

5th DISTRICT PHASE IV.1 SUMMARY

Phase 4.1 Return to In-Person Court Operations Plan ("RIPCO") commences August 10, 2020

- All measures contained in the Amended RIPCO Plan dated May 14, 2020 will continue and be enhanced during Phase 4.1. 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, June 8, 2020, and June 17, 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.
- Phase 4.1, like Phases II, III & IV, operates with certain 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
 - 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, for matters
 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.

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 Mental Hygiene Law proceedings in which a petitioner or other necessary party is confined to a hospital be conducted with appearances by means of remote audiovisual technology or by telephone and therefore a request to deviate from the presumption should not be entertained).
 - 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. 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

• **Courts should note the following:**

- All virtual matters shall be held via Skype for Business. Included in the Skype invitation is a call-in number for lawyers and litigants that do not have access to Skype for Business video. In the event that a self-represented litigant is unable to access Skype for Business, 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 June 18, 2020 and pursuant to Administrative Order AO/127/20 ("Evictions matters in which all parties are represented by counsel shall be eligible for calendaring for virtual settlement conferences"), as amended by the Memorandum from Chief Administrative Judge Lawrence Marks dated July 7, 2020. Further guidance regarding eviction matters may be found in the Memorandum of Jessica Cherry, Assistant Deputy Counsel dated July 10, 2020.
 - 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. 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 (5th Judicial District's Seventh Amended Administrative Order). Notwithstanding the above, 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.
- Plans to conduct civil and criminal jury trials shall be developed and implemented as approved by the Deputy Chief Administrative Judge. Civil Jury Summonses shall be mailed in Term 10 and Criminal Jury Summonses shall be mailed in Term 11.