - 3. Adoptions;
 - 4. Civil Evidentiary Hearings and Trials;
 - 5. Family Court evidentiary hearings;
 - 6. Surrogate's Court Citations;
 - 7. Eviction proceedings as authorized by law;
 - 8. All Housing court matters;
 - 9. 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;
 - 10. Mental Hygiene Law Proceedings pertaining to a hospitalized adult are governed by Chief Administrative Judge Lawrence Marks' Administrative Order AO/144/21;
 - 11. General Civil post Note of Issue settlement and pre-trial conferences;
 - 12. Due to the time constraints of adjudicating JD matters, these shall be in person, but may be virtual at the discretion of the judge.
- D. 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 S&C chief clerk and pursuant to the 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 ½ the posted room occupancy per code or 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. Criminal jury trials in city courts may be scheduled to begin any time after September 1, 2021 if the court facility has appropriate spacing.

- E. ALL other matters MUST presumptively be heard virtually, from a courtroom as such courtroom is available using Microsoft Teams video conferencing (using the live courtroom as background; if not appearing from the courtroom, use other appropriate background), or telephone, including but not limited to:
1. General civil conferences particularly those with counsel only (except as to those items listed in [II][C][11]);
 2. Civil Motion arguments;
 3. Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program;
 4. Small Claims Assessment Review proceedings;
 5. Other routine court matters, not expressly included in Paragraph II(C) or II(D).

Exhibit A

- A. Criminal matters on consent of defendant
 1. bail applications, reviews and writs
 2. temporary orders of protection
 3. resentencing of retained and incarcerated defendants
 4. 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.