

Updated Operating Protocols

Effective February 22, 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. Early on, the courts dramatically reduced in-person proceedings, limiting those proceedings to essential matters. In the late Spring and into the Fall of 2020, the Unified Court System progressed to permitting in-person proceedings in accordance with the Governor's un-PAUSE New York plan. Foot traffic in the courthouses was gradually increased to correspond with an improvement in the metrics measuring the spread of the Coronavirus. In the Fall of 2020, the metrics indicated the need to once again reduce foot traffic. Courts decreased in-person proceedings beginning on November 23, 2020 and again on December 9, 2020 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. Recently, the metrics once again indicate an opportunity to increase in-person proceedings in the courthouses **and while the "normal" remains a virtual appearance**, in-person proceedings are permitted where access to justice and court operations require an in-person proceeding. The metrics will continue to be monitored. 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 the Updated Operating Protocols Effective December 9, 2020. Commencing February 22, 2021 all court operations in the Eighth 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 any of the Administrative Orders issues addressing the pandemic or any previously issued memoranda, the provisions of this Protocol should be relied upon to guide operations.

I. Courthouse Operations

A. Scheduling

1. Calendar times shall be staggered in each Court Building so all parts are not starting at the same time.
2. Each Judge may hold in-person proceedings one day each week, subject to clerk staff, courtroom space and time availability, unless an exception is requested and granted by the Administrative Judge. A judge presiding over any hearing or trial that continues to an additional day or days shall be granted additional courtroom time without requesting permission. The scheduling shall be as coordinated by Supervising Judges and Chief Clerks to assure appropriate limiting of foot traffic.
3. Specific to **city courts**, Buffalo City Court may hold in person non-custodial arraignments five days per week (limit of one judge per day handling); Lackawanna, Jamestown and Niagara Falls City Court may hold in-person non-custodial arraignments two days per week, (limit one judge per day) Batavia, Dunkirk, Lockport, Olean, North Tonawanda, Salamanca and Tonawanda may hold in-person non-custodial arraignments one day per week.
4. In each court, there shall be a maximum of 10 cases/proceedings scheduled in-person per hour, except as stated in Sections (II)(B)(9) and (II)(B)(11).

B. Occupancy of all courtrooms shall be limited to the lesser of 15 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). 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 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. In all circumstances, non-judicial staff reporting to the courthouse shall be between 40% to 60% 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 time.
 - E. Each county shall have a space (kiosk or anteroom) available for use by litigants who are unable to appear virtually.
- II. Court Proceedings
- A. Notwithstanding any other provision herein and except in the case of a criminal jury trial or criminal evidentiary hearing, no incarcerated adult shall be produced to any Court (Supreme, County, Family, City, Town or Village), unless permitted by the Administrative Judge upon a request from the presiding judge. When an in person proceeding involves an adult housed at a facility other than one located in the 8th Judicial District, that individual shall appear virtually utilizing electronic means unless the presiding judge orders otherwise after appropriate application is made.
 - B. 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
 - 2. Family Court Act Article 10 proceedings
 - 3. Adoptions
 - 4. Criminal Evidentiary Hearings and Bench Trials
 - 5. Pleas and Sentences
 - 6. Jury Trials may be scheduled to begin March 22, 2021. The scheduling of the 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 jury plans for each county as approved by the Deputy Chief Administrative Judge. With regard to criminal jury trials, priority should be given to incarcerated defendants. No jury trial shall be conducted before March 22, 2021.
 - 7. Surrogate's Court Citations
 - 8. Eviction proceedings as authorized by law
 - 9. Treatment court and Judicial Diversion appearances where the presiding judge requests permission from the Administrative Judge and Supervising Judge for an in person appearance in an acute case 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.
 - 11. Traffic violation appearances may be heard in-person upon a finding that it is impractical to conduct the appearance virtually. Notwithstanding the provisions of Section (I)(A)(3), there may be a maximum of 10 traffic violation appearances scheduled every 30 minutes.
 - C. ALL other matters MUST be heard virtually using Microsoft Teams video conferencing, or telephone, including but not limited to:
 - 1. Motion arguments

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

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.