



[No. 5AO2020-102]

**NINTH AMENDED OPERATIONAL ADMINISTRATIVE ORDER
FIFTH JUDICIAL DISTRICT**

Pursuant to the authority vested in me, and in accordance with the recent operational protocols issued by the Chief Administrative Judge for the trial courts of the Unified Court System, I hereby order that, effective immediately, the following rules be put into effect in the Fifth Judicial District until rescinded.

By way of background, the Courts of the Fifth Judicial District commenced Phase I of the Resume In-Person Court Operations ("RIPCO") Plan on or about May 18, 2020, Phase II of the RIPCO Plan on June 3, 2020, Phase III of the RIPCO Plan on June 17, 2020, Phase IV of the RIPCO Plan on July 1, 2020, Phase IV.1 of the RIPCO Plan on August 10, 2020, **including the recent RIPCO updates effective October 19, 2020, (a Summary of the Updates is attached.)*** The provisions in each Phase listed above remain in effect unless specifically modified herein.

As hereinafter used, "Assigned Judge" shall refer to the judge assigned to hear the case on and before March 16, 2020.

A. General matters and matters applicable to more than one case type

- 1. Until further Administrative Order or Executive Order, eviction 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. Further reference is made to Executive Order 202.67 signed by the Governor on October 4, 2020 and the CDC Agency Order filed on September 1, 2020.**

***Updates are bold-faced.**

2. Until further Administrative Order or Executive Order, no default judgments shall 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 202.67 extends the toll on statutes of limitations (first set forth in EO 202.8 on March 20, 2020 and later extended) through November 3, 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.
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 Resume In-Person Court Operations Plan (“RIPCO”) (Phase I) implemented on May 18, 2020, the RIPCO (Phase II) implemented on June 3, 2020, and all RIPCO plans and updates for any subsequent phase are incorporated herein and all provisions of this Administrative Order shall be read in conjunction with the RIPCO.
5. The Virtual Courtroom Protocol enacted by Fifth Judicial District Administrative Order No. No. 5A02020-53 signed on April 9, 2020, to the extent not inconsistent with the RIPCO Plan, remains in full force and effect and all provisions of this Administrative Order shall be read in conjunction with the Virtual Courtroom Protocol and any subsequent amendments thereto. **The transition to Microsoft Teams will begin on October 1, 2020, as follows:**
 - **Until October 1, 2020, Skype for Business must be used to conduct a virtual appearance, unless the parties agree to use Microsoft Teams.**
 - **Commencing immediately, any virtual court proceeding to be held on or after October 1, 2020, may be scheduled and held using Microsoft.**
 - **On and after October 1, 2020, ALL virtual court proceedings MUST be scheduled using Microsoft Teams.**
 - **Notwithstanding the foregoing, after November 25, 2020, all virtual court proceedings MUST be conducted using Microsoft Teams. Skype for Business will no longer be available.**
6. **Occupancy of all courtrooms shall be limited to the lesser of 25 people or ½ the posted room occupancy per code. Notwithstanding the above, in all instances the maximum occupancy of any space in the courthouse shall be limited to ½ the posted room occupancy. A Chief Clerk or judge may apply to**

the Administrative Judge for an exception for a specific courtroom or court proceeding. The Chief Clerk must be able to demonstrate that 1) the proposed occupancy limit does not exceed ½ the posted room occupancy and that 2) social distancing can be maintained with the proposed occupancy limit.

7. Naturalization Ceremonies, wherever they occur, shall comply with the room occupancy limits stated herein.
8. All Staff shall report to the courthouse as determined by his/her supervisor. All Judges and Chambers' staff should report to the courthouse. Any requests for exemptions must be approved by the Administrative Judge.
9. 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.
10. The Fifth Judicial District Administrative Order signed on March 20, 2020, regarding vouchers is rescinded and all vouchers submitted on or after August 17, 2020 must be individually approved by the Assigned Judge. The current practice of allowing an interim voucher is continued.
11. All filings shall be pursuant to the Administrative Orders signed by the Chief Administrative Judge of the Courts (AO/111/2020, AO/114/20, AO/115/20, AO/149/20 and any amendments thereto).
12. **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 Memorandum from Chief Administrative Judge Lawrence Marks dated July 24, 2020 and pursuant to Administrative Order AO/157/20 dated July 23, 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.**
3. **Jury Trials shall be held pursuant to the Updated RIPCO, effective October 19, 2020, with scheduling as approved by the Administrative Judge.**

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. The issuance of the new return date shall occur on or before the currently scheduled adjourned date or within 30 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 greater than 30 days.
2. Grand Juries shall be impaneled in each County pursuant to Administrative Order 130a/2020 signed on June 30, 2020.
3. ~~The Accessible Magistrate procedure (for Adolescent Offenders) currently in place shall continue.~~
4. **Jury Trials shall be held pursuant to the Updated RIPCO, effective October 19, 2020, with scheduling as approved by the Administrative Judge.**
5. **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 upon the submission of a written Plan by the Assigned Judge to the Administrative Judge and its approval. **Reference is made to Paragraph V(C)(2)(f) of the Summary of the Updated RIPCO, effective October 19, 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. Virtual calendars are encouraged.

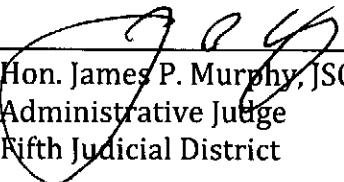
G. City Court

1. All pending criminal cases shall be addressed by the Assigned Judge and appropriately scheduled consistent with applicable Executive Orders and Administrative Orders. The issuance of the new return date shall occur on or before the currently scheduled adjourned date or within 30 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 greater than 30 days.

H. Town and Village Courts

1. All matters shall be addressed by the Assigned Town or Village Judge and appropriately calendared consistent with the attached Town and Village Courts RIPCO Updates Summary.
2. After hours arraignments shall be heard by the CAP judge in counties with a CAP court according to the approved CAP Plan.
3. In a County without a CAP Part or if the CAP Part becomes unavailable for any reason, after hours arraignments shall be conducted in the authorized Town or Village Court. The Town or Village Judge shall attempt to obtain defense counsel and make a record thereof. If no defense counsel is available, then the judge shall conclude the arraignment. All other proceedings shall be handled as they were prior to the pandemic.

Dated: October 15, 2020
Syracuse, New York



Hon. James P. Murphy, JSC
Administrative Judge
Fifth Judicial District

Distribution:
HON. VITO CARUSO

Summary of 5th District Return to In-Person Court Operations Plan (“RIPCO”) Updates Effective October 19, 2020

I. All measures contained in the Amended RIPCO dated May 14, 2020 will continue. 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.

II. 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 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.

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. Child Support proceedings

c. Permanency Hearings

d. 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
- 6. City Court Criminal
 - a. Bench trials
 - b. Preliminary Hearings
 - c. Evidentiary hearings
 - d. Appearance Ticket arraignments for Appearance
 - e. Vehicle & Traffic Appearances
 - f. Pleas and Sentences for defendants at liberty
 - g. Motion arguments
 - h. Arraignments of defendants accused of a violation of any provision of Article 31 of the Vehicle and Traffic Law (VTL 1190 et seq.)
 - i. Treatment court 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.

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. Waivers of Indictment, pleas and sentences where the defendant is incarcerated
- 3. Family Court
 - a. Conferences
 - b. Juvenile Delinquency Proceedings
 - c. Person In Need of Supervision Proceedings
 - d. Adoptions
 - e. Appearances calendars
 - f. All other proceedings not listed in (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. Eviction Proceedings
 - d. All other proceedings not listed in (C)(5) above
- 6. City Court Criminal
 - a. Conferences
 - b. Pleas and sentences where the defendant is incarcerated
 - c. All other proceedings not listed in in (C)(6) above

III. 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 11 and thereafter. Those counties approved to conduct criminal and civil jury trials as part of the pilot plan may continue to conduct trials. Planning for a Special City Court Criminal Jury Trial Pilot shall commence in Term 11 with Jury Summonses to be sent in Term 12 and trials to be held in Term 13 (in selected jurisdictions). Scheduling of trials in all courts must be approved by the Administrative Judge.

5th District Town and Village Courts Return to In Person Operations Plan Updates Effective October 19, 2020

In the Town and Village Courts, as in the state paid courts, each Phase has added additional matters which can be handled by the courts. The return to in-person operations has been slow and deliberate, allowing for pull backs if the virus progresses. The following is a bullet point list of all matters that can be handled by Town and Village Courts beginning in October 19, 2020. Matters which could be handled in Phases I – 4.1 are included so that this list is an exhaustive list of everything that can be handled. **Please note: NOT INCLUDED in this list are some routine matters such as payments, attorney appearance, post sentencing issues, and appearances for further proceedings / compliance check / status update; therefore, you CANNOT schedule such matters at this time. You may ONLY handle matters on this list.**

- Matters which are new to the list are in **bold** letters.
- If a matter is not included in this list, the Town and Village Courts may not handle it at this time.
- **At all times, the capacity of the courtroom cannot exceed 25% of capacity.**
- Proper PPE must be worn by all present.
- Social distancing must be followed.
- Proper cleaning protocols must be followed.

Criminal Matters:

- Judges may hold in-person arraignments for VTL Appearance Ticket Returns, Appearance Tickets, and Criminal Summons Returns provided the strict occupancy limitations identified above are not exceeded and proper safety protocols are followed at all times. Off-hour arraignments shall continue in the CAPs and Temporary CAPs unchanged except that the Arraigning Judge is permitted and encouraged to appear in person.
- Preliminary hearings. Judges may conduct in-person preliminary hearings.
- Bench Trials and Hearings. Scheduled one at a time.
- **IN PERSON ARRAIGNMENTS ON APPEARANCE TICKETS.** (There is no longer a restriction based upon when it was issued)
- Judges may hold in-person pleas and sentences.
- In person appearances regarding appeals.
- In person motion argument.
- Judges are encouraged to more robustly conference criminal matters virtually/telephonically and if acceptable dispositions are reached, plea affidavits (pleas on paper) are strongly encouraged. Please work with your ADA and defense counsel on procedure. This will not only limit the foot traffic in your courts, it will also give you an opportunity to address the backlog of cases.
- **In person jury trials, ONLY UPON CONSENT OF THE DISTRICT ADMINISTRATIVE JUDGE**

Civil Matters:

- Bench Trials and Hearings. Scheduled one at a time.
- Small Claims matters
- Town Code Violations
- **Landlord/Tenant and Eviction matters in accordance with Judge Marks' Administrative Order-231/20 (attached) and the OJCS memo dated October 9, 2020 (attached).**
- **In person jury trials ONLY UPON CONSENT OF THE DISTRICT ADMINISTRATIVE JUDGE**

Vehicle and Traffic Matters:

- **IN PERSON VTL TICKET RETURNS.** (There is no longer a restriction based upon when it was issued)
- Within ethical guidelines, Judges are encouraged to cooperate with their local prosecutor and public defender/assigned counsel office/local Bar Association to establish a mail-in dispositional process that would allow a defendant charged with a VTL infraction to elect to proceed without a personal appearance in order to mitigate the effects of the COVID-19 outbreak, and to control in-person traffic within Town and Village Courts