



AMENDED ADMINISTRATIVE ORDER
8th JUDICIAL DISTRICT

Pursuant to the authority vested in me, in accordance with the recent operational protocols issued by the Chief Administrative Judge for the trial courts of the Unified Court System and after consultation with the Chief Administrative Judge and the Deputy Chief Administrative Judge and

WHEREAS, New York State and the nation are now in the midst of an unprecedented public health crisis surrounding the outbreak of COVID-19 (coronavirus); and

WHEREAS, COVID-19 is known to be a highly infectious disease, and there is much community concern that large gatherings of people can result in greater public exposure to possible contagion or "community spread"; and

WHEREAS, on a daily basis, in courts across the State, hundreds if not thousands of people representing a broad cross-section of the community gather to conduct business in large groups in close proximity to one another; and

WHEREAS the Courts of the Eighth Judicial District commenced Phase I of the Return to In-Person Operations Plan ("RIOP") on May 18, 2020 for Orleans, Genesee and Wyoming counties, and May 21 for Allegany, Cattaraugus, Chautauqua, Erie and Niagara counties; and subsequently enacted Phases II, III and IV; and the Updated Operating Protocols Effective November 23, 2020, and the Updated Operating Protocols Effective December 9, 2020 ; it is hereby

ORDERED that effective immediately the following rules be put into effect in the Eighth* Judicial District until rescinded.

- A. General matters and matters applicable to more than one case type
 1. Until further Administrative Order or Executive Order, residential eviction matters may proceed pursuant to the protocol established in the memoranda from Chief Administrative Judge Lawrence Marks dated October 9, 2020 and November 17, 2020 and pursuant to Administrative Orders AO/231/20 and AO/268/20. Further reference is made to Executive Order 202.72 signed by the Governor on November

- 3, 2020, the Tenant Safe Harbor Act (Ch. 127, L. 2020) and the CDC Agency Order filed on September 1, 2020.
2. Default judgments may be granted pursuant to CPLR 3215 provided that the granting of the default judgment is not contrary to any statute, Executive Order or Administrative Order.
 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 Return to In-Person Operations Plan ("RIOP") (Phase I), the RIOP (Phase II), the RIOP (Phase III), the RIOP (Phase IV), the RIOP (Phase 4.1), the Updated Operating Protocols implemented on November 23, 2020, the Updated Operating Protocols implemented on December 9, 2020, and any further updated operating protocols are incorporated herein and all provisions of this Administrative Order shall be read in conjunction with the protocols.
 5. Virtual proceedings must occur via Microsoft Teams video conferencing, or telephone.
 6. Occupancy of all courtrooms shall be limited to the lesser of 10 people or ½ the posted room occupancy per code. An exception shall be granted for ongoing grand juries currently in progress (in those instances, occupancy shall be limited to the lesser of 30 people or ½ the posted room occupancy per code). Any exceptions that were previously granted to the occupancy limits are rescinded until further notice.
 7. Staff shall report to the courthouse as determined by his/her supervisor. In all circumstances, non-judicial staff reporting to the courthouse shall be between 25% to 40% of normal pre-COVID staffing. All staff not reporting to the courthouse shall work remotely.
 8. 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. The terms of such orders shall be extended either through the Division of Technology or as addressed by each Court.
 9. All filings shall be pursuant to the Administrative Order signed by the Chief Administrative Judge of the Courts (AO/267/20 and any amendments thereto).
 10. The Judges should encourage or require, to the greatest extent possible, the use of virtual technology in matters that occur off court premises (depositions, discovery, etc.). Such language should be included in any scheduling orders.

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 memoranda from Chief Administrative Judge Lawrence Marks dated July 24, 2020 and October 22, 2020 and pursuant to Administrative Orders AO/157/20 dated July 23, 2020 and AO/232/20 dated October 22, 2020. Further reference is made to Executive Order 202.28 signed by the Governor on May 7, 2020, Executive Order 202.64 signed by the Governor on September 18, 2020, Executive Order 202.67 signed by the Governor on October 4, 2020, and the Laws of New York 2020, Chapters 112 and 126. All Foreclosure Auctions must adhere to the Eighth Judicial District Foreclosure Auction Plan.

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. Except as noted in Paragraph 2 herein, the issuance of the new return date shall occur on or before the currently scheduled adjourned date or within 7 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 that is greater than 30 days).
2. All arraignments, other than those listed in Paragraph (II)(D)(6, 7) of the Updated Operating Protocols effective December 9, 2020 shall be administratively adjourned until further notice. (Attached hereto for easy reference.)
3. No new prospective grand jurors will be summoned to report for grand jury service until further notice. Existing grand juries, pursuant to Section 190.15 of the Criminal Procedure Law, may continue.
4. Each County, in consultation with the Sheriff, shall develop a plan for the imposition of intermittent sentences.

D. Treatment Courts/OSP

1. Treatment courts and Opioid Stabilization Parts will be handled by the Assigned Judge and reference is made to Paragraph (II)(D)(9) of the Updated Operating Protocols Effective December 9, 2020.
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.

G. City Court

1. All pending criminal cases shall be addressed by the Assigned Judge and appropriately scheduled consistent with applicable Executive Orders, Administrative Orders and the Updated Operating Protocols Effective December 9, 2020. Except as noted in Paragraph 2 herein, the issuance of the new return date shall occur on or before the currently scheduled adjourned date or within 7 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 90 days. For defendants in custody, there shall be no adjournment of a matter that greater than 30 days).
2. All arraignments, other than those listed in Paragraph (II)(D)(6, 7) of the Updated Operating Protocols effective December 9, 2020 shall be administratively adjourned until further notice.

H. Town and Village Courts

Shall operate under the directions of the Protocols Effective December 9, 2020.

Dated: December 23, 2020
Buffalo, New York



Hon. Paula L. Feroleto
Administrative Judge
Eighth Judicial District

Distribution:
HON. VITO CARUSO
Health Emergency
A/O 08/2020

Updated Operating Protocols

Effective December 9, 2020

8th Judicial District

For the past many months, the Unified Court System has permitted in-person proceedings in accordance with the Governor's un-PAUSE New York plan. Foot traffic in the courthouses has been gradually increased to correspond with an improvement in the metrics measuring the spread of the Coronavirus. Recently, the metrics have indicated the need to once again reduce foot traffic in the courthouses to protect the health and safety of litigants, lawyers, court staff and judges. It is critical that the Courts immediately decrease in-person proceedings in order to protect the health and safety of all court users, court staff and judges and to further reduce the community spread of the Coronavirus. These protocols are intended to create an environment where the "normal" is a virtual appearance and in-person appearances are rare.

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

This Plan should be considered an update to the Return to In-Person Operations Plan effective October 19, 2020, Judge Marks' Memorandum "Revised Pandemic Procedures in the Trial Courts" dated November 13, 2020, and the Updated Operating Protocols Effective November 23, 2020. Commencing December 9, 2020 all court operations in the 8th Judicial District of the State of New York shall be conducted pursuant to this Plan.

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. Judges may not hold in-person proceedings more than one day per week, unless an exception is requested and granted by the Administrative Judge. The scheduling shall be as coordinated by Supervising Judges and Chief Clerks to assure appropriate limiting of foot traffic.
3. In each court, there shall be a maximum of 5 cases/proceedings scheduled in-person per hour.

B. Occupancy of all courtrooms shall be limited to the lesser of 10 people or $\frac{1}{2}$ 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 30 people or $\frac{1}{2}$ the posted room occupancy per code). Any exceptions that were previously granted to the occupancy limits are rescinded until further notice.

C. The number of non-judicial staff reporting to the courthouse shall be reduced in the discretion of the Administrative Judge to the minimum number necessary to ensure safe operation. In-person staffing at these reduced levels 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. Under no circumstance shall the number of non-judicial staff reporting to the courthouse exceed between 25% to 40% of normal pre-COVID staffing.

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 times.

II. Court Proceedings

A. No new prospective trial jurors (criminal or civil) will be summoned for jury service until further notice.

B. No new prospective grand jurors will be summoned to report for grand jury service unless authorized by appropriate administrative order. Existing grand juries, pursuant to Section 190.15 of the Criminal Procedure Law, may continue, as provided by law, or upon application of the appropriate district attorney to the Administrative Judge.

- C. Notwithstanding any other provision herein, no adult incarcerated in the 8th Judicial District in a county or local facility shall be produced to any Court (Supreme, County, Family, City, Town or Village), unless the Administrative Judge grants permission for an in-person appearance. Where an in-person proceeding involves an adult housed at a facility other than a county or local facility, that individual shall appear virtually utilizing electronic means unless the presiding judge orders otherwise after appropriate application is made.
- D. Matters that may be heard in-person (or a hybrid of in-person and virtual) **PROVIDED THAT THE PRESIDING JUDGE FIRST FIND:**
- (a) THAT IT IS UNLAWFUL TO CONDUCT THE PROCEEDING VIRTUALLY OR
- (b) THAT IT IS IMPRACTICAL TO CONDUCT THE PROCEEDING VIRTUALLY AND CRITICAL THAT THE MATTER PROCEED IMMEDIATELY
1. Matters as designated in Exhibit A
 2. Family Court Act Article 10 evidentiary hearings
 3. Permanency Hearings
 4. Criminal Preliminary Hearings (Please Note C above)
 5. Pleas and Sentences
 6. Arraignments of in-custody defendants (Please note C above)
 7. Arraignments where the Court is notified of a request for an arraignment by either the prosecution or the defense. (NOTE THE COURT MUST STILL MAKE A FINDING IT IS IMPRACTICAL TO CONDUCT THE PROCEEDINGS VIRTUALLY AND CRITICAL THAT MATTER PROCEED IMMEDIATELY)
 8. Surrogate's Court Citations
 9. Treatment court and Judicial Diversion appearances where the presiding judge requests permission from the *Administrative Judge and Supervising Judge*, an in person appearance in an acute case deemed necessary to protect the health and safety of a defendant. (Request to be made via e-mail from Resource Coordinator to Judge.)
 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.
- E. ALL other matters MUST be heard virtually using Microsoft Teams video conferencing, or telephone, including but not limited to:
1. Bench Trials in Civil and Criminal cases. (For compelling and critical reasons, the presiding judge may forward a request for permission to conduct a bench trial in-person to the Administrative Judge. If deemed appropriate, the Administrative Judge will forward the request to the Deputy Chief Administrative Judge, whose permission is required if the matter is to be held in-person.)
 2. Evidentiary Hearings in Civil and Criminal Cases. (For compelling and critical reasons, the presiding judge may forward a request for permission to conduct a hearing in-person to the Administrative Judge. If deemed appropriate, the Administrative Judge will forward the request to the Deputy Chief Administrative Judge, whose permission is required if the matter is to be held in-person.)
 3. Motion arguments
 4. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20)
 5. ADR where both parties are represented by counsel and counsel will be present.
 6. Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program.
 7. Small Claims Assessment Review proceedings.
 8. Other routine court matters not expressly included in Paragraph II(D).

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 who passed away due to COVID-related causes.