

5TH DISTRICT RESUME IN-PERSON COURT OPERATIONS PLAN (PHASE III) SUMMARY

- I. TO COMMENCE JUNE 17, 2020
 1. All safety measures adopted in Phase I and Phase II will continue and be enhanced during Phase III. All measures contained in the Memoranda of John McConnell and Nancy Barry dated February 28, 2020, March 6, 2020, May 15, 2020, May 29, 2020 and June 8, 2020 are incorporated as part of this Plan.
 2. Judges should continue to expand their use of the virtual format where legally permissible and logistically possible.
 3. **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.**
- II. PHASE III, LIKE PHASE II, OPERATES WITH CERTAIN PRESUMPTIONS:
 1. The following matters shall **presumptively** be heard **in-person**:
 - a. Essential Matters (excepting those matters that are presumptively virtual as noted in [2] below)
 - b. Bench trials
 - c. Family Court Act Article 10 evidentiary hearings
 - d. Child Support proceedings filed prior to April 1, 2020
 - e. Permanency Hearings
 - f. Criminal Preliminary Hearings and Criminal Pre-trial Evidentiary Hearings
 - g. Pleas and Sentences for defendants at liberty that do not involve a sentence of incarceration
 - h. Arraignments of defendants accused of a violation of any provision of VTL 1190 et seq.
 - i. Arraignments of defendants whose Appearance Tickets were filed prior to April 1, 2020
 - j. Treatment court and Judicial Diversion appearances where the Assigned Judge determines that an appearance in an acute case is necessary to protect the health and safety of a defendant
 2. The following matters shall **presumptively** be heard **virtually**:
 - a. Non-essential matters (except those matters that are presumptively in-person as noted [1] above)
 - b. Criminal Proceedings (except those matters noted in [1] above) Note: Judges are encouraged to conference criminal matters virtually/telephonically and if acceptable dispositions are reached, plea affidavits (where not prohibited by law) are strongly encouraged.
 - c. Juvenile Delinquency Proceedings
 - d. Person In Need of Supervision Proceedings
 - e. Evidentiary hearings not noted in (1) may be conducted with the consent of the parties
 - f. MHL Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Marks' AO/72/20).
 3. In all instances referenced in (1) or (2) above, with the exception of MHL Proceedings pertaining to a hospitalized adult, a request to deviate from the presumption may be made by an attorney or litigant to the Assigned Judge. If a request to appear in-person is granted, the Administrative Judge shall be notified.

III. ADR SHALL BE CONDUCTED VIRTUALLY (CHIEF ADMINISTRATIVE JUDGE LAWRENCE MARKS' AO/87/20).

IV. SPECIAL MATTERS:

1. Housing matters (Landlord/Tenant, evictions, and foreclosures) may proceed only for purposes of Alternative Dispute Resolution (ADR) and settlements where all parties are represented by counsel.
2. Default judgments shall not be granted where, pursuant to CPLR 3215, the default occurred after March 16, 2020. Furthermore, no default judgment requiring the defendant's notice pursuant to CPLR 3215(g) shall be granted, unless the application was heard prior to March 17, 2020 and proper notice was given (7th Judicial District's Fifth Amended Administrative Order).
3. Preparations (confirming appropriate locations as well as preparing and mailing summons [specific dates to be established by the Administrative Judge]) may begin in Phase III to have Grand Jurors seated in Phase IV.

V. TOWN AND VILLAGE COURTS

Building on the success of Phase I and II, the following in-person operations in the Town and Village Courts shall be allowed to resume in Phase III to the extent that they can be done safely given the unique challenges that exist in certain locations:

1. In all counties in the 5th District, the Centralized Arraignment Parts **shall** continue virtual arraignments as previously approved.
2. Judges **may** conduct in-person preliminary hearings. Defendants in custody should appear virtually unless otherwise ordered by the presiding judge after an appropriate application.
3. Judges may conduct in-person bench trials and hearings.
4. Judges are encouraged to more robustly conference criminal matters virtually/telephonically and if acceptable dispositions are reached, plea by affidavits (pleas on paper) are strongly encouraged.
5. Within ethical guidelines, Judges are also encouraged to cooperate with their prosecutor to establish a mail-in plea bargaining disposition 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.
6. Judges **may** hold appearances regarding appeals.
7. Judges **may** hold Appearance Ticket Returns on criminal matters where the Court receives a request for an arraignment by either the prosecution or the defense.
8. Judges **may** also hold Appearance Ticket Returns on criminal matters where the Appearance Ticket was written before April 1, 2020.
9. Housing matters (Landlord/Tenant and evictions) **may** proceed only for purposes of Alternative Dispute Resolution (ADR) and settlements where all parties are represented by counsel.
10. There will be a strict maximum occupancy of 25% of all Town & Village Courtrooms.
11. Virtual ADR shall be encouraged.