



[No. 5AO2020-113]

**TENTH 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that, effective **November 23, 2020\***, the following rules be put into effect in the Fifth Judicial District until rescinded.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, and the RIPCO updates effective October 19, 2020. The provisions in each Phase listed above remain in effect unless specifically modified herein. **A copy of the Updated Operating Protocols effective today is attached.**

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, 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.

**\*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.
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, **including the attached Updated Operating Protocols effective November 23, 2020.**
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 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 28 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. Naturalization Ceremonies, wherever they occur, shall comply with the room occupancy limits stated herein.
8. 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 Order signed by the Chief Administrative Judge of the Courts (**AO/267/20** 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 Memoranda from Chief Administrative Judge Lawrence Marks dated July 24, 2020, **and October 22, 2020**, and pursuant to Administrative Order 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 5th 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. 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. **No new prospective grand jurors will be summoned for grand jury service until further notice. Existing grand juries are continued as provided in Administrative Order 5AO2020-112 signed by 5th District Administrative Judge James P. Murphy dated November 24, 2020.**
3. The Accessible Magistrate procedure (for Adolescent Offenders) currently in place shall 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 upon the submission of a written Plan by the Assigned Judge to the Administrative Judge and its approval. **Reference is made to Paragraph II (E) of the Updated Operating Protocols effective November 23, 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.

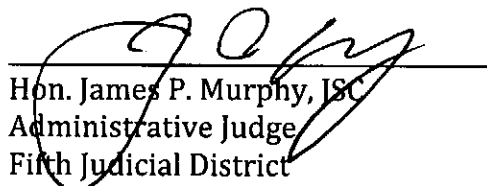
#### **G. City Court**

1. All pending criminal cases shall be addressed by the Assigned Judge and appropriately scheduled consistent with applicable Executive Orders, Administrative Orders, **and the Updated Operating Protocols effective November 23, 2020.** 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.
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: November 24, 2020  
Syracuse, New York



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

Distribution:  
HON. VITO CARUSO

# Updated Operating Protocols

## 5th 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 Court 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 5th Judicial District of the State of New York shall be conducted pursuant to these updated protocols.

### I. COURTHOUSE OPERATIONS

#### A. Scheduling

1. Calendar times shall be staggered so that different courts (e.g. Family, Criminal, etc.) located 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 ½ the posted room occupancy per code. An exception shall be granted for ongoing grand juries currently in progress where occupancy shall be limited to the lesser of 26 people or ½ 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.

### 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 for grand jury service until further notice. Existing grand juries, pursuant to Section 190.15 of the Criminal Procedure Law, may be extended, upon application of the appropriate District Attorney to the Administrative Judge.

C. 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 for compelling reasons 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 THAT IT IS UNLAWFUL OR IMPRACTICAL TO CONDUCT THE PROCEEDING VIRTUALLY:**
1. Matters as designated in Exhibit A (attached)
  2. Family Court Act Article 10 evidentiary hearings
  3. Permanency Hearings
  4. Criminal Preliminary Hearings
  5. Pleas and Sentences
  6. Arraignments
- E. 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 the Administrative 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.
- F. 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
  7. 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**

### **5th 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.**

Commencing **Monday, November 23, 2020** all Town and Village Court operations in the 5th 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.
- 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. Off hour arraignments. In all counties in the 5th District, the Centralized Arraignment Parts shall conduct virtual arraignments as previously approved.
- 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 during this pandemic.