

SUMMARY
8th Judicial District
Return to In-Person Operations Plan ("RIOP") Updates Effective October 19, 2020

- All measures contained in the Memoranda of John McConnell and Nancy Barry dated February 28, 2020, March 6, 2020, March 31, 2020, May 15, 2020, May 29, 2020, June 8, 2020, June 17, 2020, August 5, 2020 and August 18, 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.
- 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 only where the Judge determines that an appearance is necessary to protect the health and safety of a defendant or where there is a concern that the defendant is not compliant on a case by case basis with the permission of the Supervising Judge or Administrative Judge.
 - 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. Permanency Hearings
 - c. 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
 - d. Eviction proceedings-virtual format encouraged where possible
 6. City Court Criminal (**this section applicable to defendants at liberty only with exception of paragraph 6(a)**)
 - a. Non-Jury Bench trials may be conducted in person for in-custody and out-of-custody defendants.
 - b. Evidentiary hearings
 - c. Appearance Ticket arraignments for Appearance Tickets
 - d. Vehicle & Traffic Appearances
 - e. Pleas and Sentences for defendants at liberty. Intermittent sentences of incarceration must be reviewed with the Administrative Judge prior to the sentencing proceeding. Sentences of incarceration for defendants at liberty in Buffalo, Lackawanna and Tonawanda may resume November 1, 2020. Sentences of incarceration for defendants at liberty in Batavia shall be coordinated with the Genesee County Court Judge.
 - f. Motion arguments for defendants out of custody
 - g. Arraignments of defendants accused of a violation of any provision of Article 31 of the Vehicle and Traffic Law (VTL 1190 et seq.)
 - h. Treatment court and Judicial Diversion **only** where the Judge determines that an appearance is necessary to protect the health and safety of a defendant or **where there is a concern that the defendant is not compliant on a case by case basis with the permission of the Supervising Judge or Administrative Judge.**

- 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 MHL proceedings in which a petitioner or other necessary party is confined to a hospital be conducted with appearances by means of remote audiovisual technology).
 - d. All other proceedings not listed in (C)(1) above
 2. Superior Criminal
 - a. Conferences
 - b. Custodial Arraignments on indictments
 - c. Motions for defendants in custody
 - d. Waivers of Indictment, pleas and sentences where the defendant is in custody
 - e. Virtual appearances at a preliminary hearing (EO 202.28).
 3. Family Court
 - a. Conferences
 - b. Juvenile Delinquency Proceedings
 - c. Person In Need of Supervision Proceedings
 - d. Child Support Proceedings that can be conferenced or heard electronically
 - e. Adoptions
 - f. Appearances calendars
 - g. All other proceedings not listed in (III)(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. City Court Criminal Conferences
 - b. Pleas and sentences where the defendant is incarcerated
 - c. Motions for defendants in custody
 - d. Virtual appearances at a preliminary hearing (EO 202.28)
 7. All other proceedings not listed in in (III)(C)(6) above

Courts should note the following:

- All virtual matters shall be held via Skype for Business until the conversion to Microsoft Teams is fully implemented. The transition to Microsoft Teams will commence on October 1, 2020. After November 25, 2020 all virtual court proceedings will be conducted using Microsoft Teams. In the event that a self-represented litigant is unable to access Skype for Business or Microsoft Teams, 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 October 9, 2020 and pursuant to Administrative Order AO/231/20.
- 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. Notwithstanding the foregoing, a judge presiding over a matter wherein a party has defaulted may grant a default judgment where, after inquiry, the judge determines that (a) the defaulting party has received actual notice of the action or proceeding; (b) the failure of the defaulting party to respond to the action or proceeding is not due to the COVID-19 pandemic; and (c) the granting of the default judgment is not contrary to any statute, Executive Order or Administrative Order. Note: Executive Order 202.60 extends the toll on statutes of limitations (first set forth in EO 202.8 on March 20, 2020 and later extended by 202.48, 202.38, 202.28, and 202.14) through October 4, 2020. Default judgments may be governed by the suspension of "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." 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.
- Superior Court Criminal trials may be conducted in all counties in Term 12 and thereafter. Supreme Court civil trials may be conducted in all counties in Term 12 and thereafter. Those counties approved to conduct criminal and civil jury trials may continue to conduct trials following the requirements as set for the plans to conduct those trials. with notice to the Administrative Judge and approval of the Deputy Chief Administrative Judge.
- Planning for a Special City Court Criminal Jury Trial Pilot shall commence in Term 12 and requires submission and approval of jury trial plans to the Administrative Judge and Deputy Chief Administrative Judge before any city court jury trials may be conducted.