



[No. 5AO2021-25]

**THIRTEENTH 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 **April 26, 2021**, the attached Updated Operating Protocols be put into effect in the Fifth Judicial District.

Dated: April 26, 2021
Syracuse, New York



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

Distribution:
HON. VITO C. CARUSO

5th Judicial District
Updated Operating Protocols
(Effective April 26, 2021)

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. Recently, the metrics (as well as the increasing number of vaccinated New Yorkers) have once again indicated an opportunity to gradually increase in-person proceedings in the courthouses. While the “new normal” remains a presumptively virtual appearance, in-person proceedings are permitted where access to justice and court operations require an in-person proceeding. The court system remains nimble and ready to quickly adapt operations as conditions warrant.

Within any District, the Administrative Judge may, based upon local conditions, enact more restrictive operational protocols as deemed appropriate by the Administrative Judge.

These Updated Protocols supersede the Updated Operating Protocols Effective February 22, 2021.

Commencing April 26, 2021, all court operations in the 5th Judicial District of the State of New York shall be conducted pursuant to these Updated Protocols. To the extent the provisions of this Updated Operating Protocol are inconsistent with provisions in the 5th Judicial District Eleventh Amended Administrative Order (Corrected) signed on February 19, 2021 and any previously issued Administrative Orders or memoranda, the provisions of this Protocol should be relied upon to guide operations.

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. Each Judge may hold in-person proceedings on two days each week. Each judge may hold in-person proceedings on a third day each week provided that the presiding Judge first consult with the Chief Clerk and is assured that adequate staffing is available. Further additional time may be granted by the Administrative Judge after the presiding judge has submitted the request to the Supervising Judge and after the presiding judge has indicated that they have checked with the Chief Clerk and received an assurance that the chief clerk is able to accommodate the request. A judge presiding over any hearing or trial that continues to an additional day or days shall be granted additional courtroom time as needed. All scheduling shall be coordinated by the Supervising Judges and Chief Clerks to assure appropriate limiting of foot traffic and social distancing.
3. In each court, there shall be a maximum of 10 cases/proceedings scheduled in-person per hour, except as stated below in Sections (II)(B)(9) and (II)(B)(11).

B. Occupancy of all courtrooms shall be limited to the lesser of 30 people or ½ 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 40 people or ½ 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 increased or decreased in the discretion of the Administrative Judge to the number necessary to ensure safe operation. In-person staffing 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 as directed. In all circumstances, non-judicial staff reporting to the Courthouse shall be between 60% to 80% of normal pre-COVID staffing.

D. On May 24, 2021, 100% of all Judges and court staff shall report to work in their assigned locations unless a specific exception has been granted by the Administrative Judge.

E. All current safety measures and protocols will continue until further notice. Court managers and PPE Compliance Coordinators shall take steps to assure and enhance monitoring and compliance with all safety measures including masks and social distancing at all time.

F. Each county shall have a space (kiosk or ante-room) available for use by litigants who are unable to appear virtually.

II. COURT PROCEEDINGS

A. All virtual proceedings shall be conducted from the courtroom, subject to courtroom availability.

B. Notwithstanding any other provision herein and except in the case of a criminal jury trial or criminal evidentiary hearing, a remote/virtual appearance of in-custody defendants is encouraged and preferred. However, an in-custody defendant may be transported if the correctional facility and the court are able to accommodate such transport.

C. **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 (attached)
2. Family Court Act Article 10 proceedings
3. Adoptions

4. Civil and Criminal Evidentiary Hearings and Trials. The scheduling of jury 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 Chief Clerk and pursuant to the [5th District Jury Plan] as approved by the Deputy Chief Administrative Judge. Notwithstanding any provision of the aforementioned plans, during a jury trial, occupancy shall be limited to the lesser of 40 people or ½ the posted room occupancy per code. With regard to criminal jury trials, priority should be given to incarcerated defendants, subject to safety and security protocols. With regard to civil jury trials, priority should be given to trials where the parties consent to a Summary Jury Trial.

5. Pleas and Sentences

6. Jury Trials were authorized to commence beginning March 22nd. The scheduling of the jury 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 Chief Clerk and pursuant to the 5th District Jury Plan as previously approved by the Deputy Chief Administrative Judge. Notwithstanding any provision of the aforementioned Plans, courtroom occupancy shall be limited to the lesser of 40 people or ½ the posted room occupancy per Code.

7. Surrogate's Court Citations

8. Eviction proceedings as authorized by law.

9. Treatment court and Judicial Diversion appearances. Notwithstanding the provisions of Section (I)(A)(3), there may be a maximum of 10 treatment court or Judicial Diversion cases scheduled every 30 minutes provided that the occupancy of the courtroom does not exceed the lesser of 30 people or ½ the posted room occupancy per code.

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 by the presiding judge that it is impractical to conduct the appearance virtually. Notwithstanding the provisions of Section (I)(A)(3), subject to the courtroom occupancy limits identified in Section (I)(B) above, there may be a maximum of 10 traffic violation appearances scheduled every 15 minutes, provided that the occupancy of the courtroom does not exceed the lesser of 30 people or ½ the posted room occupancy per code.

D. ALL OTHER MATTERS MUST BE PRESUMPTIVELY HEARD VIRTUALLY from a courtroom (if available) using Microsoft Teams video conferencing, or telephone, including but not limited to:

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

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 deceased due to COVID.

Updated Operating Protocols

Town and Village Courts

5th Judicial District

(Effective April 26, 2021)

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. Recently, the metrics (as well as the increasing number of vaccinated New Yorkers) have once again indicated an opportunity to gradually increase in-person proceedings in the courthouses. While the “normal” remains a presumptively virtual appearance, in-person proceedings are permitted where access to justice and court operations require an in-person proceeding. The court system remains nimble and ready to quickly adapt operations as conditions warrant.

Within any District, the Administrative Judge may, based upon local conditions, enact more restrictive operational protocols as deemed appropriate by the Administrative Judge.

These Updated Protocols supersede the Updated Operating Protocols Effective February 22, 2021. Commencing **April 26, 2021**, all Town and Village court operations in the 5th Judicial District of the State of New York shall be conducted pursuant to these Updated Protocols.

UNLESS EXPRESSLY PROHIBITED OR RESTRICTED BY ANY LAW, ADMINISTRATIVE ORDER OR EXECUTIVE ORDER, ALL MATTERS MAY BE HEARD IN TOWN AND VILLAGE COURTS, SUBJECT TO THE PROVISIONS AND PROCEDURES CONTAINED HEREIN.

I. COURT FACILITY OPERATIONS/SAFETY PROTOCOLS

- A. Occupancy of all public areas of the court facility is limited to 50% of the posted room occupancy per Code outside of courtrooms. Individuals will not be allowed to congregate in hallways or entry ways while awaiting entry into the courtroom. In addition, occupancy of all courtrooms is limited to the lesser of 30 people OR 50% of the posted room occupancy limit per Code.
- B. Courts are encouraged to use the notification system in the Courtroom Program provided it would allow for a text to be sent to the defendant when the case is called, allowing individuals to safely wait outside court facilities and enter the building only when their case is ready.
- C. There may be only one Judge hearing cases at any given time in a court facility.
- D. While in the court facility (other than in a closed private office), all court personnel and visitors must cover their nose and mouth with a mask or cloth face-covering.
- E. **A distance of a minimum of six feet must be kept between all individuals at all times.**

F. Judges are encouraged to more robustly conference criminal matters virtually/telephonically and, if an acceptable disposition is reached, plea affidavits are strongly encouraged. Please work with your ADA and defense counsel on procedure. These matters may not be handled in person.

G. 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.

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 the pandemic. Judges may want to consider VTL § 1806-a permitting entry of default judgments in cases of failure to answer.

I. Landlord/Tenant proceedings must comply with existing and future Executive Orders, Administrative Orders and Memos and N.Y. law, including the provisions of the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (L. 2020, C. 381).

II. IN-PERSON COURT PROCEEDINGS

A. Trials: Bench trials and evidentiary hearings may proceed in-person but must be scheduled so that there is strict compliance with all safety protocols and the room occupancy limits in all courtrooms and public areas. Jury trials may be conducted only with the approval of the Administrative Judge.

B. Scheduling:

1. Traffic infractions/violations: No more than 25 cases will be scheduled every 30 minutes.

2. Criminal matters (including all penal law and misdemeanor traffic charges): No more than 15 cases will be scheduled every 30 minutes.

3. Trials: No more than 1 hearing or bench trial every 30 minutes.

C. Virtual appearances shall be utilized to the greatest extent possible where a virtual appearance is legally permissible and logistically possible.

D. Remote/virtual appearances of in-custody defendants is preferred. However, such defendants may be transported, but only if the correctional facility and the court are able to accommodate such transport.

AT ALL TIMES, ALL SAFETY PROTOCOLS LISTED ABOVE SHALL BE FOLLOWED ALONG WITH PREVIOUSLY SUBMITTED COVID-19 SAFETY PLANS BY TOWN AND VILLAGE COURTS AND APPROVED BY 5TH JUDICIAL DISTRICT ADMINISTRATIVE JUDGE TO THE EXTENT THEY DO NOT CONFLICT WITH THESE PROTOCOLS.