

Updated Operating Protocols

Effective May 3, 2021

District 8

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.

The Administrative Judge may, based upon local conditions, enact more restrictive operational protocols deemed appropriate by the Administrative Judge.

This Plan supersedes the Updated Operating Protocols Effective February 22, 2021. Commencing, May 3, 2021 all court operations in the Eighth Judicial District of the State of New York shall be conducted pursuant to this Plan. To the extent the provisions of this Updated Operating Protocol are inconsistent with provisions in any of the Eighth Judicial District Administrative Orders issued addressing the pandemic or any previously issued memoranda, the provisions of this Protocol should be relied upon to guide operations.

I. Courthouse Operations

A. Scheduling

1. Calendar times shall be staggered in each Court Building so all parts are not starting at the same time.
2. Each Judge may hold in-person proceedings on two days each week. Further additional time may be granted by the Administrative Judge after the presiding judge has submitted the request to the Supervising Judge. A judge presiding over any hearing or trial that continues to an additional day or days shall be granted additional courtroom time. The scheduling shall be as coordinated by Supervising Judges and Chief Clerks to assure appropriate limiting of foot traffic.
3. Specific to **city courts**, Buffalo City Court may hold in person non-custodial arraignments and further proceedings five days per week (limit of three judges per day handling) all scheduling to be coordinated through the Supervising Judge and Chief Clerk's Office; Lackawanna, Jamestown and Niagara Falls City Court may hold in-person non-custodial arraignments and further proceedings two days per week, (limit one judge per day) Batavia, Dunkirk, Lockport, Olean, North Tonawanda, Salamanca and Tonawanda may hold in-person non-custodial arraignments and further proceedings two days per week.
4. In each court, there shall be a maximum of 10 cases/proceedings scheduled in-person per hour, except as stated in Sections (II)(C)(10) and (II)(C)(12). For city courts, there shall be a maximum of 15 cases/proceedings scheduled in-person per hour, except as stated in Sections (II)(C)(10) and (II)(C)(12).

B. Occupancy of all courtrooms shall be limited to the lesser of 30 people or $\frac{1}{2}$ 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 $\frac{1}{2}$ 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 staff should be deployed in a manner that limits the likelihood and adverse consequence of a COVID transmission in the workplace. All staff not reporting to the courthouse shall work remotely. In all circumstances, non-judicial staff reporting to the courthouse shall be between 60% to 80% of normal pre-COVID staffing. On May 24, 2021, 100% of all Judges and court staff shall report to work in their assigned courthouses.

- 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 including social distancing at all time.
- E. 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 courtroom proceedings shall be conducted from the courtroom, as such courtroom is available. Virtual chambers proceedings may be conducted virtually from chambers.
- B. Notwithstanding any other provision herein and except in the case of a criminal trial or criminal evidentiary hearing, no incarcerated adult shall be produced to any Court (Supreme, County, Family, City, Town or Village), unless permitted by the Administrative Judge upon a request from the presiding judge. When an in person proceeding involves an adult housed at a facility other than one located in the 8th Judicial District, that individual shall appear virtually utilizing electronic means unless the presiding judge orders otherwise after appropriate application is made.
- 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
 - 2. Family Court Act Article 10 proceedings provided that the matter cannot be heard virtually.
 - 3. Adoptions
 - 4. Supreme and County Court and City Court 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 Supreme and County Chief Clerk/Commissioner of Jurors 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. Priority should be given to incarcerated defendants.
 - 5. Supreme and County Court and City Court Civil 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 Supreme and County Chief Clerk/Commissioner of Jurors as approved by the Deputy Chief Administrative Judge. The scheduling of in-person evidentiary hearings and non-jury trials shall be approved by the Administrative Judge on a case-by-case basis. Priority should be given to trials where the parties consent to a Summary Jury Trial.
 - 6. Pleas and Sentences
 - 7. Family Court evidentiary hearings provided that the matter cannot be heard virtually.
 - 8. Surrogate's Court Citations
 - 9. Eviction proceedings as authorized by law
 - 10. Treatment court and Judicial Diversion appearances where the presiding judge requests permission from the Administrative Judge and Supervising Judge for an in person appearance in an acute case necessary to protect the health and safety of a defendant. (Request to be made via e-mail from Resource Coordinator to Judge)
 - 11. 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.

12. Traffic violation appearances may be heard in-person upon a finding that it is impractical to conduct the appearance virtually. Notwithstanding the provisions of Section (I)(A)(3), there may be a maximum of 15 traffic violation appearances scheduled every 30 minutes.
- D. ALL other matters MUST presumptively be heard virtually 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. Bench Trials in civil cases. For compelling and critical reasons, the presiding judge may forward a request for permission to conduct a bench trial in-person to the Administrative Judge.
 8. 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 who passed away due to COVID-related causes.