

# Updated Operating Protocols

## Effective November 23, 2020

### Ninth 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. Chief Administrative Judge Lawrence Marks' Memorandum dated November 13, 2020 is incorporated herein and this document is intended to provide enhanced guidance thereto.

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 and to Judge Marks' Memorandum "Revised Pandemic Procedures in the Trial Courts" dated November 13, 2020. Commencing Monday, November 23, 2020 all court operations in the Ninth 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. No more than 50% of the number of courtrooms in a facility will be in use at the same time. If there is a conflict that cannot be resolved by the chief clerk working with chambers, the Supervising Judge or Administrative Judge shall be notified.
3. No more than 50% of the judges/referees/magistrates of one court type (Family Court, Criminal Court, Civil Court) may hold in-person calendars at any one time.
4. **In each court, there shall be a maximum of 10 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 ongoing grand juries currently in progress (in those instances, occupancy shall be limited to the lesser of 25 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 Any exceptions that were previously granted to the occupancy limits are rescinded until further notice.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 and to ensure sufficient "remote" staff is available to replace the staff reporting to the courthouse in the event there is a workplace Coronavirus exposure. All staff not reporting to the courthouse shall work remotely.
- 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.

Pending criminal and civil jury trials will continue to conclusion.

- A. No new prospective grand jurors will be summoned for grand jury service until further notice. Existing grand juries, pursuant to Section 190.15 of the Criminal Procedure Law, may continue, upon application of the appropriate district attorney to the Administrative Judge.
- B. 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 after appropriate application is made.
- C. Matters that **may** be heard in-person (or a hybrid of in-person and virtual) **PROVIDED THAT THE PRESIDING JUDGE FIRST FIND THAT IT IS UNLAWFUL OR IMPRACTICAL TO CONDUCT THE PROCEEDING VIRTUALLY:**
  - 1. Matters as designated in Exhibit A
  - 2. Family Court Act Article 10 evidentiary hearings
  - 3. Permanency Hearings
  - 4. Criminal Preliminary Hearings
  - 5. Pleas and Sentences
  - 6. Arraignments
- D. Matters that **may** be heard in-person (or a hybrid of in-person and virtual)
  - 1. Treatment court and Judicial Diversion appearances where the presiding judge determines, in consultation with Supervising Judge, that an appearance in an acute case is necessary to protect the health and safety of a defendant.
  - 2. 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, including but not limited to:
  - 1. Bench Trials in Civil and Criminal cases. (For compelling 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 reasons, the presiding judge may forward a request for permission to conduct a hearing 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.)
  - 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

1. Small Claims Assessment Review proceedings

## 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.

# Updated Operating Protocols

## Town and Village Courts

### Ninth 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. Chief Administrative Judge Lawrence Marks' Memorandum dated November 13, 2020 is incorporated herein and this document is intended to provide enhanced guidance thereto.

Commencing Monday, November 23, 2020 all Town and Village Court operations in the Ninth Judicial District of the State of New York shall be conducted pursuant to this Plan.

#### I. Courthouse Operations

- A. Occupancy of all courtrooms shall be limited to the lesser of 10 people or 25% of the posted room occupancy per code. This includes lawyers/litigants/spectators, but does not include any court personnel or security.
- B. All current safety measures and protocols will continue.

#### II. Court Proceedings

- A. No new prospective trial jurors (criminal or civil) will be summoned for jury service until further notice. Commenced criminal and civil jury trials will continue to conclusion.
- B. No new bench trials and hearings in civil and criminal cases will be conducted. Bench trials and hearings may only be conducted after a request is made to the Administrative Judge. The Administrative Judge shall seek permission from the Deputy Chief Administrative Judge. Exception: in-person Preliminary Hearings in Criminal Court may be heard in-person pursuant to the Updated Return to In-Person Operations Plan effective October 19, 2020, without further approval.
- C. Judges may conduct in person off hour arraignments. In counties with a CAP, the arraignments shall occur with the Judge presiding at the CAP; where there is a VAP, virtual arraignments shall continue. In all other counties, necessary arraignments shall occur at the Town or Village Court.
- D. Judges are encouraged to more robustly conference criminal matters virtually/telephonically and if acceptable disposition is reached, plea affidavits are strongly encouraged. Please work with your ADA and defense counsel on procedure.
- E. Judges are encouraged to use a mail-in plea bargaining disposition process that would allow a defendant charged with a VTL infraction to proceed without a personal appearance. Please work with your ADA and defense counsel on procedure.
- F. Judges may hold appearances regarding appeals.
- G. Judges may hold arraignments on Appearance Ticket returns and appearances on VTL matters.
- H. While currently there exists no Executive Order nor statutory directive that would excuse a failure to appear or prevent a judge from suspending a motorist's license for failing to appear at a court session, Judges are encouraged to utilize their judicial discretion when considering the suspension of a motorist's license for failure to appear.