

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

I. TO COMMENCE JULY 1, 2020

1. All safety measures adopted in Phase I - III will continue and be enhanced during Phase IV. 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 as part of this Plan.
2. It is essential that Judges make maximum use of out of court time utilizing virtual technology.
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, upon the request of one of the parties, orders otherwise.**

II. PHASE IV, LIKE PHASE II AND III, OPERATES WITH CERTAIN PRESUMPTIONS:

1. Matters that shall **presumptively be heard in-person**:
 - a. Superior Civil
 - i. Bench trials
 - ii. Evidentiary hearings and inquests
 - iii. All appearances and conferences where at least one party is self-represented
 - iv. Essential Matters
 - b. Superior Criminal (Incarcerated Defendants shall appear virtually, unless otherwise ordered)
 - i. Bench trials
 - ii. Evidentiary hearings
 - iii. Non-custodial arraignments
 - iv. Waivers of Indictment, Pleas and Sentences for defendants at liberty
 - v. Motion argument
 - vi. Treatment court and Judicial Diversion where the Judge determines that an appearance is necessary to protect the health and safety of a defendant
 - vii. Grand Jury proceedings (commencing on or after July 13, 2020)
 - viii. Essential Matters
 - c. Family Court
 - i. All evidentiary hearings (priority given to matters filed first)
 - ii. Child Support proceedings filed prior to June 1, 2020
 - iii. Permanency Hearings
 - iv. Article 10 Consents, Admissions and Surrenders
 - v. Essential Matters

- d. Surrogate's Court
 - i. Citations and Show Cause orders
 - ii. Bench trials
 - iii. Evidentiary hearings
 - iv. All appearances and conferences where at least one party is self-represented
 - v. Essential Matters
- e. City Court Civil
 - i. Bench trials
 - ii. Evidentiary hearings
 - iii. Small claims matters, including the small claims arbitration program, for matters that were filed prior to April 1, 2020
 - iv. Essential Matters
- f. City Court Criminal
 - i. Bench trials
 - ii. Preliminary Hearings
 - iii. Evidentiary hearings
 - iv. Appearance Ticket arraignments for Appearance Tickets filed prior to June 1, 2020
 - v. Pleas and Sentences for defendants at liberty
 - vi. Motion arguments
 - vii. Arraignments of defendants accused of a violation of any provision of Article 31 of the Vehicle and Traffic Law (VTL 1190 et seq.)
 - viii. Treatment court where the Judge determines that an appearance is necessary to protect the health and safety of a defendant.
 - ix. Essential Matters

2. Matters that shall **presumptively be heard virtually**:

- a. Superior Civil
 - i. All conferences, including foreclosures, where all parties are represented by counsel
 - ii. Motion arguments where all parties are represented by counsel
 - iii. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20)
 - iv. All other proceedings not listed in (1)(a) above
- b. Superior Criminal
 - i. Conferences
 - ii. Waivers of Indictment, pleas and sentences where the defendant is incarcerated
- c. Family Court
 - i. Conferences
 - ii. Juvenile Delinquency Proceedings
 - iii. Person In Need of Supervision Proceedings
 - iv. Adoptions
 - v. Appearances calendars
 - vi. All other proceedings not listed in (1)(c) above

- d. Surrogates' Court
 - i. Conferences where all parties are represented by counsel
 - ii. Motion Arguments where all parties are represented by counsel
 - iii. Adoptions
 - iv. All other proceedings not listed in (1)(d) above
 - e. City Court Civil
 - i. Conferences
 - ii. Motion arguments
 - iii. All other proceedings not listed in (1)(e) above
 - f. City Court Criminal
 - i. Conferences
 - ii. Pleas and sentences where the defendant is incarcerated
 - iii. All other proceedings not listed in (1)(f) above
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 pursuant to the Guidance for Judges (attached). If a request to appear in-person is granted, the Administrative Judge shall be notified.

III. SPECIAL MATTERS:

1. All virtual matters shall be held via Skype for Business. Included in the Skype invitation shall be 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.
2. Housing matters (Landlord/Tenant evictions and foreclosures) 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"). Foreclosures may proceed pursuant to AO/131/20.
3. 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.
4. ADR shall be conducted virtually (Chief Administrative Judge Lawrence Marks' AO/87/20).
5. Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program will occur virtually.
6. Small Claims Assessment Review proceedings shall be conducted virtually.

IV. TOWN AND VILLAGE COURTS

The Courts should strive to utilize virtual technology and appearances as much as possible. Building on the success of Phase I through III, the following in-person operations in the Town and Village Courts shall be allowed to gradually increase in Phase IV 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 existing 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 criminal and civil 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 affidavits (pleas on paper) are strongly encouraged (Sample Form attached). 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.
5. Judges may hold in-person Pleas and Sentences for defendants at liberty that do not involve a sentence of incarceration.
6. Judges may hold in-person Pleas and Sentences for defendants in custody when the sentence would result in the release of the defendant.
7. 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.
8. Judges may hold in-person VTL Appearance Ticket Returns where the Appearance Ticket was written before June 1, 2020.
9. Judges may hold in-person appearances regarding appeals.
10. Judges may hear in-person motion argument
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11. Judges may hear in-person small claims matters.
12. Judges may conduct in-person Town and Village Code Violations proceedings.

13. Judges may hold in-person Appearance Ticket or Criminal Summon Returns where the Court is notified of a request for an arraignment by either the prosecution or the defense.
14. Judges may hold in-person Appearance Ticket Returns where the Appearance Ticket was written before June 1, 2020.
15. Housing matters (Landlord/Tenant and evictions) may proceed in accordance with Judge Marks' Administrative Order-127 and ONLY for the purposes of Alternative Dispute Resolution (ADR) and settlements where all parties are represented by counsel.
16. There will be a strict maximum occupancy of 25% of all Town & Village Courtrooms.
17. Only one bench trial or hearing may be scheduled at a time.
18. All "in-person" foot traffic within town and village courts will be conducted by the established social distancing rules (i.e., 6-foot distance maintained, facial coverings worn at all times by anyone entering the courthouse/room, etc.) and provided that the court has obtained proper PPE.
19. Virtual ADR shall be encouraged.

Phase IV Guidance for Judges

The Plan allows for a party to request a deviation from the presumptions contained therein (note: Judge Marks' 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). Requests should be granted on an individual case by case basis. Furthermore, requests to deviate from the presumption that matters be heard virtually should be granted sparingly and only for compelling reasons. Upon receiving a request, a judge may:

- Summarily deny the request. If the Assigned Judge summarily denies the request, he/she must communicate the denial to the party/parties who made the request and to the court clerk.
- Require that the non-requesting party be provided notice that a request to deviate from a presumption has been made. Once notice has been provided and the non-requesting party has been given the opportunity to be heard, the Assigned Judge must either grant or deny the application and communicate the decision to all parties and the court clerk. If the application is granted:
 - The Assigned Judge must permit, but shall not require, the non-requesting party to likewise deviate from the presumption.
 - If the Assigned Judge grants a request to appear in-person, the Assigned Judge must timely (the same day) notify the Administrative Judge by email and provide him with the name of the case, the name of the requesting party and whether the non-requesting party is likewise deviating from the presumption.

SAMPLE FORM

**State of New York
County of**

**Justice Court
Town/Village of**

**The People of the State of
New York
- Against -**

**Memorandum of
Plea Bargain**

DEFENDANT

Original Charge(s):

- A. _____ [Reduced To] _____
- B. _____ [Reduced To] _____
- C. _____ [Reduced To] _____
- D. _____ [Reduced To] _____
- E. _____ [Reduced To] _____

[] Defendant offers plea to charge (s) _____
in satisfaction of all charges outstanding against him / her.

Conditions of Agreement:

This form shall be used solely during the COVID-19 Pandemic and, as such, may be utilized only until such time that the Courts resume full in-person operations in regular sessions. Use of this form is intended to further the interest of justice, to protect court users from exposure while allowing parties to resolve pending charges. The use of plea bargains by mail will limit in-person appearances in Court and reduce the spread of the COVID-19 virus.

The above constitutes the agreement between the People, the Defendant, and the Court as to the disposition of the above original charge(s), and the defendant by his/her signature hereto affirms that he/she consents thereto with full appreciation of his/her rights and being fully aware of the terms of this agreement. That further, the defendant affirms, that he/she is represented by legal counsel or had the full opportunity to do so before this bargain was entered into, and the defendant voluntarily, intelligently, and knowingly agrees to all the terms herein. That all parties agree that this plea bargain has been executed and sent by mail and that no personal appearances are required.

Prosecutor

Defendant

Dated: _____

Town/Village Justice

