



**New York Courts' Response to  
the Pandemic:**

*Observations, Perspectives,  
and Recommendations*

*A Report of the Pandemic Practices Working Group*

*January 2023*

# STATE OF NEW YORK

Hon. Craig J. Doran  
Supreme Court Justice



Seventh Judicial District  
Ontario County Courthouse

January 25, 2023

Greetings,

I am pleased to forward the Final Report of the Pandemic Practices Working Group, which I am honored to chair, and which is a project of the Commission to Reimagine the Future of New York's Courts, chaired by Henry "Hank" Greenberg.

The pages that follow, are the culmination of an unprecedented effort put forth by an extraordinary group of judges, court administrators, practitioners and dedicated "justice partners"- which by all accounts is one of the most vibrant, diverse and committed groups ever assembled to tackle a statewide project such as this. Every member of the Working Group has been actively and enthusiastically engaged in several months of intense listening and information gathering including three public hearings held in Albany, New York City and Buffalo, more than 30 remote listening sessions, and the review of voluminous written submissions from across the state. Quite literally, hundreds of people had a hand in formulating the observations and recommendations that follow.

As you read the attached report, members of the Working Group urge you to be mindful of the unprecedented foundation upon which the pages are authored, and the great breadth and depth of the input that formed the basis of this work. We share this report with heartfelt gratitude for the countless many who helped create it. We are hopeful that this work will help assure that New York's Courts benefit from lessons learned during the pandemic; and that we will not squander this opportunity to build upon the great work that so many in our courts-and the entire legal community-have done to ready our justice system to take the next steps.

With appreciation for your attention and hope for great progress, we remain grateful for the opportunity to be involved in this important process during this critical moment; and our members look forward to being called upon to assist in the future.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Craig J. Doran".

Craig J. Doran  
New York State Supreme Court Justice  
Chair, Pandemic Practices Working Group of the  
Commission to Reimagine the Future of New York's Courts

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# Introduction

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The Pandemic Practices Working Group (the “Working Group”) was formed in order to conduct a thorough, multi-dimensional review and evaluation of court practices implemented by New York State Courts during the COVID-19 pandemic. The effort was undertaken with extensive cooperation of the New York Courts, though it is an independent project of the Working Group. The Working Group is an initiative of The Commission to Reimagine the Future of New York’s Courts, which was formed in June 2020 to study and make recommendations to improve the delivery and quality of justice services, facilitate access to justice, and better equip the New York Courts to keep pace with society’s rapidly evolving changes and challenges. The Working Group’s members reflect a diverse set of stakeholders in the court system, including judges, court administrators, prosecutors, public defenders, and attorneys from a range of practices, including private practice, governmental, and legal services organizations.

Although the Working Group was tasked with leading this effort, a much larger group of people and organizations are responsible for providing the substance of this report. The Working Group’s key strategy for preparing this study was to listen to people who experienced the effects of the pandemic on the courts firsthand. Thus, as part of an extraordinary outreach campaign, the



Working Group held three full-day public hearings between June and November 2022, in Albany, Buffalo, and New York City. Over 90 people from the courts and greater legal community testified at these hearings, which were livestreamed on the internet. They included judges and court staff, union leaders, academics, leaders of prominent legal services organizations and bar associations, lawyers in large practices, lawyers in small practices, solo practitioners, prosecutors, members of the defense bar, and leaders from local government and law enforcement. In addition to these in-person hearings, the Working Group hosted more than 30 remote listening sessions, conducted virtually, covering a range of topics, including commercial litigation, criminal proceedings, disability issues, language access, family courts, housing courts, problem-solving courts, town and village courts, rural legal services, domestic violence, self-represented litigants, and more. Finally, the Working Group received written testimony in addition to, or in place

# Introduction

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of, live testimony. All told, the Working Group heard testimony from more than 300 people and organizations, and their insights provide the backbone and primary source material for the substance of this report. A full list of the individuals and organizations that contributed are contained in Appendix A, and the strength of this report is due to the contributions and insights from this impressive group.

The Working Group also looked at an extensive body of surveys, data, and reports prepared by other organizations inside and outside of New York State regarding the effect of the pandemic and related issues. These include reports from the state's leading legal organizations and initiatives, including the New York State Bar Association, The New York City Bar Association, The Fund for Modern Courts, The Commission to Reimagine the Future of New York Courts, The Permanent Commission on Access to Justice, and The New York Legal Assistance Group. The Working Group also relied on the extensive body of work assembled by the National Center for State Courts for a national perspective on court responses from other

states. The collection of these works can be found in the bibliography to this report.

The organization of this report is straightforward. Section II offers an executive summary of the findings of this report. Section III sets forth a summary of the primary elements of the court system's response to the pandemic. Section IV summarizes the observations and perspectives that were gathered through the extensive testimony gathered through the Working Group's in-person hearings, remote listening sessions, and written submissions. Section V sets forth the recommendations of the Working Group based on these observations and perspectives. And Section VI concludes the report with a look forward to next steps.<sup>1</sup>

The COVID-19 pandemic was arguably the most disruptive event in the history of the New York Courts, and it brought significant hardship to many individuals who depend on the court system. That hardship cannot be undone, but our sincere hope is that this report will be an important step along the path to improving the performance of the courts and ensuring that the next time there is a significant disruption, the courts are prepared.

*The Pandemic Practices Working Group thanks the efforts of the following individuals and organizations for their invaluable assistance in the public outreach and preparation of this report: Wilderness Castillo-Dobson, Portia Proctor, Thomas Ruane, Nicole Swanson, and Vincent Tennant from Proskauer Rose LLP; Kelsey Miller from Cravath, Swaine & Moore LLP; Barbara Mule from the Office of Court Administration; Jeanna Savage from the Unified Court System; and Lynn Kodjoe from the New York State Bar Association*

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<sup>1</sup> In reviewing this report, it may be helpful to understand the many different courts within New York's court system. Appendix B provides a brief overview of these courts.

# The Pandemic Practices Working Group

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# Executive Summary

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The impact of the COVID-19 pandemic on the New York Courts was profound. It is not surprising that an unprecedented public health crisis would have significant impacts on a public institution like the courts, but it is nevertheless important to take account of its many effects and repercussions. Many of the effects were short-term, brought about by the public health emergency that temporarily shuttered businesses and government operations across the state. In the court system, this translated into hundreds of courthouses that were forced to close their doors and the hurried shift of court operations from an almost exclusively in-person system into a predominantly remote one. Although the court system continued to function throughout this transition, the effect was a significant disruption in the accessibility of the courts to the tens of thousands of New Yorkers who rely on them. Individuals who had important business before the courts found it difficult—and in some cases, impossible—to have their day in court. In other cases, the business of the courts proceeded, but with

processes that were inconsistent, changing, opaque, and not suited to the fair and equitable administration of justice. These effects are still felt today.

That said, some of the consequences of the pandemic on the courts have led to a court system that is more efficient and better prepared to do its work. It could be argued that the way in which New York Courts hear cases has changed more in the last three years than in the sixty years since the creation of the Unified Court System. Historically, cases proceeded nearly exclusively in physical courthouses, in which litigants, counsel, judges, and court staff gathered in one place to argue and hear disputes. Now many of them have become “virtual,” with some or all participants able to appear via phone, video, or other remote technologies. This new paradigm for judicial proceedings presents novel challenges and increased technical demands, but it also presents truly revolutionary possibilities for how justice is delivered to the public, which the courts are just beginning to explore.





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**There are many observations, lessons, and recommendations for the court going forward, but key themes and conclusions include the following:**

**The courts stayed open.** In the face of an unprecedented pandemic, New York Courts continued to function. It was a critical priority for the court system that it not “close,” even in the darkest hours of the health emergency. That the court system was able to deliver on this goal is a testament to the dedication, creativity, and tireless efforts of judges, court staff, and administrators, who worked long hours, nights, and weekends for months to keep the court system functioning. The importance of their efforts to the work of the courts over these past three years cannot be overstated.

**There was significant disruption and hardship for many court users.** The above notwithstanding, many New Yorkers found themselves without effective access to the courts. Although courts were technically open, for several months following the onset of the pandemic, it was difficult for many to gain access to the courts. A critical development was the suspension of matters deemed “non-essential” from being filed and/or proceeding, which occurred in March 2020 and remained in place to varying degrees for months. While this decision was understandable at the time, made to triage demands when the courts were not at full capacity, it left thousands of New Yorkers effectively shut out of the court system, unable to pursue matters “essential” to them. The personal consequences for these New Yorkers have been in many cases devastating, and the courts should make it a

top priority to never be forced to make such a decision again.

**The courts were not adequately prepared for the COVID-19 pandemic.** When the pandemic hit, the court system did not have a plan to adjust its operations and continue to fulfill its mandate. Moreover, years of underfunding the courts, especially of high-volume courts such as family and housing courts, contributed to their inability to respond effectively. It is no surprise that the court system was unprepared for a health crisis without precedent in this country for the last century. That said, there would be no excuse for a failure to prepare for the next disruption, when (not if) it occurs. Given the threats posed by future health emergencies, as well as weather and other natural and man-made disasters, the court system must take steps to prepare for the next disruption, including by developing a detailed plan and a system for testing, refining, and deploying that plan.

**Court innovation during the pandemic resulted in practices that should be continued.** Not all was bad news for the courts during the pandemic, and practices emerged that many found to be significant improvements to the traditional way of doing things. For example, the use of virtual proceedings brought substantial benefits to many. While not every type of matter or every proceeding is appropriate for virtual proceedings, they can mean greater convenience and accessibility to the courts,

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less time spent traveling to courthouses, and the ability for counsel to effectively represent more clients in more forums. Court users also lauded the use of “time certain” proceedings, which became the norm during the pandemic, in place of the derided “cattle call” system, in which courts scheduled multiple matters to start at the same time, resulting in long waits for litigants to have their cases heard. Finally, the pandemic saw a significant expansion of the use of electronic filing, and there is broad consensus that this practice should be expanded into every court in the state, with appropriate protections for self-represented litigants.

**Technology investment has become a strategic imperative for the courts.** The court system’s experience during the pandemic revealed that a key aspect of court readiness is technological readiness, and 21st-century courts cannot be effective without 21st-century technology. While there are discrete examples of investment and innovation in the courts that have worked, the court system needs a more sustained and consistent effort to be successful over the long term. Key investments include new technologies to support virtual proceedings, statewide modernization of antiquated courthouses

and courtrooms, an expansion of e-filing, revamped systems for communicating with court users, including a new court website, technology “kiosks” for court users without reliable access to the internet or computer devices, and an expansion of technical support resources to aid court users, judges, and court staff in using the technologies at their disposal.

**The courts need more staffing and resources to be prepared for the future.** The investments needed to prepare the courts for the future require more funding from the state. This includes greater investments in technology infrastructure, as described above. In addition, the court system is facing a crisis in staffing on a number of fronts, from staff that have opted for early retirements or are being lured away by better offers, historically inadequate numbers of judges and court staff, especially in the highest-volume courts, and depleted ranks of prosecutors and lawyers for the indigent, including 18-B attorneys who have not received a pay increase in more than 18 years. No plan to address the challenges and opportunities from the pandemic will be effective if there are not enough skilled people to implement it.

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Based on these observations, the Working Group offers the following fourteen recommendations, which are described more fully in the report below:

- **Recommendation 1:** Expand and encourage the use of virtual proceedings
- **Recommendation 2:** Bring greater transparency and consistency to the use of virtual proceedings
- **Recommendation 3:** Improve the functioning of virtual proceedings
- **Recommendation 4:** Expand alternatives for court users to access virtual proceedings and other court resources
- **Recommendation 5:** Improve accessibility for people who require accommodations
- **Recommendation 6:** Improve systems for communicating with and supporting court users, including a new website
- **Recommendation 7:** Ensure that there is appropriate public access to virtual proceedings
- **Recommendation 8:** Expand use of electronic filing
- **Recommendation 9:** Invest in locally appropriate modernization projects that will permit courthouses to better support virtual, hybrid, and in-person proceedings
- **Recommendation 10:** Improve training and technical support available for judges, court staff, and users
- **Recommendation 11:** Expand and provide better support for court staff
- **Recommendation 12:** Implement a plan for responding to a future pandemic or other court disruption
- **Recommendation 13:** Appropriate and earmark supplemental funds for court modernization and emergency preparedness
- **Recommendation 14:** Create a permanent working group of stakeholders, external experts, and internal decisionmakers to help implement the above recommendations and identify future needs

# The Court System’s Response to the Pandemic

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On January 24, 2020, Governor Cuomo announced a series of actions in response to “an outbreak of a novel coronavirus,” after the Centers for Disease Control and Prevention announced the first two confirmed cases in the United States—one in Washington State and one in Chicago.<sup>2</sup> On March 1, the Governor announced the first confirmed case of a New Yorker testing positive for the virus,<sup>3</sup> and within another week, 76 individuals had tested positive for the virus.<sup>4</sup> Less than a week later, Governor Cuomo declared a state disaster emergency for the entire state of New York.<sup>5</sup>

In response to the Governor’s declaration of emergency, the Unified Court System (“UCS”) undertook a number of steps to permit the continued functioning of the courts while protecting the health and safety of court staff, litigants, lawyers, and members of the public.

*First*, on March 16, the Chief Administrative Judge (“CAJ”) ordered that all “essential court functions” were to continue, while “non-essential” functions of the court were to be postponed.<sup>6</sup> The order stated that eviction proceedings and orders, auctions of property, residential foreclosures, and criminal matters wherein the defendant was not in custody were to be suspended until further notice.<sup>7</sup> Criminal matters in which the defendant was in custody were to be adjourned or conducted remotely, and arraignments were also to be conducted remotely. The order directed that all civil matter motions be taken on written submission, except in “exceptional circumstances,” and that all arguments were to be held remotely where possible. A follow-up order on March 22 prescribed that “no papers shall be accepted for filing” by any court for any matter except those deemed “essential,” defined to include, among other proceedings, criminal

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<sup>2</sup> *Governor Cuomo Outlines State Response to First Two Confirmed Cases of Novel Coronavirus in United States*, January 24, 2020. Available at: <https://www.governor.ny.gov/news/governor-cuomo-outlines-state-response-first-two-confirmed-cases-novel-coronavirus-united>.

<sup>3</sup> *Governor Cuomo Issues Statement Regarding Novel Coronavirus in New York*, March 1, 2020. Available at: <https://www.governor.ny.gov/news/governor-cuomo-issues-statement-regarding-novel-coronavirus-new-york>.

<sup>4</sup> *At Novel Coronavirus Briefing, Governor Cuomo Declares State of Emergency to Contain Spread of Virus*, March 7, 2020. Available at: <https://www.governor.ny.gov/news/novel-coronavirus-briefing-governor-cuomo-declares-state-emergency-contain-spread-virus>.

<sup>5</sup> New York State Executive Order [202](#).

<sup>6</sup> Administrative Order of the Chief Administrative Judge of New York Courts AO/68/20.

<sup>7</sup> The suspension of eviction proceedings, foreclosures and court-ordered auctions of property was subsequently addressed by additional CAJ AOs, Governor’s EOs, and, ultimately, state-wide legislation (the Emergency Eviction and Foreclosure Prevention Act of 2020). This law, which was signed by Governor Cuomo on December 28, 2020, immediately stayed pending residential eviction proceedings for sixty days, and provided that where a tenant submitted to the landlord or the court a declaration attesting to hardship arising from or during the COVID-19 pandemic, proceedings would be further stayed until May 2021.

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arraignments, temporary orders of protection, child removal applications, juvenile delinquency intake, commitment proceedings under the Mental Hygiene Law, applications regarding landlord lockouts, and “any other matter that the court deems essential.”<sup>8</sup> The effect of this system was that there were a significant number of purportedly “non-essential” matters that were not able to be filed, or if already filed, not able to proceed. This Report will detail the consequences of this bifurcation between “essential” and “non-essential” matters.

*Second*, the courts consolidated operations such that special parts were established in certain courthouses that could hear matters from across the relevant jurisdiction. Courts outside of New York City were directed to establish special parts in certain courthouses such that “essential matters” could be consolidated from all other courts within each judicial district.<sup>9</sup> For example, court operations in Nassau and Suffolk Counties were consolidated into single courthouses in each county. Operations in other judicial districts were consolidated from 15 or 20 different courthouses into fewer than ten. Courts inside New York City were directed to remain open, but only to hear “essential matters.”

*Third*, for the courts that remained open, rules were established to provide for social distancing and to otherwise allow for safe operation. Orders provided for social distancing by specifying the maximum capacity in courtrooms and auxiliary rooms<sup>10</sup> and by limiting the number of judges and staff who were to report to the courthouse to work in-person.<sup>11</sup> Orders also designated backup courthouses, on-call judges, and emergency lists of staff for each county within a given judicial district.<sup>12</sup>

*Fourth*, the courts worked to facilitate remote work for judges and court staff. Initially, many courts were not able to function effectively because courts were not prepared to work remotely. Aside from judges, management, and technology staff, no UCS employees had laptops or the software necessary for them to access court networks remotely. UCS immediately provisioned virtual private network accounts for staff to access court networks, requisitioned and delivered laptops when they became available, and provided technical and operational support to employees to allow for remote work. Within a matter of weeks, UCS had deployed the necessary hardware and software to essentially all judges and UCS employees who needed remote access to court systems.

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<sup>8</sup> Administrative Order of the Chief Administrative Judge of New York Courts AO/78/20.

<sup>9</sup> Administrative Order of the Chief Administrative Judge of New York Courts AO/68/20.

<sup>10</sup> Administrative Order of the Fifth Judicial District, March 16, 2020.

<sup>11</sup> *Id.*

<sup>12</sup> *See* Third Amended Administrative Order of the Seventh Judicial District, April 14, 2020.

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*Fifth*, the courts shifted much of their business from in-person proceedings to virtual proceedings. Prior to the pandemic, some courts allowed for participants to call in via telephone for certain types of proceedings, such as to facilitate attendance from people who lived long distances from the courthouse. The family courts also had a method for domestic violence survivors to file family offense petitions remotely, as well as have their initial appearance for a temporary restraining order held by videoconference. Otherwise, courts generally did not support virtual appearances for any kinds of proceedings.

With the March 16 order, the court system initially provided for the use of remote means to hear arguments on motions only in “essential matters,” but it had simply suspended all non-essential matters, rather than permitting them to proceed virtually. In April, as it became clear that the interruption was not going to be short-lived, the CAJ ordered that virtual proceedings be expanded to advance cases of all types—both essential and non-essential—including for case management and discovery conferences, not just motion practice.<sup>13</sup> At that time, Skype for Business was available to the court system and was designated as

the exclusive tool for hosting video conferences held by the court. In the following months, the CAJ ordered the expansion of the use of virtual technology across a variety of proceedings, including in “problem-solving” courts,<sup>14</sup> virtual alternative dispute resolution,<sup>15</sup> foreclosure conferences or proceedings,<sup>16</sup> eviction proceedings,<sup>17</sup> and certain Mental Hygiene Law proceedings.<sup>18</sup> Some judicial districts issued Virtual Courtroom Protocols (“VCPs”) that set forth procedures for the use of virtual technology across various types of criminal and civil proceedings, addressing issues related to staffing, public access, press access, signage, court reporters, and interpreters.<sup>19</sup>

Skype for Business permitted the parties to a proceeding to assemble by videoconference. As the statewide videoconferencing product already used by the court system, many judges and non-judicial staff were familiar with the functions of Skype and using it regularly. However, for court appearances, Skype lacked certain functionality, such as breakout rooms to facilitate private conversations between parties, and the ability to play video and audio files within the videoconference. The sound and video quality could also be poor,

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<sup>13</sup> Administrative Order of the Chief Administrative Judge of New York Courts AO/85/20.

<sup>14</sup> Administrative Order of the Chief Administrative Judge of New York Courts AO/87/20.

<sup>15</sup> *Id.*

<sup>16</sup> Administrative Order of the Chief Administrative Judge of New York Courts AO/157/20.

<sup>17</sup> Administrative Order of the Chief Administrative Judge of New York Courts AO/160A/20.

<sup>18</sup> Administrative Order of the Chief Administrative Judge of New York Courts AO/144/21.

<sup>19</sup> Administrative Order of the Third Judicial District, April 3, 2020.

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especially for large groups. Due to these shortcomings, in December 2020 Microsoft Teams replaced Skype for Business as the standard platform used to support virtual proceedings in New York Courts. Teams addressed the principal shortcomings of Skype, although as discussed further below, as a tool designed principally for business meetings, it remained imperfect in providing the range of functionality required for court hearings.

*Sixth*, the court system undertook a significant expansion of the electronic filing system, called the New York State Courts Electronic Filing System (“NYSCEF”). Electronic filing (or “e-filing”), which has been in place in some form since 1999, permits parties and counsel to securely file court documents electronically through the internet.<sup>20</sup> This avoids the need to file court documents in-person or by mail. E-filing also effectuates electronic service of documents on other parties and permits users to browse and access filings, court decisions, and other court documents electronically. E-filing is not available in all courts, and in some courts, it is available only where all parties consent to its use. Prior to the pandemic, e-filing (either mandatory or consensual) was available in

many civil matters in the Supreme Court, Surrogate’s Court, and the Court of Claims, with availability varying by county.<sup>21</sup> Importantly, no e-filing (mandatory or consensual) was available for criminal matters or for matters in some of the highest-volume courts, such as family courts and courts that hear housing matters. A statute that prohibits or places limits on the ability of the court system to deploy e-filing to certain courts and certain types of cases is responsible for the limited availability of e-filing.<sup>22</sup>

Working within these limitations, in March 2020, the CAJ extended the consensual use of e-filing to all civil matters within the Supreme Court in 47 of New York’s 62 counties.<sup>23</sup> And in April 2020, the CAJ permitted judges in all New York Courts to file orders and decisions electronically.<sup>24</sup> Despite these steps, e-filing was still not available in many courts. Moreover, in courts that permitted only consensual e-filing, the lack of consent by any party meant that all parties were required to file papers in the traditional manner, by hand or by mail, and to separately serve the other parties. Critically, litigants and counsel in courts without e-

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<sup>20</sup> Commission to Reimagine the Future of New York Courts, *The Expansion of Electronic Filing: A Report and Recommendations of the Structural Innovations Working Group* (January 2021). Available at: <https://www.nycourts.gov/LegacyPDFS/publications/pdfs/CommitteeReport-eFiling.pdf>.

<sup>21</sup> *Memorandum Re: Electronic Document Delivery System (“EDDS”), Unified Court System* (April 30, 2020), Appendix B.

<sup>22</sup> 2015 Sess. Law News of N.Y. Ch. 237 (A. 8083) (McKINNEY’S).

<sup>23</sup> Administrative Order of the Chief Administrative Judge of New York Courts AO/81/20.

<sup>24</sup> Administrative Order of the Chief Administrative Judge of New York Courts AO/86/20.

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filing generally lack the ability to access court filings electronically.

In courts and in matters where e-filing was not available, courts improvised in order to permit the electronic delivery of documents given the challenges and health risks associated with in-person filing. One such improvisation was to allow parties to email documents to chambers or court clerks. This presented a number of problems, including a lack of standards across judges and courts, inadequate tracking of filed documents, and no encryption of documents during transit. To satisfy the emergency need in a more systematic manner, the UCS implemented the Electronic Document Delivery System (“EDDS”), which allows users to enter case information on a web page and upload the documents to be securely transmitted to the appropriate court or clerk. The transmission of documents through EDDS does not constitute “filing” of the document, and the document must still be reviewed and officially filed by the clerk. That said, it saves parties from needing to deliver documents physically to a courthouse and permits clerks to receive and file documents while working remotely. EDDS was made available in May 2020 in all courts and matters in which e-filing was not available.<sup>25, 26</sup>

In addition to the above systematic efforts, individual courts undertook their own measures to respond to the pandemic. These efforts are too numerous to detail, but some examples include:

- *The Civil Court of New York set up “kiosks” at its satellite locations through which court users could be interviewed remotely, have the appropriate forms generated, and have those forms presented to a judge for review. After judicial review, the judge’s determination could be returned to the court user via the kiosk with appropriate instructions. Hearings were also conducted virtually via these satellite offices.*
- *The Special COVID Intervention Part (SCIP) in the 7th Judicial District consolidated all housing matters in the district into a single part, which allowed cases to be heard more quickly. The SCIP also integrated the provision of services such as housing and rental assistance, mediation, and legal counsel. The SCIP was used as a model for similar parts throughout the state (and many believed it helped increase access to the courts), ensured uniform application of state and federal protections, prevented evictions, and improved access to legal and social services.*
- *The Erie County Family Court staff connected with primary domestic violence service providers—Haven House and Family Justice Center—to create a procedure for essential filings and to assist the public remotely by phone. The Erie County Family Court also connected with the Erie County Department of Social Services to create a remote-filing procedure for remand, neglect, and abuse matters.*

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<sup>25</sup>Memorandum Re: Electronic Document Delivery System (“EDDS”), Unified Court System (April 30, 2020), Appendix B.

<sup>26</sup> Administrative Order of the Chief Administrative Judge of New York Courts AO/87/20.



# The Court System's Response to the Pandemic

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• *The New York City Family Court created a citywide virtual intake court, hotline, and email boxes for self-represented litigants and attorneys to file essential and emergency applications. Those citywide virtual intake mechanisms were able to process filings on essential matters and other emergency applications, including requests for orders of protection, remand applications in child welfare and juvenile delinquency cases, and emergency orders to show cause and writs. While initial operations consisted of three virtual intake court parts servicing all five counties, the New York City Family Court expanded this capacity over time, reaching 28 intake court parts. Virtual court interpreters and a language line were established to address language concerns. The Manhattan Family Court set up a live feed to allow for the public viewing of proceedings. By April 2021, each courthouse had retrofitted at least one courtroom or private computer terminal such that parties could participate in proceedings virtually from the courthouse, equipped with courthouse technology. Although the court implemented efforts such as these to maintain access to justice, court users experienced significant impediments, as this Report will detail below. These impediments caused significant disruption in the lives of litigants that cannot be overlooked.*

Even as the pandemic continued to affect daily lives, the court system made plans to begin a phased return to more “normal” operations. In May 2020, the Chief Judge

and Chief Administrative Judge put forth a plan for the gradual and phased expansion of court operations: The Return to In-Person Operations Plan (“RIOP”).<sup>27</sup> As counties across the state reached safety benchmarks established by Governor Cuomo, they were permitted to slowly expand staffing in courthouses, the filing of new matters, and the holding of in-person proceedings. The RIOP thus comprised several phases, implemented by Judicial Districts at different times from May through October 2020. Initially, courthouses that had been closed were re-opened just to judges and court staff to perform administrative functions on a limited basis, but in-person proceedings remained prohibited, and social distancing and other health and safety protocols remained in place.<sup>28</sup> Importantly, the earliest phase lifted the moratorium on filing of new “non-essential” matters. Later phases opened courthouses to greater numbers of staff and litigants and expanded the types of proceedings that could be heard in person.<sup>29</sup> At the same time, judges were encouraged to continue to hear matters virtually where appropriate and to stagger court appearances to limit the number of people in courthouses.<sup>30</sup>

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<sup>27</sup> *New York State Court System to Begin Return to In-Person Courthouse Operations*, New York State Unified Court System, May 13, 2020.

<sup>28</sup> *New York State Court System to Begin Return to In-Person Courthouse Operations: Judges and Staff in Counties Meeting Governor’s Benchmarks to Return to Their Courthouses; New Case Filings Will Be Accepted*, New York State Unified Court System, May 13, 2020. Available at: [https://nycourts.gov/LegacyPDFS/press/PDFs/PR20\\_17.pdf](https://nycourts.gov/LegacyPDFS/press/PDFs/PR20_17.pdf).

<sup>29</sup> *Courts in Five Upstate Judicial Districts to Begin Second Phase of Gradual Return to In-Person Operations*, New York State Unified Court System, June 2, 2020. Available at: [https://nycourts.gov/LegacyPDFS/press/PDFs/PR20\\_22.pdf](https://nycourts.gov/LegacyPDFS/press/PDFs/PR20_22.pdf).

<sup>30</sup> *Courts in Five Upstate Judicial Districts to Begin Phase Three of Return to In-Person Operations*, New York State Unified Court System, June 16, 2020. Available at: [https://nycourts.gov/LegacyPDFS/press/PDFs/PR20\\_27.pdf](https://nycourts.gov/LegacyPDFS/press/PDFs/PR20_27.pdf).

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By May 2021, more than a year after the start of the pandemic, all courthouses in the state had resumed full in-person operations. In January 2022, the mandatory adjournment of matters pertaining to foreclosures, evictions, and tax liens was terminated.<sup>31</sup> Courts were thus able to function as they had prior to the pandemic with in-person proceedings, albeit with a substantial backlog of cases that had not been possible to file or hear during the pandemic.

Many courts and judges continue to employ the tools and protocols that were put in place during the pandemic, such as virtual proceedings and e-filing. Indeed, as will be described in more detail below, despite the substantial challenges faced by the courts during the pandemic, many of these tools brought with them significant benefits that judges, court users, and staff alike would like to see continued.



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<sup>31</sup> Administrative Order of the Chief Administrative Judge of New York Courts AO/34/22; Administrative Order of the Chief Administrative Judge of New York Courts AO/35/22.

## Observations and Perspectives

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Through three public hearings, more than 30 remote listening sessions, and dozens of written submissions, the Working Group heard from more than 300 judges, court staff, lawyers, litigants, and other stakeholders regarding their experience in the New York Courts during the pandemic. Based on that substantial body of testimony, the Working Group offers the following observations and perspectives.



### New York State Courts Stayed Open, but There Were Substantial Challenges

Due to the tireless efforts of judges, court administrators, court staff, and outside stakeholders, the court system, as a whole, never closed. To be sure, many courthouses were physically closed to in-person proceedings, and cases deemed “non-essential” were unable to proceed. However, the courts were able to function continuously thanks to statewide adaptation efforts led by judges and dedicated court staff.

Court operations were able to stay open in large part because of an unprecedented, rapid transition from in-office to remote work. In the initial days of the pandemic, remote work was difficult because many counties simply did not have the technological infrastructure for remote work. Many courts lacked the equipment to

allow employees to work from home. Following the onset of the pandemic, OCA was able to distribute hardware and software to support secure remote work, and soon after many judges and court employees were able to recommence effective work

*“The pandemic only exacerbated the challenges that had already existed within the court system.”*

Ryan Gallagher, Director of Legal Technology,  
Family Legal Care

from home.<sup>32</sup> These efforts were possible due in large part to court staff who worked long hours and took on responsibilities not in their job descriptions, such as personally delivering laptops to employees’ homes. In time, many court operations were able to proceed remotely in a relatively smooth manner.

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<sup>32</sup> This was not necessarily true for Town and Village Courts, which are not under the jurisdiction of OCA. Thirty-two percent of Town and Village court judges use non-UCS-issued computers at home to conduct court business remotely. See *Remote Judging Survey: Experiences with Virtual Proceedings*, the Technology Working Group of the Commission to Reimagine the Future of New York’s Courts, New York Unified Court System, October 2021.

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The implementation of remote proceedings was also critical to the continued operation of the courts. Many courts adopted some form of remote proceedings, and those that did were able to initiate them within weeks of the onset of the pandemic. The speed and success of this transition varied widely, however, and depended on the technological capabilities of both court users and the courts themselves. Many litigants, counsel, judges, and court staff struggled, especially early in the pandemic, with how to use the virtual environment to conduct the business of the courts.

Finally, the consolidation of operations into a smaller number of courts was an important aspect of the continued operations of the courts. Especially in rural counties, where small courthouses are often situated far from each other, this consolidation allowed courts to remain open and staffed even in the most challenging times of the pandemic. These consolidated courts ensured that at least “essential” cases were able to be moved along.

Certain court types faced especially significant challenges in the shift to remote proceedings:

- **Town and Village Courts:** Practitioners noted frustration that—in contrast to Supreme, County, and City courts—Town and Village Courts were shut down for a long period of time during the pandemic, including some courts that may have

had the technology to operate remotely. Additionally, Town and Village Courts often lacked infrastructure to allow remote access to court records, meaning attorneys and the public could not access records for over a year in some



instances. A survey of Town and Village Courts suggests there is widespread agreement among court staff as to the need to facilitate statewide access to the universal case management system and e-filing in these courts.<sup>33</sup>

The Working Group heard testimony from various court users who expressed concerns with the ability of Town and Village Courts to operate the technology necessary to facilitate virtual proceedings, though the same survey in Town and Village Courts found that court staff were more-likely-than-not to report being comfortable with the use of technology necessary to facilitate virtual proceedings.<sup>34</sup>

- **Family Courts:** New York State Family Courts hear over 600,000 cases per year. The high-volume nature of these courts, especially in urban areas, combined with a lack of sufficient staffing and adequate technology, along with the high percentage of unrepresented litigants, presented unique challenges when the pandemic struck.

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<sup>33</sup> Remote Judging Survey: Experiences with Virtual Proceedings, the Technology Working Group of the Commission to Reimagine the Future of New York’s Courts, New York Unified Court System, October 2021.

<sup>34</sup> *Id.*

# Observations and Perspectives

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*Unrepresented litigants in family court are disproportionately low-income, from communities of color, and often face language barriers.*

*The lack of virtual proceedings and electronic filing at the time of the pandemic made it difficult for the New York City Family Court to function. At the beginning of the pandemic, there were no help centers open, very few court clerks available, and no way to pick up or drop off petitions for pro se litigants. Many people informed the Working Group that the lack of electronic access to documents impeded access to justice.*

- **Housing Courts:** *New York City housing courts are still dealing with a considerable backlog that grew during the pandemic. This backlog was the result of a confluence of factors, including: pandemic-related disruptions that affected many courts across the state; a temporary moratorium on evictions and foreclosures, put in place in the early days of the pandemic and then extended until January 2022; an increase in housing-related needs arising from the material hardships of the pandemic; and shortages of housing counsel needed to resolve cases even while the “right to counsel” law significantly increased demand for attorneys. Legal service providers, tenants, landlords, and their attorneys have all expressed*

*frustration about the slow pace by which these courts were able to resolve their cases in the midst of myriad statutory and executive eviction moratoria, as well as a blanket suspension on the statutes of limitations. Frequent changes in the legal landscape regarding evictions led to confusion and required the court system to develop guidance regarding the scheduling, notice requirements, stays, and dispositions of cases.*

- **Problem-Solving Courts:** *Problem-solving courts, such as drug treatment and mental health courts, saw both benefits and drawbacks to the use of remote proceedings. Many see in-person meetings with court participants to be vital for accountability and relationship-building, and believe participants take them more seriously due to the solemn setting of a courtroom. However, others noted that remote meetings can be less intimidating to attend as well as allow litigants in residential treatment to participate in appearances without leaving the treatment facility. At a minimum, virtual proceedings were useful for keeping in touch with treatment court users during times when in-person appearances would not have been feasible and prevented vulnerable participants from being wholly cut off from their support networks.*

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## Suspension of Non-Essential Proceedings Resulted in Significant Impediments to Justice

The decision to separate matters into “essential” and “non-essential” matters at the start of the pandemic had significant repercussions that are still felt to this day. The decision was understandable at the time, given the need to limit the number of people in courthouses and the expectation, at the beginning of the pandemic, that the interruption to court services would be short-lived. However, the question of what kinds of matters are “essential” is highly subjective, and most matters before the courts are important or even “essential” to those affected by them. Preventing purportedly “non-essential” matters from proceeding effectively closed the courts to certain individuals and types of matters for months.

The hardship associated with this decision was felt particularly in the family courts. In the New York City Family Court, “non-essential” matters included most visitation, custody, adoption, guardianship, and support matters, as well as some child protective and termination of parental rights proceedings that could not proceed for nine months or longer. This was enormously consequential for parents and their children,



who faced extended periods of separation or lack of support funds based on the courts’ inability to process their cases, with essentially no recourse. Although the New York City Family Court opened three citywide virtual intake parts by the end of March 2020, these replaced the more than 130 court parts that had operated prior to the pandemic, and they were only open to “essential” matters and “emergency” applications.

The decision also created a bifurcated system of justice that disadvantaged those without legal counsel. “Non-essential” matters like custody were only being heard if an “emergency” application was filed. Many represented parties understood this option and could therefore get emergency issues heard in non-essential matters. By contrast, many self-represented litigants tended not to be aware of this option and waited months or even years due to the moratorium. Moreover, what constituted an “emergency” application was not defined and was therefore left to the subjective judgment of court clerks.<sup>35</sup>

Finally, the system led to an immense backlog of “non-essential” matters. While the New York City Family Court rolled out

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<sup>35</sup> *The Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants*, The New York City Family Court COVID Work Group: A Joint Project of the New York City Bar Association and The Fund for Modern Courts, January 2022. Available at: <http://moderncourts.org/wp-content/uploads/2022/02/NY-Family-Court-Report-1-22-2022.pdf>.

## Observations and Perspectives

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virtual courtrooms, and judges and staff began returning to the courthouses within a few months of the start of the pandemic, court appearances still were lacking, and only a small number of cases actually proceeded through the court.<sup>36</sup> It was not until December 2020 that the Family Court began to assign court dates to the “non-essential” custody and visitation cases that had been filed prior to the start of the pandemic, and only in February 2021 that the Family Court began to assign court dates to child support cases. By March 2021, a year after the start of the pandemic, the Family Court announced that it would begin to schedule the custody, visitation, and support

cases that had been submitted during the pandemic.<sup>37</sup>

Over the following months, there was variation in how quickly cases were scheduled, but it was sometimes haphazard, with the calendaring of appearances not necessarily matching the urgency of any given matter. By December 2021, all cases that had been submitted throughout the pandemic were calendared, although there remains “wide variation in how quickly cases [are] being scheduled, longer than usual adjournments between court appearances, and little or no improvement in the overall delays in the New York City Family Court.”<sup>38</sup>

### Virtual Proceedings Offered Significant Benefits to Court Users

For those matters that were able to proceed, virtual proceedings demonstrated significant benefits for many court users. Court users with work responsibilities were less likely to need extensive time off to attend court proceedings; they could log on during a break or during their lunch hour. They did not need to travel to the courthouse or wait for their case to be called. This meant they did not have to lose pay in order to attend court. Court users with childcare responsibilities did not have to make alternate arrangements or pay for childcare. Court users with limited mobility or disabilities did not have to navigate the

structural impediments they may previously have faced when attending proceedings in-person. Court users living in rural

*“It became apparent throughout the pandemic that virtual proceedings had a beneficial impact on litigants, attorneys, court staff and the judiciary. The benefits were most obvious in the timeliness of court proceedings, overall, and the cost savings to litigants and attorneys.”*

Hon. Stacey Romeo, Supervising Judge,  
7th Judicial District Family Courts

communities far from their local courthouses saved the time and expense of commuting or arranging travel. The convenience was especially felt by those without private

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<sup>36</sup> *Id.* at 14.

<sup>37</sup> *Id.* at 15.

<sup>38</sup> *Id.* at 16.

## Observations and Perspectives

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means of transportation since public transit in rural communities is often limited.

All of these benefits not only improved the experience of court users, but also many testified that parties were more likely to attend proceedings because of the flexibility afforded by the format. This resulted in fewer defaults and more engaged participation by the parties.

Witnesses testified that a key benefit of virtual proceedings was that they were scheduled at a “time certain.” This differed from the traditional practice in many courts prior to the pandemic which employed “calendar calls” (informally, “cattle calls”) in which a large number of cases would be scheduled for the same time to be heard sequentially by the judge. Under the calendar call system, a party might show up for a hearing at 9:30 a.m. but would not have the case heard until after lunch. Time-certain proceedings resulted in higher levels of productivity because parties and counsel were no longer spending the better part of their days waiting in a courthouse lobby for what could be a relatively short appearance. Additionally, witnesses reported that time-certain proceedings allowed cases to move along more efficiently by allowing attorneys

to take advantage of the entire time allotted to them for their proceeding. Furthermore, attorneys and their clients appreciated not having the wasted billable time spent waiting for cases to be called, which can be several hours and hundreds of dollars.<sup>39</sup> Use of time-certain proceedings has been recommended nationally as a best practice to which states should aspire.<sup>40</sup>

Another substantial benefit from remote proceedings is that they permit counsel and other court personnel to represent more clients in more courts. The benefits of this change were felt by private practitioners, legal services providers, appointed attorneys, interpreters, and court reporters alike. When all proceedings were in-person, attorneys were limited in their representations by both time and geography. With virtual, time-certain appearances, attorneys can log on to an appearance in one county and then log on to an appearance in another county 30 minutes later, all from their office or a single courthouse. This advantage is particularly appreciated in rural areas, where the distance between courthouses is particularly great, though it was noted by both rural and urban practitioners alike.

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<sup>39</sup> One area of concern noted about time-certain proceedings in the criminal proceedings context was the difficulty in coordinating with the Department of Corrections on ensuring the availability of certain parties and witnesses at the scheduled times. Some noted that proceedings are often at the whim of the Department of Corrections amidst time constraints imposed by other time-certain proceedings.

<sup>40</sup> *Pandemic Era Procedural Improvements That Courts Should Adopt Permanently*, National Center for State Courts, September 2022. Available at: [https://www.ncsc.org/\\_data/assets/pdf\\_file/0030/84873/Pandemic-Improvements-10.31.2022.pdf](https://www.ncsc.org/_data/assets/pdf_file/0030/84873/Pandemic-Improvements-10.31.2022.pdf).

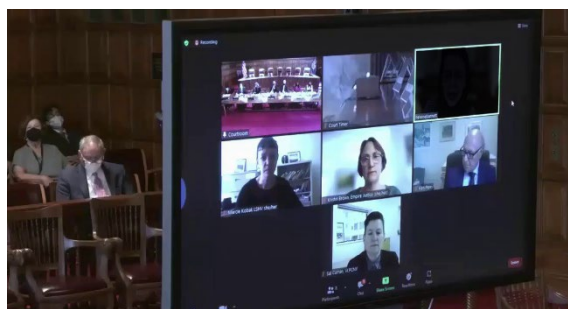


# Observations and Perspectives

## Challenges with Virtual Proceedings Remain, Including the “Digital Divide,” Shortcomings with the Technology, and Inadequate Technical Support

While virtual proceedings offer substantial benefits and were a critical component that permitted the court system to function during the pandemic, they were not without their challenges. A critical challenge is that many court users lack effective access to technology, which impedes their ability to participate in virtual proceedings.

One issue is that many areas of New York State lack broadband internet or cell phone service. In those areas, a remote proceeding is simply not possible, unless it is conducted over a landline phone, which provides a much less complete experience than a full video appearance. Even in areas with internet or cell service, the service may be inconsistent or not strong enough to support the needs of a bandwidth-intensive videoconferencing platform like Teams. In areas with sufficient technological infrastructure, many court users individually lack



access to the requisite technology to participate effectively in remote proceedings. Some people do not have consistent access to a phone. Others have a phone but use a pay-per-minute plan that imposes significant costs, or do not have a

smartphone or computer with webcam capabilities, and as a result they cannot see other parties or have other parties see them. Some courts have required parties to appear on video, necessitating alternative arrangements for those who cannot easily access this technology.

*“Pre-Covid, I would block out my entire day for 2 conferences—varying in times from 10 minutes to 1 hour each. Now, I can make several appearances in a morning session and the same in the afternoon. My desk is clean, my calendar is only booked a month in advance, instead of 2 to 3.”*

Sofia Balile, Solo Practitioner  
The Law Office of Sofia Balile, Esq.

Users reported a number of issues with using Skype, which was the default platform from March until December 2020. Although Microsoft Teams, which replaced Skype, was a significant improvement, it too is not without shortcomings. These mainly derive from the fact that Teams is fundamentally a platform designed for business meetings, not for court proceedings, and it lacks features that would allow it to better mimic a live courtroom or courthouse experience. For example:

- *At a courthouse, there is a physical lobby or waiting room where court staff are available to answer questions about where to go or about when a case will be called. The Teams “waiting room” is a blank screen that provides no information about the specific proceeding, leaving court users to wonder if they have received or clicked on the correct link for their hearing. Especially for attorneys who routinely received dozens of links,*

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*mixing them up was a real concern. Additionally, self-represented litigants reported concerns about missing hearings due to clicking on incorrect links or other technical difficulties, and the waiting rooms provided no information or point of contact to resolve their concerns.*

- ***In a courthouse, everyone's identities and roles are fairly obvious:*** *the plaintiff is on one side of the courtroom, the defendant is on the other; the judge is on the bench; court staff are situated in spaces corresponding with their roles. During remote proceedings, it can be difficult for court users to identify the various parties participating in their proceedings or ascertain their roles. This is particularly true during telephonic proceedings, where participants can only be identified by voice. Even on Teams, when participants are on video and labeled, their labels may not disclose their affiliation to the courts or relationship to the case. This can cause confusion among court users during the proceeding.*
- ***Breakout rooms are frequently not available in virtual proceedings.*** *Although Teams does support breakout rooms, their availability is dependent on the system administrator enabling them, and this sometimes does not occur. Lack of breakout rooms is an impediment to attorney-client interactions before, during, and after proceedings.*

The above shortcomings are exacerbated by inadequate technical support available to court users and even court staff who need it. This is especially a problem in high-volume courts and in rural areas where technology is limited to begin with. There is no centralized “help desk” accessible to court users. Instead, they must rely on individual court clerks and other staff, who may have varying degrees of technical sophistication. Many clerks and other non-technical personnel are

not in a good position to provide the level of technical support that virtual proceedings require.

Virtual proceedings also present a challenge to effective court reporting. Particularly at the beginning of the pandemic, court reporters often lacked basic equipment to perform their jobs remotely. Even with the best technology, however, challenges remained. Unstable internet or phone connections made it difficult for reporters to make an accurate record of what participants were saying. This was compounded when court users were off-camera or wore masks, which impeded the ability to read lips and interpret facial expressions. Additionally, it can be difficult to decipher what is said when litigants talk over one another on Teams or when there is a delay or disruption in the audio.

Other challenges with virtual proceedings seem to be inherent to the nature of a non-physical proceeding. Many attorneys noted the benefits of in-person court

*“I am encouraged that the widespread use of technology . . . has been shown to be a viable option for the practice of law. I am, however, concerned that the continued reduction of in-person interaction does hamper resolution of cases and diminishes the collegial nature of the bar that can lead to substantive discussions on pending matters and foster good working relationships.”*

Kyle Mitchell, Associate, Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet, LLP

proceedings for developing camaraderie with fellow attorneys, even adversaries. These relationships, they say, are vital to the

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profession. They create opportunities for career development and can facilitate interactions like settlement negotiations. Many noted that agreements are often reached “on the courthouse steps.” In that way, these relationships benefit clients as well as the attorneys themselves.

Additionally, in-person court proceedings create training opportunities for young lawyers and allow them to readily observe how courthouses function. However, some noted that these training opportunities can exist (and perhaps be more abundant or diverse) in virtual settings. For example, law school students in clinics can represent clients throughout the state if their proceedings and client meetings are held remotely. But the availability of training

opportunities requires that junior lawyers are aware of and able to access such virtual proceedings, which does not always happen.

Finally, judges, in particular, have reported on a noted decline in courtroom decorum during virtual proceedings. Attorneys and litigants alike have appeared in improperly informal clothing, or in inappropriate locations such as driving in a car or even in bed. Further, because of the lack of physical proximity, court users may feel more emboldened to be combative or disorderly. One positive aspect to remote proceedings, however, is that judges have more control over their courtroom in many ways. For example, they can mute a disruptive litigant, or remove them from the virtual courtroom.



Rensselaer County Court House, Troy, NY

# Observations and Perspectives

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## Virtual Proceedings Are Not Suited for All Types of Proceedings

While there is general consensus that virtual proceedings offer substantial benefits for a number of proceeding types and situations, there are situations where many perceive in-person proceedings to be superior, although there was some disagreement about where exactly to draw the lines.

Many testified that credibility determinations are easier to make in person. In-person proceedings allow for a more holistic assessment of body language and demeanor, which are important to assessing credibility. While some thought that credibility determinations could be aided by virtual proceedings because of the ability to see a witness's face more closely and observe nuances in their expressions, most felt that credibility determinations were more difficult to make in virtual proceedings.

Some practitioners felt that the rapport developed during in-person negotiation sessions cultivates compromise and leads to more effective resolution. Others, however, thought that remote negotiations could lead ultimately to more thoughtful and advantageous outcomes; while they may not come about as quickly, they may be better thought-through than the results of quick negotiations on the courthouse steps in the minutes leading up to an appearance. Some noted that the expansion of remote means of alternative dispute resolution can lower the barriers to participate and therefore increase its accessibility to litigants who desire it.

There was general consensus that virtual proceedings may not be appropriate in some sensitive matters. For example, a litigant who is participating in proceedings from their home may have other family members in the room during the proceedings. This presents challenges for proceedings involving children, who may have family members present in the room coaching, influencing, or intimidating them. This might prevent them from speaking truthfully out of fear of retribution from a parent or authority figure. Domestic violence survivors also often need a safe space from which they can participate in remote court proceedings, as the presence of an abuser could make participation in the proceedings unsafe for the litigant or render them unable to speak candidly, although there was also testimony that remote appearances were beneficial to victims of domestic violence because they eliminated the possibility of seeing the abuser in person.

Finally, some reported that remote proceedings can lead to disengagement by participants. They may not feel like they are participating in a "real" proceeding when they are not present in a courtroom. Particularly where the stakes are high, it may be important to have the proceeding in person so that the seriousness of the proceeding is clear to all participants.

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## There Was a Lack of Transparency and Consistency in How Virtual Proceedings Were (or Were Not) Conducted

Procedures regarding the use of virtual proceedings varied by county, court, and even by individual judge during the pandemic. While a degree of flexibility was sometimes necessary during the uncertain times of the pandemic, it also created confusion among court users who could not predict the format of their upcoming proceedings. Court users often did not receive the opportunity to have input on decisions about whether and how virtual proceedings would be used. Instead, the use of virtual proceedings was often a matter of judicial discretion or blanket rule, implemented without considering the circumstances of the case or the desires of the parties.

Despite the significant advantages of virtual proceedings, some courts and judges were (and remain) resistant to the use of remote proceedings. Especially in rural counties, individual courts and judges were able to exercise wide discretion in deciding whether or not to hold their proceedings virtually. Some rural practitioners reported that certain judges required in-person appearances even during the height of the pandemic, which caused stress for practitioners and litigants, especially those with particular vulnerability to COVID-19.

There was also no or only very limited public access to virtual proceedings. In contrast to an in-person proceeding, where an interested party (or reporter) can simply show up to the courtroom at the appointed time, public access to a virtual proceeding requires that the link to the proceeding be publicly advertised, which generally was not done. In part, this was the result of some misgivings about public access to virtual proceedings, such as the inability to prevent recording of court proceedings and/or their subsequent distribution. This is especially



concerning for cases that are later sealed or deemed confidential. That said, the public's right to access court proceedings, and a defendant's right to a public trial, are fundamental rights that must be accommodated in the virtual environment.

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## Virtual Proceedings Presented Particular Challenges for Specific Groups of People

While many court users expressed satisfaction with virtual proceedings, there are concerns about their accessibility for certain populations.

- **Self-represented litigants.** *The challenges faced by self-represented litigants were compounded in the virtual environment. While in pre-pandemic times, self-represented litigants could rely on in-person interactions with clerks, judges, and other court staff to provide direction, during the pandemic they were often left to figure it out on their own due to insufficient remote resources. For example, some litigants reported having no way to contact the court in the event of technical difficulties, or if they needed to reschedule a hearing. The pilot program of access stations and kiosks was praised for helping to bridge the digital divide as well as helping those with disabilities who are affected by having to travel into court. Participants requested additional staffing and investment in this program.*
- **Limited English proficient (LEP) populations.** *LEP court users, and all parties involved in their cases, experienced significant impediments to smooth virtual proceedings. Although courts were able to make interpreters available remotely, interpreters were unable to interpret simultaneously, as they would in a courtroom. Instead, they had to interpret consecutively, which approximately doubled the length of time their proceedings took and impaired natural communication flows.*
- **Court users with hearing impediments.** *Court users who communicate using sign language, or who read lips, have a unique need to see the parties participating in the hearing, which was not possible unless everyone involved had a camera and high-speed internet connection. As mentioned above, many court users lack access to this*

*technology. The issues are also compounded by a lack of sign language interpreters statewide. The interpreters that are available have unique needs, such as quiet spaces within the courthouse to perform interpretation services virtually.*

- **Court users with disabilities.** *Court users with disabilities noted a perceived stigma and prejudice associated with requesting or accessing accommodations from the court. This was highlighted as especially acute for lawyers with disabilities. Participants encouraged the courts to go further in offering private means to request and receive accommodations remotely to avoid the request being received directly by judges, litigants, or counsel in the active matter.*
- **Elderly court users.** *Some elderly court users were hesitant to adapt to virtual proceedings. Even when they have access to the requisite technology, some simply prefer to conduct court business in person. One witness described an excess of technology available at a senior center upstate – while it was available, the elderly court users simply didn't want to use it and preferred to be in person. However, while virtual proceedings presented challenges for some, they were also important for safeguarding the health of this vulnerable population. Elderly court users reported feeling much safer attending virtual hearings than in-person, especially when the pandemic was at its peak.*
- **Court users with limited access to, or comfort with, technology.** *Many court users simply cannot access or afford the technology needed to appear remotely. Some litigants lack smart phones needed to participate in proceedings by video. Others have cellular plans that require paying for bandwidth or time used. Many New Yorkers, such as those experiencing homelessness, have no internet access. According to a recent study,*

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18% of New York City residents—more than 1.5 million people—have neither a mobile nor a home broadband connection.<sup>41</sup> Residents of rural counties are also particularly likely to lack broadband internet access. Other court users

simply weren't comfortable with using technology for court proceedings. They were intimidated by the Teams platform and were unfamiliar with audiovisual technology generally.

## There Are Benefits and Concerns for Remote Proceedings Specific to Criminal Matters

Among those involved in criminal practice in New York, there was general consensus that virtual proceedings could be a benefit to the conduct of cases, at least with respect to certain aspects of such cases. Witnesses on both the prosecution and defense sides echoed the testimony of others that virtual proceedings could be more efficient, more convenient, and facilitate the appearance of counsel at more matters than is possible with in-person proceedings. Even from those who expressed concern about the fairness of virtual proceedings to criminal defendants, there was acknowledgment that clients often prefer virtual appearances because they appreciate the flexibility and ease that appearing virtually provides. Incarcerated defendants may prefer to attend virtually instead of disrupting their day to travel to and from the courthouse. Similarly, individuals in drug treatment court programs may benefit from continuing with their treatment routines instead of forgoing treatment to appear before the court. Defendants who are hospitalized may also benefit from forgoing the hassle and

health risks from attending in-person. Defendants in rural areas, too, or those with appearances in far-away jurisdictions, may prefer to attend virtually instead of dedicating significant time to commuting.

*“Upstate . . . defense attorneys, district attorneys, and judges all want authority to conduct virtual arraignments. And the reason that it's so uniform upstate is because in many of these small counties, the alternative is a defendant sitting in jail overnight because there's no judge who's going to come out and spend three hours waiting for a defense attorney to drive an hour away to come in.”*

Karl Manne, President, New York State Magistrates Association

Relatedly, many rural areas do not always have enough defense attorneys available to appear to conduct late-night arraignments, which can result in defendants, arrested at night, having to wait overnight before appearing before a judge to be arraigned. In addition, defendants arrested for non-qualifying bail offenses may be held unnecessarily for hours in order to accommodate an in-person appearance.

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<sup>41</sup> *Access to Justice in Virtual Court Proceedings: Lessons from COVID-19 and Recommendations for New York Courts*, New York Legal Assistance Group, August 2021. Available at: [https://nylag.org/wp-content/uploads/2021/08/NYLAG\\_CourtsDuringCovid\\_WP\\_FINAL2.pdf](https://nylag.org/wp-content/uploads/2021/08/NYLAG_CourtsDuringCovid_WP_FINAL2.pdf).

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Accordingly, defendants in rural areas may prefer to attend their arraignments virtually if it means returning to their lives more quickly. Lastly, legal service providers themselves may prefer to appear virtually, as doing so may permit them to service a larger geographic area without having to dedicate substantial time to commuting.

At the same time, there were significant concerns expressed about the potential for virtual proceedings to prejudice the rights and interests of criminal defendants. One concern was the ability for counsel to develop and maintain an effective attorney-client relationship with criminal defendants

*“While the efficient and timely adjudication of cases is important . . . any perceived benefit to virtual proceedings does not outweigh the significant risk of violating the constitutional rights of the accused.”*

Chief Defenders Association of New York

when relying on virtual proceedings. Members of the criminal defense bar in particular noted the benefit of being physically present in the courtroom with their clients. These include having the ability to speak privately at a moment’s notice, to being able to stop a client from making certain mistakes or admissions in the courtroom, to even just gauging their demeanor and putting them at ease.

Members of the defense bar similarly noted difficulties in connecting with their clients post-appearance following a virtual proceeding, especially for indigent clients. In person, attorneys and clients can have brief conversations outside the courtroom where they can develop rapport and understanding and discuss private information. Overall, the view was that remote attorney-client interactions did not build trust as effectively as in-person appearances.

There were also concerns about the impact that low-quality audio, video, and internet connections could have on criminal defendants. Again, this concern is not unique to criminal matters, but the repercussions for criminal defendants make them worth emphasizing. Witnesses pointed to studies that showed that differences in audio and video quality can substantially impact judgments about the credibility of a witness.<sup>42</sup> The same concerns apply to incarcerated individuals who may appear virtually with lower-quality audio or video, with backgrounds that are visually unappealing, and potentially dressed in attire that elicits negative reactions. Some reported that it was harder in a virtual environment to help a client maintain appropriate decorum, which could prejudice a defendant’s case or position before the

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<sup>42</sup> See Lezlee J. Ware, et al., *Camera Perspective Bias in Videotaped Confessions: Evidence that Visual Attention is a Mediator*, *Journal of Experimental Psychology Applied*, Feb. 2009; see also Joshua L. Fletcher, et al., *Audiovisual quality impacts assessments of job candidates in video interviews: Evidence for an AV quality bias*, *Cognitive Research: Principles and Implications*, Dec. 2018; Elena Bild, et al., *Sound and credibility in the virtual court: Low audio quality leads to less favorable evaluations of witnesses and lower weighting of evidence*, 2021, *Journal of Law and Human Behavior*.



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court. Some expressed concerns that defendants can be disadvantaged by virtual proceedings because in-person appearances are inherently more humanizing than virtual ones.

Some also expressed concern about the quality of the transcripts or other recordkeeping that result from virtual appearances. This may be especially true for courts in rural communities, such as in Town and Village Courts, where the record may be kept using software-based recording technology instead of court reporters. Although concern about court reporting is not unique to criminal matters, given the stakes in criminal matters, the risks associated with incomplete and faulty records can be especially significant.

For all of these reasons, most members of the defense bar were opposed to the use of virtual appearances for evidentiary hearings, even if they felt they could be valuable for status conferences. In addition to the above-mentioned concerns, there are concerns about the challenge of making accurate credibility determinations in a virtual environment, where the factfinder has less ability to see and assess body language and other cues. Moreover, some reported that cross examination of witnesses in a virtual environment was more difficult, impeding the ability for criminal defendants to effectively confront their accusers or other witnesses against them.

Arraignments were an area of particular concern. Often this is the first time that lawyers are meeting with their clients and a key opportunity for them to establish trust

and a good working relationship. Arraignments can also be a time of significant anxiety for defendants, and the presence of counsel can help them to remain calm and focused on the proceeding. There is a perception among some that bail was set



higher on average when virtual arraignments were used than when arraignments were in person. These concerns are important, though they may be difficult to assess given the confounding impact that 2020 bail reform laws may have had on bail determinations during the same period. Further study of this issue is warranted.

Witnesses noted the significant differences between different counties and courts across the state in how they handled arraignments during the pandemic. For instance, courts had different practices with respect to off-hours arraignments where no attorneys are available. Some places provided defendants with appearance tickets to return for their arraignments when representation might be available, whereas others conducted the arraignment without a defense attorney present. Where virtual arraignments were used, some were

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equipped with both audio and visual equipment, whereas others were conducted telephonically. Some places have adequate space to permit attorneys to confidentially meet with their clients prior to an arraignment, whereas others operated out of courthouses where such space was not available. These differences raise concerns about potential treatment of defendants in different parts of the state.

Some witnesses pointed to the benefits of centralized arraignment parts to standardize and streamline arraignment procedures. Since their authorization in 2016, centralized arraignment parts have been used to address local needs pertaining to the operation of arraignments, specifically the operation of off-hours arraignments and the provision of counsel. The number of counties with centralized arraignment parts stands at 25, with a three-county increase seen in 2022. Centralized arraignment parts can help address the lack of counsel available for indigent representation, especially off-hours. Without centralized arraignment parts, it is commonplace for attorneys to be staffed on-call for off-hours (nighttime and weekend) arraignments, meaning they

would travel in-person to a courthouse should an off-hours arraignment arise. These long hours, often requiring significant travel time, contribute to burnout among the already diminishing supply of appointed counsel. Staffing for arraignments, both on-

*“For the people we represent who have the technology needed to participate in remote proceedings, virtual court - for non-substantive appearances - can offer the flexibility needed to maintain their jobs, care for their children, reduce transportation costs and eliminate the time spent waiting for a case in a crowded courthouse. However, many of the people we represent do not have access to the technology necessary to participate in court proceedings virtually. . . . It is the responsibility of the courts, not court-appointed counsel, to ensure litigants have access to virtual proceedings.”*

Lisa Schreibersdorf, Executive Director,  
Brooklyn Defender Services

and off-hours, can be improved when arraignments are centralized. They standardize arraignment processes, permit defense counsel to represent more clients due to reduced travel time, and permit more opportunity for conferences between attorneys and clients either prior to or following a proceeding.

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## There Are Challenges in Creating a Workable “Hybrid” Environment

For many courts and matters, virtual proceedings became the “default” mode by which courts operated during the pandemic. However, as the pandemic has waned, and as courthouses have re-opened, a virtual-physical “hybrid” has emerged, in which some proceedings remain purely virtual, other proceeding have returned to in-person, and still others are a mix of virtual and in-person, with some participants appearing virtually, and others appearing in-person. This blend of proceedings has created its own set of complications.

One challenge is equipping courtrooms so that they can accommodate mixed physical-virtual proceedings. Many courtrooms lack the broadband internet access, monitors, audio equipment, and electrical equipment necessary to facilitate participation by witnesses or other court users (*e.g.*, interpreters, court reporters) not in the courtroom. In 2019, the court system launched a Courtroom Modernization Initiative (“CMI”), with the goal of providing updated technological equipment in courtrooms. However, the task of modernizing New York’s courtrooms is monumental. There are over 1,540 courtrooms in New York (not counting Town and Village Courts), many of which are old or physically configured in ways that make them challenging to modernize. For example, some courtrooms lack electrical outlets or use architectural materials such as marble that make drilling and wiring difficult. Others cannot be altered because of

their status as historical buildings. An additional challenge is avoiding technological obsolescence. Upgrading a single courtroom may take several months or years, and by the time equipment is chosen and installed, it may already be obsolete.

One challenge arises for counsel attending a mix of in-person and virtual appearances. While litigants and counsel often appear in virtual proceedings from their homes or offices, counsel often faces the challenge of needing to juggle a mix of virtual and in-person proceedings on their calendar. They may have an in-person proceeding at one courthouse, and then a



virtual proceeding in another courthouse immediately following. Court reporters and interpreters face similar issues in juggling their need to attend to multiple proceedings in multiple courthouses. Some courthouses have addressed this by providing dedicated spaces for use by litigants, court users, and court staff to attend virtual appearances, but many courthouses lack such facilities, or where they exist, they may be limited in number and availability or otherwise lack necessary privacy or access to technology.

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## The Pandemic Underscored Shortcomings in the Way Courts Communicate with Litigants, Especially Self-Represented Litigants

When the pandemic hit, there was an urgent need to communicate timely and accurate information to court users, such as changes to court schedules and protocols brought about by the pandemic. Unfortunately, the courts did not have a communications infrastructure that was up to the task. There are three principal areas for improvement.

*First*, the courts did not have an effective way to deliver timely messages to court users regarding the status of court operations or information about particular cases. Notice by mail was not effective when lawyers were not working regularly from their offices. Some litigants continued to receive automated phone calls ordering them to appear in court, only to arrive and find the courthouse doors locked. A basic challenge to court communications was that court users' email addresses and mobile phone numbers were not always collected regularly or stored in a way such that the court could easily communicate with them.

*Second*, the mechanisms for court users to seek out information about the courts were – and are – inadequate. Many counties lacked a phone number that court users could call to obtain information, and when they did have such a number, it was often not supported by sufficient staff to handle the volume of calls they received. This is especially true for those who staffed technology helplines – they simply did not have the resources to respond to the demand

for technical support, both internally from court staff and externally from court users.

Ideally, the courts' website would be able to provide this information, but people who turned to it found it difficult to use. Even before the pandemic, the court system's website was not organized or formatted in a user-friendly manner. When the pandemic prevented litigants from accessing calendars, court papers, and information at their physical courthouses, they turned to the court's website and were often disappointed or frustrated by what they found. The layout does not make it obvious where to find court information or forms. Once litigants find the forms they need, they are often confusing and lack supporting documents explaining how to fill them out. Further, the website is not updated regularly with up-to-date court information. Finally, the website lacks adequate support for LEP speakers, with only limited portions of the website available in languages other than English.

Law libraries and self-help centers are a vital lifeline for self-represented litigants. In the early days of the pandemic, many of these centers were closed or otherwise unavailable, which left self-represented litigants without adequate support. That said, in later months many of these centers were able to switch over to assisting litigants virtually or over the phone, and they were a practical source of information for many otherwise-unsupported litigants.

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## Electronic Filing and Submissions Presented Benefits

Electronic filing of documents brings significant advantages in terms of cost, convenience to parties and counsel, the creation of a reliable and accessible digital record of filings that have been made in a case, and better public accessibility to court records. The value of electronic filing became particularly clear during the

*“Digitization of information allows simple, efficient, and almost immediate exchange between parties and the court. Filing by email or formal e-filing programs/protocols is something that is far overdue in New York state courts.”*

The Legal Aid Bureau of Buffalo, Inc

pandemic, when access to courthouses for physical filing became difficult and/or created unnecessary risks of exposure to COVID. As a result, electronic filing was expanded significantly during the pandemic, particularly in Supreme and Surrogates Courts, but it is not universally required or even available in some courts and some locations.<sup>43</sup> For example, e-filing is still not available in criminal matters, nor is it available in most city, town, village, and family courts, nor is it mandatory in other courts and types of cases.<sup>44</sup>

The reason for the limited availability is not technical. The court system has the capability to expand e-filing to additional courts, cases, and counties, but it is prevented from doing so by law. When the Legislature first authorized e-filing in 1999, it permitted the CAJ to authorize consensual e-filing only on a pilot basis in a handful of courts.<sup>45</sup> This authority was gradually expanded to permit consensual e-filing in additional counties and case types, and in 2009, the Legislature gave the CAJ permanent authority to expand consensual e-filing to all case types in all venues in the Supreme Court. That legislation and subsequent legislation imposed certain requirements on the CAJ before it could expand e-filing, including regular reporting to the Legislature and consultation with county clerks and other stakeholders. The legislation also permitted implementation of *mandatory* e-filing programs in a small number of courts, subject to consultation and the ability for self-represented litigants and attorneys lacking necessary technological capabilities to opt out of e-filing.<sup>46</sup>

Objections to the expansion of e-filing have typically centered on potential challenges that self-represented litigants

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<sup>43</sup> See *The Expansion of Electronic Filing: A Report of the Structural Innovations Working Group*, Commission to Reimagine the Future of New York Courts (January 2021). Available at: <https://www.nycourts.gov/LegacyPDFS/publications/pdfs/CommitteeReport-eFiling.pdf>.

<sup>44</sup> CPLR § 2111(b)(2)(C).

<sup>45</sup> *The Expansion of Electronic Filing: A Report of the Structural Innovations Working Group*, at 3-4.

<sup>46</sup> *Id.* at 4-5.

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and/or counsel with inadequate technology access may face in using it. However, current law already requires consent of self-represented litigants for e-filing and also permits attorneys lacking necessary technical skills or equipment to opt out of e-filing. Those protections should remain in courts to which e-filing is expanded.

Courts that had e-filing during the pandemic fared better than courts that did not. The Supreme Courts, where consensual or mandatory e-filing was widespread, were able to accept filings even while courthouses were closed, effectuate electronic service on parties, and, critically, maintain an electronic docket of documents filed by the parties and the courts which was accessible to all litigants. Courts that did not have e-filing were not so fortunate. For example, in New York City Family Court, litigants had to

initiate proceedings either by mail or by filling out a petition at the courthouse. This presented hurdles when, as described above, the number of open family courts was



reduced during the pandemic due to the legitimate health concerns of litigants who were not comfortable appearing in person. Thus, while other courts in the state were able to adapt and extend their electronic filing, family courts were stymied and later forced to play catch-up. Due to the lack of e-filing, most litigants in family courts did not have electronic access to the court's orders and filed papers.

### The Pandemic Took a Significant Toll on Court Staff and Exacerbated Staffing Challenges

The unprecedented mobilization of court resources to shift operations virtually at the outset of the pandemic was a massive undertaking, requiring immense efforts by local court staff, and the success of New York Courts in remaining operational during the pandemic is a result of their efforts. Substantial administrative effort was required to facilitate the establishment of new protocols and programs intended to address the impact of the pandemic. Court staff were also required to manage significant increases in the number of filings where e-filing or Electronic Document Delivery System (“EDDS”) services were

implemented for the first time. These additional responsibilities fell on the shoulders of court clerks and IT personnel, who often needed to work nights and

*“The one thing that I think is really important when we talk about how difficult that time was, is our mental wellness. . . . It is important that we begin to think about that for our court chief clerks and deputy chief clerks, managers, and direct line staff.”*

Kelly Buckley, Chief Clerk of Family Courts,  
8th Judicial District

weekends to keep up. Moreover, there was a mandatory hiring freeze in place for over a year during the height of the pandemic,

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which further added to the demands placed on staff who remained. The added stress led many court staff to retire early or to leave their positions for other work. The result is that there are now fewer court personnel to handle the post-pandemic landscape and its attendant backlog than existed prior to the pandemic and what new staff there is lacks experience and training.

Many court employees appreciated the ability to work from home during the pandemic. This was necessary because of the closure of some courthouses and the imposition of limits on in-person staff to facilitate social distancing. Many court employees reported high levels of satisfaction working remotely due to greater flexibility and efficiency, including not having to commute, being able to focus better at home, and spending more time with their families. As conditions normalized and public health concerns subsided, court staff were required to return to their courthouses on a full-time basis by May 2021. This was perceived as both an inconvenience as well as a potential safety hazard by those who were concerned about COVID exposure and inadequate ventilation or other safety protocols in courthouses and other UCS offices. The Working Group heard from a number of court employees who either themselves were contemplating leaving, or knew of others who had left, as a result of the switch back to in-person work. Court reporters and translators disliked that they were expected to work in-person even when the proceeding they were assisting was occurring virtually.

The Working Group also heard concerns about staffing shortages impacting the pool of 18-B attorneys, Attorneys for Children, and other appointed counsel. Since the start of the pandemic, the number of attorneys providing state-guaranteed legal representation has decreased sharply. Ballooning

*“Virtual practice helps reduce the physical toll on attorneys who have heavy caseloads in multiple venues over a broad geographic area. This is even more significant in rural counties, where panel attorneys often practice in several counties.”*

Women’s Bar Association of the State of New York

pandemic-era workloads, the stresses attendant with remote work, and stagnant pay were all reasons cited to the Working Group as causes underlying the increased departure rates. Although the number of appointed counsel began to decline before the pandemic, the rate of departures and ensuing workload backlogs worsened during the pandemic. For example, witnesses testified that from 2005 to 2020, the number of attorneys participating in Onondaga County’s Assigned Counsel Program has decreased by 13%, and since 2018, the number of Family Court 18-B attorneys has declined by nearly 30%. Rural areas in New York have experienced especially high departure rates. For instance, six out of eight counties surveyed by the Third Judicial Department lost more than half of the Attorneys for Children panel, with Hamilton County losing more than seventy-five percent of its panel.

As a result of these departures, 18-B attorneys have been further burdened with

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increasingly difficult-to-manage caseloads. These departures came at the same time that conditions resulting from the pandemic saw increased demand for appointed representation, such as for domestic violence matters and landlord-tenant actions. The Working Group heard that the increased workload has resulted in worsening public perception of the quality of services provided by appointed attorneys. One person reported that they have seen an increased rate of individuals eligible for appointed attorneys opting to self-represent out of fear their appointed counsel will not be able to allocate adequate time to their case.

These increases in workload have occurred at a time of pay stagnation for 18-B attorneys. As of the date of this Report, 18-B attorneys are paid the same rate as they were in 2004, the last year a pay raise went into effect. This pay rate is no longer competitive. At the same time, legal service providers themselves have experienced a general decrease in the number of available attorneys, resulting in even more work for those remaining on 18-B panels. In total, the number of 18-B attorneys able, willing, and capable of representing indigent clients has been severely diminished since the outset of the pandemic.



Ontario County Court House, Canandaigua, NY



# Recommendations

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Based on the testimony described above, as well as its review of other studies and reports regarding the performance of the courts during the pandemic, the Working Group makes the following recommendations:

## Recommendation 1: Expand and Encourage the Use of Virtual Proceedings

There is broad consensus that virtual proceedings provide benefits for all court users, litigants, counsel, judges, and staff alike, and a general opposition to returning to the way things have always been done, namely, exclusively in-person proceedings for all matters and types of proceedings. That said, there are two considerations that need to be taken into account as courts seek to expand the use of virtual proceedings. The first is that there are situations where virtual proceedings are not appropriate, or where virtual proceedings are inferior to in-person proceedings, such as in serious criminal matters or where credibility determinations are an important aspect of the proceeding. Thus, judges should have flexibility and discretion in the decision as to whether a proceeding will proceed virtually or in person. Second, there needs to be transparency and predictability by courts in the use of virtual versus in-person proceedings. At a basic level, parties need to understand in advance when a matter is going to be virtual as opposed to in-person. Moreover, they need to understand and be able to have some input on that decision, so that it does not appear to them to be arbitrary or that their legitimate interests are not being considered.

In order to balance these considerations—the need for flexibility and judicial discretion, with the need for transparency and stakeholder input—the Working Group recommends the adoption of guidelines for different types of actions and proceedings that identify whether a particular proceeding should generally be virtual or generally be in person.<sup>47</sup> Importantly, these guidelines should provide for factors that judges should consider if and when they

*“Our recommendation to resolve these varied issues is simple: Courts must take a leadership role and issue clear, consistent procedures within each court that govern virtual procedures, rather than leaving practices to be determined ad hoc by judges and clerks.”*

New York Legal Assistance Group

decide that it is appropriate to depart from the guidelines. These factors should include whether the parties to the matter consent to the proceeding being virtual or in-person, circumstances that would make virtual or in-person attendance difficult for a party or witness, and other factors a judge could consider in determining what is in the best interests of justice.

Appendix C sets forth the Working Group’s recommended guidelines for different types of actions and proceedings,

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<sup>47</sup>The Working Group recognizes that expansion of the use of virtual proceedings in criminal matters may require an amendment to N.Y. Criminal Procedure Law § 182, which permits courts to conduct proceedings electronically, but only in certain circumstances and certain counties within the state.

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and the factors to be considered in deviations from those guidelines. For example, within criminal courts, the guidelines call for proceedings for arraignments/initial appearances to be in person in situations where the defendant is confined, but suggest that a judge consider the consent of the parties (e.g. the defendant) and other factors in deciding on potential deviations from this guideline.<sup>48</sup> Conversely, the guidelines call for conferences to be held virtually in criminal matters, but also suggest that a judge consider consent, the lack of access to appropriate technologies, and other factors in potentially allowing for such a conference to proceed in-person. In this way, the guidelines encourage the use of virtual proceedings in appropriate situations, while also allowing for the exercise of judicial discretion in a manner that is transparent and fair to the parties.

In addition to recommending the expansion of virtual proceedings, the Working Group also recommends the continued use of virtual depositions where appropriate. Virtual depositions became commonplace during the pandemic in order

## Recommendation 2: Bring Greater Transparency and Consistency to the Use of Virtual Proceedings

Adopting the above guidelines would improve the transparency around the decision of *when* virtual proceedings are to be conducted. In addition, there should be greater consistency regarding *how* such virtual proceedings are conducted.

to permit pretrial discovery to proceed even while health recommendations limited the ability of witnesses and counsel to travel and/or be in the same room with one another. Virtual depositions brought significant benefits in terms of the cost efficiency of depositions, largely by eliminating the need for counsel, witnesses, and court reporters to travel to one location to conduct a deposition. Parties should continue to be able to benefit from virtual depositions where there is unanimous

*“While the practices in and opinions about the different courts varied, there were some universal observations and comments, the most prevalent of which was that there needs to be more uniformity of rules and protocols within each court, at a minimum countywide if not citywide.”*

New York City Bar’s Council on  
Judicial Administration

consent among the parties to the deposition. Where there is not unanimous consent, virtual depositions should still be available where there is a showing of need by one party and/or a ruling by the court that a deposition should proceed virtually.

Expectations are generally better formed around how parties, counsel, and judges are to conduct themselves in live proceedings than they are with respect to virtual proceedings. Thus, the courts should develop and publish best practice guidelines

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<sup>48</sup> While there was general consensus among the Working Group that virtual arraignments were appropriate in some situations, some members of the Working Group oppose virtual arraignments in any situation.

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for judges to consider with respect to protocols for virtual proceedings, and to encourage judges to publish these practices on their web pages and otherwise make counsel and parties aware of them. These guidelines should include:<sup>49</sup>

- *Expectations for parties in terms of logistics for the waiting room and how they should announce themselves when the proceeding begins;*
- *Guidelines for when video should be engaged and/or when purely telephonic appearances are permitted, and the appropriate use of muting to limit audio noise;*
- *Reminders to court users to be cognizant of the needs of the court reporter to create an accurate record (as applicable), including identifying themselves for the record and not speaking over one another;*
- *Maintaining appropriate decorum during the proceeding, including appearing from a quiet location free of distractions, dressing appropriately, and using respectful language during the proceeding;*

- *An admonishment against unauthorized recording of the virtual proceeding.*

The ability to easily record and digitally transcribe proceedings has also raised difficult questions as to what should constitute the official record of the court, and who should have access to the recordings that are not the official record. It was suggested that recordings of proceedings could be useful to attorneys, litigants, and even judges because they can convey information beyond what a transcript captures, *e.g.*, about tone of voice and demeanor. Moreover, they permit judges to have an informal record of what occurred that they can consult when there has been no reporter at the proceeding, such as during argument on a motion. However, there are concerns that reliance on these recordings could create confusion and conflict about what constitutes the official record of the Court. The Working Group recommends further study with respect to the use of recording technology in court proceedings.

## Recommendation 3: Improve the Functioning of Virtual Proceedings

The Working Group recommends upgrading the technical capabilities of the platform(s) used for virtual proceedings to make them better suited to legal proceedings. Virtual appearances are currently conducted using Microsoft Teams, a leading video conferencing software platform. However, as discussed above, Microsoft Teams is not ideal for hosting

virtual proceedings because it is designed for business meetings and not customized for court appearances.

A platform that is custom-built for court appearances would greatly improve the user experience. Court technology staff are currently considering a new virtual proceedings platform specifically designed

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<sup>49</sup> *Virtual Courtroom Standards and Guidelines*, National Center for State Courts. Available at: [https://www.ncsc.org/data/assets/pdf\\_file/0016/40363/RRT-Technology-Guidance-on-Remote-Hearings.pdf](https://www.ncsc.org/data/assets/pdf_file/0016/40363/RRT-Technology-Guidance-on-Remote-Hearings.pdf).

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for court appearances, which could alleviate many of the issues described above. Virtual participation should feel as close as possible to sitting in a courtroom and should ensure that all individuals feel included, heard, and treated fairly.

General recommendations to improve the functioning of virtual proceedings include:

- *There should be better “waiting rooms” and queue management for litigants and counsel awaiting their virtual proceeding, so that it is clear to participants that they are in the right place, they are provided information about when their proceeding will begin, and they have an opportunity to interact with someone who can provide technical support.*
- *Participants should be allowed to test and gain familiarity with the platform prior to appearing in court. Court clerks or support staff should be available and trained to assist participants wishing to familiarize themselves with the virtual platform before the start of a proceeding.*
- *Court participants should be clearly identified in the virtual proceeding. Each participant should be clearly labeled as: judge, counsel, witness, and party, along with the individual’s name.*
- *There should be more effective breakout sessions to permit better attorney-client consultation, and judicial sidebars. Parties should be able to request a breakout room during a virtual proceeding, and the transition into and out of such breakout rooms should be seamless. This will streamline attorney-client communication and afford an opportunity to speak with the judge or opposing counsel off-record where necessary.*
- *There should be improved control over permissions, such as access to the courtroom,*

*ability to speak, and ability to present/view evidence. This is important so that judges have more control over the virtual courtroom, including the ability to initiate sidebars, to “clear” the courtroom to discuss sensitive matters, and to better manage the presentation of witnesses.*

- *Provide a dedicated channel for simultaneous interpretation for limited English proficient (LEP) speakers. This will reduce the time for proceedings by half over the current practice, which requires that interpretation be conducted consecutively.*
- *Offer computer aided real-time transcription (CART) and closed captioning to improve accessibility. CART provides instantaneous transcription of spoken words into written words for the hearing impaired or others who benefit from words being visually presented.*
- *Integrate live-streaming of appropriate proceedings to provide for public access to proceedings, subject to the court’s ability to limit or end streaming where required for security, confidentiality, or other purposes. The court should investigate solutions to the problem of unauthorized recording of court proceedings.*
- *Provide integration between the virtual platform with the case management platform(s) so that scheduling of court appearances and posting of links to virtual proceedings are more seamless.*

Another important aspect of the virtual platform is its support for court reporters, who face unique challenges in virtual proceedings, even with the best technology. To improve the functioning of virtual proceedings, the Working Group recommends that courthouses designate quiet, uninterrupted areas to court reporters where they have access to hard-wired internet for better transmission. Moreover,

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effective management of Microsoft Teams or an alternative platform by court clerks or

other court staff would improve the ease of transcription.

## **Recommendation 4: Expand Alternatives for Court Users to Access Virtual Proceedings and Other Court Resources**

Some court users face barriers to participating in virtual proceedings and accessing other court resources. For instance, not all litigants have a quiet safe space from which to participate in virtual proceedings and others need appropriate equipment, internet bandwidth, or technical support in making it all work. In response to these needs, the New York Courts started providing “kiosks” inside of courthouses where litigants have private and safe access to the necessary equipment and support to attend virtual proceedings. These programs should be expanded. Kiosks should be a priority of all courthouses, especially high-volume courts with a large number of self-represented litigants. This is particularly true for family courts, where survivors of domestic violence need a safe space from which they can appear in virtual proceedings. This measure will help ensure survivors of domestic violence and other vulnerable populations are not trapped at home with their abuser or in a space where they would otherwise be unable to speak candidly. Courthouses should have a kiosk that is accessible to the public, with a help line or in-person assistance available, even at times when the courthouse is forced to close.

The courts have also experimented with community partnerships that brought kiosks into places other than the courthouse. As part of the Virtual Court Access Network (“VCAN”), the courts worked with local government and community-based organizations to provide access to equipment and support in municipal buildings, libraries, churches, and community centers. The VCAN program should also be expanded to more localities, particularly in rural areas where travel to courthouses may be an impediment to participation.

Another means through which the court system can improve participation in virtual proceedings is through work with prisons and jails to ensure incarcerated individuals are able to participate. This includes providing incarcerated individuals with access to requisite technology and technological support to attend and appear in proceedings. Incarcerated individuals do not have access to their own technology and thus require additional attention in order to improve participation in virtual proceedings.

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## Recommendation 5: Improve Accessibility for People Who Require Accommodations

Virtual court proceedings can benefit people with disabilities and other individuals requiring accommodations. The elderly and those with limited mobility can benefit from not needing to travel to courthouses. Litigants with hearing impairments can benefit from technology that provides for simultaneous transcription

*“We recommend the expansion of Help Centers, both in-person and virtual, for unrepresented litigants with links to Microsoft Teams and virtual proceedings. Increased access to assistance with forms and information provided by court staff in multiple languages is also recommended.”*

Latino Judges Association

of spoken language. And LEP individuals can benefit from the availability of a larger pool of interpreters who could provide services remotely than the pool available to travel to any given courthouse.

That said, virtual proceedings can require accommodations in the same way that in-person proceedings can. As discussed elsewhere, the elderly may need more support in gaining access to and using necessary technology. Litigants with hearing impairments can benefit from automatic transcription technology (known as CART) to the extent it is available. And language interpreters need specialized equipment to support simultaneous translation, such as a dedicated audio channel between the translator and the LEP

individual. The Working Group recommends investments in the above efforts to ensure access to justice for all individuals regardless of their needs.

Additional recommendations to improve access to virtual and in-person appearances:

- *Establishing a private means, such as a secure web form, for people to request accommodations. Such a mechanism would make it clear how courts users can seek accommodations as well as mitigate the reluctance that some may feel in making an in-person request.*
- *Ensuring that clerks, judges, and relevant courthouse staff are trained on the duty to affirmatively offer accommodations and the range of accommodations available to court users.<sup>50</sup>*
- *Expanding e-filing, discussed below, which removes the barriers that physical filing of court documents presents to individuals with limited mobility who cannot easily travel to the courthouse.*
- *Designating an assigned “guide” representing the court who will be involved in technology coordination for disabled users.*
- *Providing the option to sign on early to a video conference in order to assist those struggling with accommodations or technology to prepare for the virtual proceeding.*
- *Reviewing judge-made rules that contain blanket statements such as, “all X proceedings must be in person,” which can be read to disadvantage court users with disabilities.*

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<sup>50</sup> *Access to Justice in Virtual Court Proceedings: Lessons from COVID-19 and Recommendations for New York Courts*, New York Legal Assistance Group, August 2021. Available at: [https://nylag.org/wp-content/uploads/2021/08/NYLAG\\_CourtsDuringCovid\\_WP\\_FINAL2.pdf](https://nylag.org/wp-content/uploads/2021/08/NYLAG_CourtsDuringCovid_WP_FINAL2.pdf).

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## Recommendation 6: Improve Systems for Communicating with and Supporting Court Users, Including a New Website

The pandemic highlighted the ways in which the courts' public communications systems are not up to modern standards. There are two key initiatives to focus on.

*First*, the courts need a reliable event notification system to communicate reminders, notifications, and other important information to court users. While the court system has an event notification system called E-Track, email addresses and cell phone numbers are not routinely collected when matters are filed, or when parties appear, limiting the value of such systems. Addressing this shortcoming will help ensure all parties remain informed with the most up-to-date and accurate information in the event of emergencies or change. The Working Group heard testimony that event notification systems increase appearance rates and overall satisfaction with the court system.<sup>51</sup>

*Second*, the court system needs to revamp its website, NYCourts.gov, to be more user-friendly, informative, accessible, and up to date.<sup>52</sup> For a model, the court system should look to sites like New York City's NYC311,

which makes accessible and searchable the hundreds of different ways a person may want to access city government information and services and presents them from a user-centric point of view.

In addition to revamping the design, the website should:

- *Provide a single point of entry for information about all courts, including online calendars showing scheduled hearings and appearances, with links for public access, rather than the current disjointed system that utilizes different tools for different types of courts.*
- *Improve the searchability of online help resources, including adding a chat bot to assist with live questions.*
- *Expand the ability to pay fines and fees online and request fee waiver to cover more courts and more types of fines and fees.*
- *Expand the number of forms that can be accessed and submitted through the website, make them more user friendly, and ensure that such forms can be filled out on mobile devices.*
- *Make the full contents of the website available in languages other than English (currently, only small portions of the website are available in other languages).*

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<sup>51</sup> *Pandemic Era Procedural Improvements that Courts Should Adopt Permanently*, The National Center for State Courts (September 2020).

<sup>52</sup> These recommendations are drawn in part from an earlier Commission report. See *Initial Report on the Goals and Recommendations for New York State's Online Court System*, Commission to Reimagine the Future of New York's Courts (November 9, 2020).

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To further support the above initiatives, the court system should publish best practices and provide trainings to guide judges and staff in their use of electronic communications with court users. These best practices might include guidelines

around whether and how to accept electronic communications from court users, providing adequate notice for hearings, providing adequate notice regarding accommodations, and acknowledging receipt of communications.

## Recommendation 7: Ensure That There Is Appropriate Public Access to Virtual Proceedings

There is an important public interest in the business of the court being open to the public, including for family and friends of the interested parties, the press, and the general public. This plays an important role in ensuring not only that interested parties are able to participate in the judicial process, but also that there is appropriate transparency and public scrutiny of the courts. Unfortunately, virtual proceedings too often have been effectively inaccessible to the public not because they were technically closed, but because the means of accessing the virtual proceeding were not well known. Accordingly, judges and the court system need to ensure that there is adequate public notice of virtual proceedings, including the times when they are taking place with links and instructions for accessing them. This notice should be provided sufficiently in advance of the proceedings to allow for any interested parties to attend. The OCA recently rolled out a tool allowing individuals to request access to a virtual proceeding in certain

courts, which is an important start, but more needs to be done to make sure that interested parties are aware of virtual proceedings and have a seamless way to obtain access.

While public access to proceedings is important, there are situations where public access to proceedings is not appropriate, such as certain family court matters, mental health proceedings, and other proceedings regarding sensitive topics that implicate the safety of one or more parties.<sup>53</sup> In addition,

*“The use of blending remote and in-person appearances has allowed for certainly increased productivity and the ability to quickly pivot when needed to address not only the needs of the court but of any other party that’s involved with our actions.”*

Cavette Chambers, Corporation Counsel,  
City of Buffalo

there will be times in an otherwise public proceeding where a judge will need to close the courtroom to address sensitive topics with counsel and/or the parties. Thus, the provision for public access to proceedings should be guided by protocols that address

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<sup>53</sup> See *Background and Legal Standards – Public Right to Access To Remote Hearings During COVID-19 Pandemic*, National Center of State Courts. Available at: [https://www.ncsc.org/\\_data/assets/pdf\\_file/0017/40364/RRT-Technology-Background-and-Legal-Standards-on-Public-Right-to-Access-to-Remote-Hearings.pdf](https://www.ncsc.org/_data/assets/pdf_file/0017/40364/RRT-Technology-Background-and-Legal-Standards-on-Public-Right-to-Access-to-Remote-Hearings.pdf).



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when the public should be permitted (and not permitted) to attend virtual proceedings and that establish ground rules for public access. There should also be a mechanism for judges to “close” the virtual courtroom when that is required in a given proceeding.

Courts should consider less-restrictive measures to closing the virtual courtroom where feasible, such as limiting access to certain individuals or obscuring only parts of the proceeding (e.g., sensitive pieces of evidence).

## Recommendation 8: Expand Use of Electronic Filing to All Courts and All Counties

The Working Group recommends that the Chief Administrative Judge of the UCS be given authority to expand e-filing to all court types, all case types, and all counties, subject to appropriate consultation with local stakeholders, such as the county clerk, local bar associations, and institutional service providers. The UCS has proposed legislation that would implement this recommendation.<sup>54</sup> The Legislature should introduce and pass this legislation.

facilitating filing during the pandemic. That said, EDDS was and is a “stop gap” measure that does not provide the full benefits of e-filing, including straight-through filing and access to electronic dockets. Thus, its use should be phased out in courts once mandatory e-filing is available.

In the meantime, the Electronic Document Delivery System (“EDDS”) should remain available in all courts where e-filing is not available. The UCS introduced EDDS during the pandemic to address challenges court users faced in making filings in courts where e-filing was not permitted, and courthouse access was limited.<sup>55</sup> EDDS was very helpful in

Two other measures should be undertaken to improve the ability of courts to support e-filing. First, e-filing should be expanded to include transcripts in appellate matters, and to allow remote access for digital archiving of stenographic digital notes. And second, courts should authorize the use of signed affirmations and conformed signatures for court filings in place of notarized affidavits, which can present an unnecessary impediment to filing when notaries are closed and/or difficult to access, as occurred during the pandemic.

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<sup>54</sup> Proposed legislation adds the following new sections: CRC § 42, UDCA § 2103-a, UCCA § 2103-a, UJCA § 2103-a, CPL § 10.40(2)(c), and FCA § 214(c); replaces the following sections: CPL § 10.40(2)(b) and FCA § 214(b); and amends CPL 10.40(2)(e)(ii). See *The Expansion of Electronic Filing: A Report and Recommendations of the Structural Innovations Working Group*, the Structural Innovations Working Group of the Commission to Reimagine the Future of New York’s Courts, January 2021. Available at: <https://www.nycourts.gov/LegacyPDFS/publications/pdfs/CommitteeReport-eFiling.pdf>.

<sup>55</sup> See *The Expansion of Electronic Filing: A Report of the Structural Innovations Working Group*, Commission to Reimagine the Future of New York Courts, (January 2021), at 10-12. Available at: <https://www.nycourts.gov/LegacyPDFS/publications/pdfs/CommitteeReport-eFiling.pdf>.

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Legislation has been drafted that would amend the CPLR to effectuate this change.<sup>56</sup>

Finally, technical support resources need to be expanded and improved to ensure that court users have the help they need to file documents electronically. This topic is addressed more generally below, but with

respect to e-filing, if court users are expected to file documents electronically themselves, there needs to be adequate support to help them do so. These resources are particularly important to assist self-represented litigants and counsel that may lack technical proficiency.

## Recommendation 9: Invest in Locally Appropriate Modernization Projects that Will Permit Courthouses to Better Support Virtual, Hybrid, and In-Person Proceedings

The Working Group recommends the expansion of funding for the Courtroom Modernization Initiative (“CMI”). Begun in 2019, the CMI seeks to modernize nearly 1,400 courtrooms and hearing rooms throughout New York. This means adding high-speed Wi-Fi internet connection, an advanced audio system, electrical outlets, and charging stations for counsel tables. With the advent of virtual proceedings, CMI should also encompass the availability of mobile touchscreens that allow for digital evidence presentation and support for videoconferencing. This will allow for “hybrid” proceedings, in which some court participants appear live in the courtroom, while others (e.g., witnesses, counsel, interpreters) could appear remotely. CMI should also be expanded to include two-way

audio devices with a dedicated band that support remote simultaneous translation.

Each courthouse and judicial district needs flexibility to address the particular needs of their local population and bar. Some courts, for instance, have a greater

*“Hiring technical staff has always been challenging, since there are more jobs available than qualified candidates. Many companies are still working from home, so hiring the best candidates without a work from home option is difficult.”*

Jason Hill, OCA Division of Technology & Court Research

demand for in-person over virtual proceedings, and they therefore have a greater need for upgrades such as improved audio rather than technology for virtual or hybrid proceedings, while in other courts the opposite is true. While not all courtrooms

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<sup>56</sup> Proposed legislation adds the following new sections: CRC § 42, UDCA § 2103-a, UCCA § 2103-a, UJCA § 2103-a, CPL § 10.40(2)(c), and FCA § 214(c); replaces the following sections: CPL § 10.40(2)(b) and FCA § 214(b); and amends CPL 10.40(2)(e)(ii). See *The Expansion of Electronic Filing: A Report and Recommendations of the Structural Innovations Working Group*, the Structural Innovations Working Group of the Commission to Reimagine the Future of New York’s Courts, January 2021. Available at:

<https://www.nycourts.gov/LegacyPDFS/publications/pdfs/CommitteeReport-eFiling.pdf>.

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require all of the technologies necessary for supporting hybrid proceedings, most courthouses should have at least one courtroom available that does, which could be shared by chambers on an as-needed basis.

Training and ongoing support are important components of the modernization projects. Court staff and judges have, at times, been hesitant to embrace these new

technologies. More training could alleviate this issue. The Working Group recommends mandatory training for relevant court staff (including judges) on any computer system or technology that the courts may use, including training on cyber-security issues. Centralized technical support services, as recommended below, will also help support judges and court staff in taking full advantage of the modernized courtrooms.

## **Recommendation 10: Improve Training and Technical Support Available for Judges, Court Staff, and Users**

As electronic means of accessing the court system, including e-filing and virtual proceedings, become more common, it is imperative that the court system offer improved training and technical support. Chief among the improvements should be a centralized “help desk” in each Judicial District for court users to get real-time support on participating in virtual proceedings, electronic filing, and getting access to information about their cases. This centralized help desk would replace the patchwork system that exists today, where individual court clerks and staff are responsible for providing support to litigants and counsel and may lack the technical expertise to do so effectively. This recommendation is consistent with the recommendations of other court stakeholders.<sup>57</sup>

Support should be available for both the court system “end users,” such as litigants

and counsel, as well as judges and staff. Particular attention should be focused on local courts, such as Town and Village Courts, which are more likely to lack resources and training to conduct their business electronically. Because the local Town and Village courts are administered by local governments, the Justice Court Assistance Program (“JCAP”) provides annual grants to such courts to fund improvements, and it should be expanded in order to help such courts to improve their technological capabilities. OCA should develop and publish recommended minimum technical standards for local courts to target in improving their technological capabilities. In addition, courts at all levels should partner with local bar associations and legal service organizations to conduct training on relevant topics, including virtual proceedings and depositions, and e-filing.

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<sup>57</sup> *Access to Justice in Virtual Court Proceedings: Lessons from COVID-19 and Recommendations for New York Courts*, New York Legal Assistance Group, August 2021. Available at: [https://nylag.org/wp-content/uploads/2021/08/NYLAG\\_CourtsDuringCovid\\_WP\\_FINAL2.pdf](https://nylag.org/wp-content/uploads/2021/08/NYLAG_CourtsDuringCovid_WP_FINAL2.pdf).

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## Recommendation 11: Expand and Provide Better Support for Court Staff

The success of the court system is contingent on hiring and retaining excellent court staff and providing them with the training and support they need. The pandemic took a significant toll on court staff, as it did for workers in many areas of the economy, due to added stresses and uncertainty that came with the pandemic. The recommendations in this report are important not only because better preparation will support court users, but also because they will support court staff.

The courts are facing an extraordinarily competitive job market. Unemployment is low, market salaries have risen, and many people have retired or otherwise left the job market. Rural areas in particular are struggling to hire enough staff. UCS is competing with other private and public employers who may offer higher pay as well as greater work flexibility, including the ability to work remotely. This is particularly true with relation to technology staff where competition for talent is fierce.

UCS should reassess compensation and benefit packages for its staff to ensure that it

remains competitive. This is particularly true with regard to technology staff given the importance of the initiatives and recommendations of this report, such as providing centralized technical support, supporting the deployment of new applications, and the expansion of the Courtroom Modernization Initiative.

The court system should also assess roles that can and should be permitted to work remotely, in full or in part, especially in rural areas. The pandemic has demonstrated that remote work can be done effectively and expanding remote work options will increase the pool of potential employees for the court system statewide. Offering remote work is also likely to improve morale among the workforce, many of whom appreciate the flexibility of being able to work remotely, as well as improving productivity, recruiting, and retention needs. As the court system seeks to expand the ability of the courts to operate in a virtual environment, it should do the same with respect to its valued staff.

## Recommendation 12: Implement a Plan for Responding to a Future Pandemic or Other Court Disruption

One of the most important lessons of the pandemic is the importance of planning for success in responding to a court emergency. The court system was able to continue to function in the face of COVID, but there were significant gaps and disruptions, the repercussions of which are still being felt

today. The threat of future disruptions comes not just from resurgence of COVID or another pandemic, although that remains a threat, but myriad other potential disruptions, including severe weather events, earthquake, or other natural disasters, debilitating cyber-attacks, and

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terrorist attacks or acts of war. These disruptions could affect the state as a whole, or they could be more localized, such as a heavy winter storm that forces closure of courthouses in a given region of the state, which happens with regularity. A comprehensive, vetted, and practiced response plan will allow the courts to serve their essential public purpose in the face of such a disruption.

One critical goal of this plan will be to avoid the unfortunate occurrence in 2020 in which certain matters deemed “non-essential” were unable to be filed or, if already filed, proceed. It may be necessary to triage and prioritize certain matters such that emergency matters can be addressed in the short window of time that they require, but *all* matters must continue to be filed, heard, and adjudicated in a timely fashion.

An emergency response plan should include the following:

- *Criteria for the declaration of a disruption, and identification of participants and lines of responsibility within the court system for responding to a disruption. Precious days can be lost at the start of a disruption just determining whether a disruption has occurred and who is responsible for what. The members of an “emergency working group” should be identified with appropriate skills, expertise, and lines of responsibility.*
- *Development of a set of template administrative rules that can be issued promptly in the event of a disruption. These rules can be issued to modify and/or suspend existing rules as necessary in the event of a disruption. Administrative orders*

*promulgated in 2020 provide a helpful template for the rules, and key topics include*<sup>58</sup>:

- *Prioritization and triage of case types and proceedings;*
  - *Suspension and/or postponement of deadlines;*
  - *Consolidation of matters into a smaller number of courthouses;*
  - *Health and safety regulations regarding access to courthouses;*
  - *The use of virtual proceedings.*
- *Standards for the operation, closure, and re-opening of courthouses during and following a disruption. This should include criteria as to when courthouses should be closed and when they can be re-opened. In the case of a pandemic or other health emergency, it should also include rules for addressing any health-related issues, such as masking protocols, social distancing, and other health requirements. It should include plans for reconfiguring courthouse space to comply with social distancing requirements in a manner that preserves the ability to serve the public and conduct court business effectively. The court system should ensure that it has adequate access to supplies of personally protective equipment (“PPE”). This plan should be vetted by medical professionals and based on generally accepted medical standards and research.*
  - *Improved workforce flexibility that ensures that judges and court staff are able to continue to work effectively during a disruption. This should include the expansion of remote work for court staff, such as the implementation of regular rotations of staff who work remotely, so that the court system is practiced and better able to support a shift to mostly or exclusively remote work. It should also include the implementation of tools that support a more distributed workforce, including portable devices such as laptops for more*

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<sup>58</sup> See Appendix D for examples of such orders from the Seventh Judicial District.

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staff, elimination of reliance on paper records, and the deployment of collaboration tools (e.g., Teams) to support remote work.

- A communications plan to ensure that timely information is provided to judges, court staff, and court users in the event of a disruption. This plan should address communications about court openings and closures, changes to court procedures, changes in the scheduling of court proceedings, and safety protocols for staff and court users. The communications plan should address multiple channels of communication, including timely website updates, email and text communications, social media, automated phone messaging, courthouse signage, and media outreach. The plan should address communication with court staff, court users, stakeholders (e.g., law enforcement, local government, legal service providers), and the general public.
- A plan for continuity and resiliency for information systems, including case management systems, systems needed to support virtual appearances, the court website, systems for communications with court users, and internal systems for accounting, HR, and staff communication and collaboration. The plans should address the possibility of outages due to weather or man-made or natural disaster, as well as the possibility of cyberattack, such as the ransomware attack that recently debilitated Suffolk County government agencies (including some

courts).<sup>59</sup> The plan should address the resiliency of court systems to disruption as well as redundancies in the event that a disruption takes place.

- A full-time senior position within OCA with responsibility for developing and overseeing emergency preparedness efforts by the court system.
- Regular drills to test and refine the court system's readiness to respond to disruptions. These drills should seek to simulate the range of possible disruptions and allow decisionmakers to play out scenarios for how they would react. Drills should involve senior decisionmakers at OCA as well as from a range of courts and geographic areas. Some drills should assess statewide readiness while others should address readiness within particular regions and/or courts. Drills should be managed by an outside consultant who can structure the drill and prepare an assessment following each drill on the court system's performance and where improvements can be made in the court system's emergency preparedness.
- A standing task force of external stakeholders to advise OCA on emergency preparedness. This group should include appropriate outside experts (e.g., a public health professional) as well as key stakeholders such as local government officials, legal service providers, and the bar. It should include individuals across the state from a mix of urban, suburban, and rural areas.

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<sup>59</sup> See S. Maslin Nir, "How a Cyberattack Plunged a Long Island County into the 1990s," *The New York Times* (November 28, 2022). Available at: <https://www.nytimes.com/2022/11/28/nyregion/suffolk-county-cyber-attack.html>.

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## **Recommendation 13: Appropriate and Earmark Supplemental Funds for Court Modernization and Emergency Preparedness**

Many of the above recommendations require additional resources to implement successfully. For example, expanding the number of courtrooms that can support hybrid proceedings, providing kiosks for court users to participate in virtual proceedings, expanding technical support for court users and staff, and developing and maintaining an emergency preparedness plan all require significant investments

beyond what is available from current court resources. OCA should prepare a budget for a supplemental appropriation that will fund these priorities and present it to the Legislature for inclusion in the 2024 budget and beyond. These supplemental funds should be earmarked to be spent on priorities that will modernize the courts and prepare them for future disruptions.

## **Recommendation 14: Authorize a Permanent Commission of Stakeholders, External Experts, and Internal Decisionmakers to Help Implement the Above Recommendations and Identify Future Needs**

The court system does not operate in a vacuum and has a range of stakeholders who have strong interests in seeing it succeed, including local governments, social services agencies, legal services providers, the bar, and the litigants themselves. Moreover, there are different constituencies within the court system with varying perspectives and areas of expertise. The experience of the Working Group over the last six months has shown that bringing all of these elements together is a powerful way to identify opportunities for change and improvement in the court system, including identifying problems to be solved and ways to solve them. The next, critical stage in the process is to translate those ideas into *action*, and a permanent group comprising the above

constituents has a role to play in that project as well, advising on the further development of the ideas presented, and working with court leadership, state agencies, and the legislature to help see that the ideas are implemented. Moreover, the recommendations set forth here are just the beginning. “Court modernization” is not a discrete project with a start and an end, but a process that requires ongoing work and attention. Accordingly, to ensure that New York courts not only modernize but stay on the cutting edge, a Permanent Commission should be authorized to continue to work with the court system to research, analyze, and make innovative proposals for the justice system of the future.

## Conclusion

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The task of adequately preparing the court system for the next major disruption, and for the future generally, is momentous. It is not an effort that will be accomplished with any single change to court policies, with any single investment, or with any single piece of legislation. It instead will be an effort of sustained attention, leadership, investment, innovation, and work, over a period of years. The recommendations in this report are an important start, but they are just a start. They reflect the needs as we see them now, based on the information available to us. But the way we conceive of the problems and the solutions to them will inevitably change, even as we make progress on them. Thus, long-lasting improvement requires not just a particular set of changes, but a plan that puts the New York Courts on a path of continuous innovation and improvement.

Although the task is momentous, the New York Courts have many strengths to draw on to meet its challenges. One advantage that has become clear during the Working Group's short tenure is the legion of talented people who are dedicated to the very best aspirations of justice in New York Courts. Although the Working Group's effort began barely six months prior to the publication of this report, it quickly found hundreds of people who cared enough about the future of New York's courts to take time from their busy schedules to show up and offer their observations, perspectives, and recommendations on what the COVID-19

pandemic taught about the court system's shortcomings and opportunities to improve. These individuals came with many different experiences and perspectives, but they shared a sincere belief that lessons could be drawn from the pandemic about how to better meet the fundamental mission of the New York Courts: to deliver equal justice and achieve the just, fair, and timely resolution of all matters before the courts.

In hearing from these different perspectives, the Working Group finds the common ground that exists to be striking. Across the hundreds of people who offered testimony, the Working Group heard a significant degree of consensus over most of the important issues it considered. Moreover, in the relatively rare areas where there were differences of opinion, there was a recognition and respect for different perspectives, and an acknowledgement of the need to compromise.

The goodwill revealed during this exercise should not be wasted. Emergencies such as the pandemic can have a catalyzing effect on people and institutions, focusing us on our common interests and our shared responsibility to ensure that public institutions receive the care and attention that they need to succeed. There is a long road ahead in improving the performance of the New York Courts, but we believe that this report is an important step—not the first, but also not the last—down that road.



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# Appendix A: Testifying Witnesses

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- Samantha Agaum, Co-Deputy Executive Director and Director of Elder Law Program, Volunteer Lawyers Project of Central New York, Inc.
- Naima Aiken, Project Director, Queens Misdemeanor Treatment Court
- Natisha Alexander, Deputy Director, State Legislative Affairs, NYC Office of the Mayor
- Peter Alizio, Attorney, Alizio Law, PLLC
- Eric Allen, President, Association of Supreme Court Reporters Within the City of New York
- Hon. Shahabuddeen Ally, Supervising Judge, Civil Court of the City of New York, New York County; President, Asian American Judges Association of New York
- Aaron Alweis, Senior Court Reporter, 6th Judicial District – Supreme Court
- James Auricchio, Attorney, Erie County
- Michael Baker, Public Defender, Broome County Public Defender’s Office
- Sofia Balile, Attorney, The Law Office of Sofia Balile, Esq.
- Helaine Barnett, Chair, New York State Permanent Commission on Access to Justice
- Justin Barry, Chief of Administration, NYS Office of Court Administration
- Laura Belrose, Chief, Landlord Tenant Court, NYC Housing Authority
- Amanda Beltz, Director, Domestic Violence Law Unit, New York Legal Assistance Group
- Joanne Best, Public Defender, Orleans County
- Rosalind Black, Director, Housing Unit, Manhattan Legal Services
- Helen Blank, Attorney, Blank & Star
- Anna Blondel, Staff Attorney, Juvenile Rights Practice, The Legal Aid Society
- Kelly Blunt, Clinical Director & Owner, KB Forensics, Forensic Assessment and Treatment Services
- Connie Boland, Partner, Thompson Hine LLP
- Sam Braverman, Member, Board of Directors, New York State Association of Criminal Defense Lawyers
- Lauren Breen, Executive Director, Neighborhood Legal Services, Inc.
- Kerri Bringslid, President, Richmond County Bar Association
- Carla Brogoch, Legal Director, The Legal Project, Inc.
- Kristin Brown, President and CEO, Empire Justice Center
- Hon. Keith Bruno, Judge, Problem-Solving Courts, Clinton County
- Susan Bryant, Executive Director, New York State Defender’s Association
- Kelly Buckley, Chief Clerk, Family Court, 8th Judicial District
- Molly Burke, Advocacy and Policy Advisor, Family Legal Care
- Lt. Angela Bush, Onondaga County Sheriff’s Office
- Valerie Buzzell, Principal Local Area Network (LAN) Administrator, 9th Judicial District
- Carolyn Byrne, Managing Partner, Storch Byrne LLP
- Esther Cajuste, former President, Haitian-American Lawyers Association of New York
- Danielle Caminiti, Per Diem Attorney, Have U Covered, LLC
- Paulette Campbell, CLARO Managing Attorney, Western New York Law Center
- David Cardona, Chief Clerk, Albany County Supreme and County Court
- Joseph Cardone, Orleans County District Attorney
- Ralph Carter, Senior Counsel, Litigation & Cybersecurity, Workday, Inc.
- Jeff Carucci, Statewide Coordinator of Electronic Filing, Unified Court System
- Molly Casey, Attorney, Maguire Cardona, P.C.
- Richard Castle, Undersheriff, Saratoga County Sheriff’s Office
- Hon. Felix Catena, Administrative Judge, 4th Judicial District
- Michael Cervini, Attorney, Law Offices of Michael A. Cervini, PC
- Cavette Chambers, Corporation Counsel, City of Buffalo Law Department
- Tracey Chance, Conflict Defender, Schenectady County Conflict Defender’s Office

# Appendix A: Testifying Witnesses

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- Sarah Chandebal, Video Conferencing Coordinator, NYC Department of Correction
- Vince Chang, Partner, Wollmuth Maher & Deutsch LLP
- Sidney Cherubin, Director of Legal Services, Access Justice Brooklyn
- Mark Chevalier, Principal IT Analyst, Division of Technology and Court Research, NYS Unified Court System
- The Children’s Law Center
- Norman Chirco, Attorney, Norman J. Chirco Law
- Dana Chiu, Managing Attorney for Housing Administration, Mobilization for Justice, Inc.
- Joseph Ciravola, Principal LAN Administrator, Unified Court System
- Civil Service Employees Association, Inc.
- Michael Clarke, Director, Legislative Affairs Unit, New York City Police Department
- Erica Cohen, Support Magistrate, Jefferson County Family Court
- Carlos Collazo, Court Interpreter, Bronx Supreme Court
- Lawrencia Colón, Chief Clerk, Albany Family Court
- Hon. Gerald Connelly, Administrative Judge, 3rd Judicial District
- Prof. Kim Diana Connolly, Vice Dean for Advocacy and Experiential Education; Director of Clinical Legal Education, University at Buffalo School of Law
- Jaya Connors, Assistant Professor of Law; Director, Field Placement Clinic, Albany Law School
- Court Attorneys Association of the City of New York
- Hon. Melissa Crane, Justice, New York County Supreme Court, Commercial Division
- Hon. Andrew Crecca, Administrative Judge, 10th Judicial District
- Steve Crumble, Court User
- Sgt. Patrick Cullen, President, NYS Supreme Court Officers Association
- Sally Curran, Executive Director, Volunteer Lawyers Program of Central New York
- Hon. Lori Currier Woods, Judge, Orange County Family and Supreme Court
- Lisa D’Angelo, Chief Clerk, Supreme & County Court of Westchester County
- Hon. Matthew D’Emic, Administrative Judge for Criminal Matters, Kings County Supreme Court; Presiding Judge of the Brooklyn Domestic Violence Court and the Brooklyn Mental Health Court
- Sandra Davidson, Chief Deputy Commissioner, Suffolk County Department of Social Services
- Diana Davis, Chief Clerk, Courtland City Court
- Joanna Davis, Managing Attorney, Legal Aid Society of Northeastern New York
- Michael Deal, Managing Attorney, Criminal Defense Unit, The Legal Aid Bureau of Buffalo, Inc.
- Brian Degnan, Attorney for the Child/18-B Attorney, Genesee County
- Anna Maria Diamanti, Director, Family and Matrimonial Practice, Her Justice
- Jehed Diamond, Attorney
- Ann Dillon Flynn, Clerk of the Court, Appellate Division, Fourth Department
- Linda DiStefano, Chief Clerk, Ontario County Family Court
- Donald Doerr, District Executive, 5th Judicial District
- Kathleen Dougherty, Executive Director, Onondaga County Bar Association Assigned Counsel Program, Inc.
- Jennifer Dunn, Treatment Court Case Manager, Lackawanna City Court
- Joana Eder, Director, Office of Attorneys for Children, Supreme Court of New York, Appellate Division, Second Department
- Norman Effman, Wyoming County Public Defender
- Kelly Egan, Appeals Director, Rural Law Center of New York, Inc.
- Hon. Susan Egan, Supervising Criminal Court Judge, 8th Judicial District, Erie County Court
- Amy Eisenberg, Rockland County Women’s Bar Association, Corresponding Secretary

# Appendix A: Testifying Witnesses

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- Molly England, Suffolk County Anti-Trafficking Initiative (SCATI) Task Force Coordinator; Associate Executive Director, ECLI-VIBES
- Laurie Epstein, Director of Litigation, Pace Women’s Justice Center, Pace University Elisabeth Haub School of Law
- Marcia Estrada, Chapter Coordinator, Sepa Mujer
- Family Legal Care
- Hon. Paula Feroletto, Former Administrative Judge, 8th Judicial District
- Adele Fine, Bureau Chief, Family Court Bureau, Monroe County Public Defender’s Office
- Marc Fishman, Court User
- Saul Fishman, President, Civil Service Bar Association
- Janet Fong, Citywide Technical Support Unit Manager, New York City Criminal Court
- Hon. Pierce Fox Cohalan, District Court Judge, Suffolk County
- Lauren Francis, Associate Court Clerk, Suffolk County Family Court
- Lisa Freeman, Director, Special Litigation and Law Reform Unit, Juvenile Rights Practice, The Legal Aid Society
- Jennifer Friedman, Director, Bronx and Manhattan Legal Project and Policy, Sanctuary for Families
- Melissa Friedman, Director of Child Welfare Training, Juvenile Rights Practice, The Legal Aid Society
- Maggie Fronk, Executive Director, Wellspring
- The Fund for Modern Courts
- Mark Funk, Conflict Defender, Monroe County Office of the Conflict Defender
- Ryan Gallagher, Director of Legal Technology, Family Legal Care
- Karla George, Deputy Director, Bronx Family Law Project, Sanctuary for Families
- Judith Gerber, Chief Attorney, Attorneys for Children Unit, Legal Aid Bureau of Buffalo, Inc.
- Joan Gerhardt, Director of Public Policy & Advocacy, NYS Coalition Against Domestic Violence
- Stan Germán, Executive Director, New York County Defender Services
- Lawrence Germano, President, Local 330, Civil Service Employees Association Judiciary
- Hon. Jeffrey Gershuny, Judge, Queens County Criminal Court
- Hon. Judith Gische, Associate Justice, Appellate Division, First Department
- Robert Godosky, Attorney, Godosky & Gentile, P.C.
- Steve Gold, Albany Payroll Office, Unified Court System
- Erica Gomez, Court Attorney, New York County Surrogate’s Court
- Gretchen Gonzalez, Chief Executive Officer, Erie County Bar Association Volunteer Lawyers Project
- Elias Gootzeit, Court-Appointed Attorney and Social Worker, Westchester County
- Timothy Graber, President-Elect, Erie County Bar Association
- Joseph Gramaglia, Police Commissioner, Buffalo Police Department
- Dahyana Grullon, Principal Court Interpreter, Office of Language Access
- Hon. Joseph Gubbay, Judge, Kings County Supreme Court
- Cecilia Gullas, Court User
- Sheng Guo, Program Manager, Courtroom Modernization Initiative
- Hon. Alison Hamanjan, Judge, Kings County Family Court



# Appendix A: Testifying Witnesses

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- Donna Hamell, Deputy Chief Clerk, Warren County Family Court
- Laurie Hankin, Law Librarian, Columbia County Supreme Court Law Library
- Jeff Harradine, Senior Managing Counsel, Xerox
- William Hart, President, CSEA Judiciary, Local 335
- Helene Hechtkopf, Partner, Hoguet Newman Regal & Kenney
- Sarah Hedden, Supervising Attorney, Kinship Care Legal Services Program, Center for Elder Law & Justice
- Beth Hendy, Staff Attorney, Legal Assistance of Western NY
- Her Justice
- PJ Herne, Staff Attorney, Legal Aid Society of Northeastern New York
- Jason Hill, Senior Technical Manager, Universal Case Management System, Division of Technology, Office of Court Administration
- Jodi Hirschman, Counsel to Hon. Anne-Marie Jolly, Administrative Judge of the New York City Family Court
- Jonathan Hitsous, Assistant Solicitor General, New York State Office of the Attorney General
- Nicole Hoag, Chief Clerk, Washington County Family Court
- Fran Hoffinger, Legacy Project Special Committee Chair, New York Women's Bar Association; Co-Chair, Criminal Law Committee, New York Criminal Bar Association
- Adam Horowitz, Chief of Staff to Presiding Justice Rolando Acosta, Appellate Division, First Department
- Amy Hozer-Weber, Director, Civil Practice, Veteran Advocacy Project
- Martin Huynh, Network Systems Engineer, Courtroom Modernization Initiative
- Rezwanul Islam, Co-Chair, President's Committee on Access to Justice and Member, Committee on Legal Aid, New York State Bar Association
- Penelope Jagessar Chaffer, Court User
- Hon. Anne-Marie Jolly, Administrative Judge, New York City Family Court
- Imogene Jones, President, NYS County Clerk's Association
- J. Anthony Jordan, President, District Attorneys Association of the State of New York; Washington County District Attorney
- Kimberly Jorgensen, Chief Clerk, Columbia County Surrogate's Court
- Darlene Jorif-Mangane, Support Magistrate, Suffolk County
- Alexandria Kaminski, Senior Associate, Gross Polowy, LLC
- Cindy Kanusher, Executive Director, Pace Women's Justice Center
- Stuart Kaufman, President, Saratoga County Bar Association
- Cheryl Keshner, Senior Paralegal and Community Advocate, Empire Justice Center
- Katie Kestel Martin, New York State Council on Divorce Mediation
- Hon. Keith Kibler, Supervising Family Court Judge, 8th Judicial District
- Daniel Kiss, Vice President and Deputy General Counsel for Housing Litigation, New York City Housing Authority
- Marcie Kobak, Director of Litigation, Legal Services of the Hudson Valley
- Adrienne Koch, Partner, Katsky Korins LLP
- Darren Kornblut, Court User
- Kimberly Kozlowski, Regional Project Manager, Office of Court Administration; Project Director, Syracuse Community Treatment Courts
- Kat Kramarchyk, Associate, Harris Beach PLLC
- Betsy Kramer, Director of Public Policy and Special Litigation, Lawyers for Children, Inc.
- Laurel Kretzing, Chair, Commercial and Federal Litigation Section, New York State Bar Association; Chief, Litigation and Appeals Bureau, Office of the Nassau County Attorney
- Denise Kronstadt, Deputy Executive Director/Director of Advocacy and Policy, The Fund for Modern Courts
- Jennifer LaFontaine, Resource Coordinator, Essex County Treatment Courts



# Appendix A: Testifying Witnesses

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- Pamela LaMancuso, Alcohol & Drugs Services, Buffalo Veterans Treatment Court
- Cami Landau, Senior Court Reporter, 9th Judicial District
- Ronald Lanouette, President, Broome County Bar Association
- Bruce Lederman, Partner, D'Agostino, Levine, Landesman, Lederman, Rivera & Miraglia, LLP
- The Legal Aid Society
- Hamutal Leiberman, Partner, Helbraun Levey
- Beatrice Leong, Vice President of Programs & Operations, Asian American Bar Association of New York
- Sherry Levin Wallach, President, New York State Bar Association
- Richard Lewis, President-Elect, New York State Bar Association
- Tashi Lhewa, Supervising Attorney, Consumer Law Project, The Legal Aid Society
- Tiffany Liston, Executive Director, Mobilization for Justice
- Casey Lord, Court User
- Heather Lothrop, Supervising Attorney, Domestic Violence Project, Urban Justice Center
- Erica Ludwick, Deputy Director, Legal Aid Society of Northeastern New York
- Evelina Luzhansky, Per Diem Attorney, Queens County Supreme Court, Civil Term
- Jacob Malafsky, Supervising Attorney, Legal Services NYC
- J. Marshall Mangold, Director, Supreme Court Help Center, 9th Judicial District
- Karl Manne, President, New York State Magistrates Association
- Michael Manoussos, Attorney, Michael Manoussos & Co PLLC
- Roshondra Martin, Support Magistrate, 9th Judicial District
- Hon. Marisol Martinez Alonso, Judge, New York County Criminal Court
- Rosemary Martinez-Borges, Deputy Chief of Staff, New York State Unified Court System's Office for Justice Initiatives
- Ira Matetsky, Partner, Ganfer Shore Leeds & Zauderer LLP
- Robert Mayberger, Clerk of the Court, Appellate Division, Third Department
- Brian McAllister, First Deputy Chief Clerk, Criminal Term, Kings County Supreme Court
- Edward McCarthy, Supervising Attorney, Manhattan Criminal Defense Office, The Legal Aid Society
- Ellen McCormick, Staff Attorney, Consumer Law Unit, The Legal Aid Society
- Hon. Kelly McKeighan, Supervising Criminal Court Judge, 4th Judicial District
- Kathleen McKenna, Senior Policy Social Worker, Brooklyn, Defender Services
- Christine McMenamain, Senior Housing Staff Attorney, Erie County Bar Association, Volunteer Lawyers Project, Inc.
- Julia McNally, Attorney-in-Charge, Queens Neighborhood Office, The Legal Aid Society
- Brian Melber, President, New York State Association of Criminal Defense Lawyers
- Suzette Melendez, Professor of Law and Associate Dean of Equity and Inclusion, Syracuse University College of Law
- Jeanette Mercedes, President, Court Attorneys Association of the City of New York
- Hon. Juan Merchan, Presiding Justice, Manhattan Mental Health Court
- David Meyers, Attorney, Meyers & Meyers, LLP
- Hon. Adam Michelini, Supervising Family Court Judge, 4th Judicial District
- Arthur Miller, Attorney, The Law Office of Arthur L. Miller, Esq.
- Kyle Mitchell, Attorney, Crusier, Mitchell, Novitz, Sanchez, Gaston & Zimet, LLP
- Stacy Mix, Attorney, Dreyer Boyajian, LLP
- Ludmila Molina, Immigration Attorney, SEPA Mujer
- Tina Monshipour Foster, Executive Director, JustCause
- Jennifer Monthie, Legal Director, Disability Rights New York

# Appendix A: Testifying Witnesses

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- Claire Mooney, Domestic Violence Consumer Staff Attorney, The Legal Aid Society
- Leonard Morin, Court Interpreter, New York County Criminal Court; Chair, Court Interpreter Chapter, Local 1070, District Council 37, AFSCME
- Russell Morris, Attorney, The Law Office of Russell D. Morris PLLC
- Hon. Caroline Morrison, Judge, Monroe County Court
- Lillian Moy, Executive Director, Legal Aid Society of Northeastern New York
- Jennifer Naiburg, Chief Assistant District Attorney, Queens County District Attorney's Office
- Domenick Napoletano, Treasurer and Chair, Pandemic Practices Committee, New York State Bar Association
- Lisa Natoli, Senior Attorney, Chenango County Children's Law Office
- Janet Neustaetter, Director of Appeals, Writing, and Paralegal Support, The Children's Law Center
- Elizabeth Nevins, Clinical Law Professor, Maurice A. Deane School of Law at Hofstra University
- Claudette Newman, Court Attorney to Hon. Frank B. Revoir, Chenango County Courts
- The New York City Bar Association's Council on Judicial Administration
- New York State Bar Association President's Committee on Access to Justice and Committee on Legal Aid Working Group on Access to Justice During the COVID-19 Pandemic
- The New York State Coalition Against Domestic Violence
- William Ng, President, Asian American Bar Association of New York
- Karen Nicolson, Chief Executive Officer, Center for Elder Law and Justice
- Dan Norton, Partner, Hinman, Howard & Kattell, LLP
- Leah Nowotarski, Assistant Public Defender, Wyoming County
- Lisa Ohta, President, UAW Local 2325, Association of Legal Aid Attorneys
- Adam Orlow, President, Queens County Bar Association
- Judith Osburn, Chief Clerk, Broome County Supreme and County Courts
- Marissa Paradowski, General Manager, Diversion Management - Securix Systems
- Michelle Parker, Executive Director and Chief Defender, Assigned Counsel Program of Erie County
- Nadine Patterson, Deputy Executive Director – Civil Practice, Legal Aid Bureau of Buffalo
- Olga Perez, Director, Guardian Assistance Network, Kings County Supreme Court
- Patrick Perfetti, Cortland County District Attorney
- Taier Perlman, Staff Attorney, Legal Services of the Hudson Valley
- C. Kenneth Perri, Executive Director, Legal Assistance of Western New York, Inc.
- Hon. Stacy Pettit, President, The Surrogates Association of the State of New York
- Christopher Pisciotta, Attorney-in-Charge, Staten Island Trial Office, The Legal Aid Society
- Hon. Erik Pitchal, President, New York City Family Court Judges Association
- Michael Pollok, Attorney, Law Offices of Michael Pollock, PLLC
- Halina Radchenko, Immediate Past President, New York State Trial Lawyers Association
- Susan Radosh, Deputy Director of State Operations, CSEA, Inc.
- Hon. Kimberly Ragazzo, Town Justice, Town of Cortlandt
- Hon. Raja Rajeswari, Judge, Richmond County Criminal Court
- Michael Rakower, Founding Partner, Rakower Law PLLC
- Wantee Ramkaran, Program Manager for New York Justice Initiatives, Pro Bono Net
- Joseph Ranni, Managing Attorney, Ranni Law Firm, PLLC; Member, NYSBA Committee on Disability Rights
- Alia Razzaq, Chief Clerk, New York City Civil Court
- Frederick Reed, Ontario County Surrogate
- Mike Regan, Partner, Smith, Gambrell & Russell LLP

# Appendix A: Testifying Witnesses

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- Dennis Reilly, Director of Operations, Treatment Court Programs, Center for Court Innovation
- Helen Reilly, Supervising Clerical Assistant, Albany County Family Court
- Hon. Rosalyn Richter, Senior Counsel, Arnold & Porter; former Associate Justice, Appellate Division, First Department
- Debbie Riegel, Member, Rosenberg and Estis, P.C.
- James Ritts, Ontario County District Attorney
- Hon. Brenda Rivera, Judge, Bronx County Civil Court
- Peter Rivera, Judicial Committee Chair, New York State Puerto Rican Bar Association
- Hon. Walter Rivera, Judge, Court of Claims; President, Latino Judges Association
- Courtney Rockett, Member, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC
- Jamie Romeo, Monroe County Clerk
- Hon. Stacey Romeo, Supervising Judge, Monroe County Family Court
- Phil Rosen, Managing Partner, Horing Welikson & Rosen P.C.
- Deborah Rosenthal, President, Women’s Bar Association of the State of New York
- Michelle Rosien, Attorney, Assigned Counsel Panel, Appellate Division, Third Department
- Michaela Rossettie Azemi, Director of Pro Bono Services & Externships, Cornell Law School
- David Roth, Attorney, Roth & Roth, LLP
- Laura Russell, Director, Family/Domestic Violence Unit, The Legal Aid Society
- Hon. Robert Russell, Former Presiding Judge, Buffalo and Erie County Treatment Courts
- Daniel Russo, Vice President, Nassau County Bar Association
- Ann Ryan, Coordinator, OCA Office of Language Access
- Kevin Ryan, Executive Director, Monroe County Bar Association
- Scott Rynecki, Partner, Rubenstein & Rynecki
- Veronica Salama, Staff Attorney, New York Civil Liberties Union
- Rob Salkin, Associate Computer Systems Analyst, Division of Technology, Office of Court Administration
- Hon. Mark Saltarelli, Chief Judge, Tonawanda City Court; President, New York State Association of City Court Judges
- Arlene Sanders, Managing Attorney, Pro Bono Programs, Legal Aid Society of Mid-New York, Inc.
- Shawn Sauro, Chief Defender, Steuben County Public Defender’s Office
- Surya Sayed-Ganguly, Chief Information Officer, The Legal Aid Society
- Barbara Schaus, Volunteer Attorney, Center for Elder Law and Justice, Surrogate’s Court Help Center
- Hon. Jennifer Schecter, Justice, Commercial Division, New York County/Manhattan
- Russell Schindler, Vice President, New York State Association of Criminal Defense Lawyers
- Lisa Schreibersdorf, Executive Director, Brooklyn Defender Services
- Dustin Schwartz, Technical Support Coordinator, 4th Judicial District
- Deborah Scinta, Court Attorney Referee, Erie County Supreme Court
- Hon. Toko Serita, Presiding Judge, Queens Problem-Solving Courts
- Lauren Shapiro, Managing Director, Family Defense Practice, Brooklyn Defender Services
- Lauren Sharkey, Partner, Cioffi Slezak Wildgrube P.C.
- Jack Sheridan, Senior Technical Manager, Division of Technology and Court Research, Unified Court System
- Daniel Shonn, Volunteer Attorney, Erie County Surrogate’s Court Help Center
- Alexandra Shookhoff, Managing Attorney, Criminal Appeals Bureau, The Legal Aid Society
- Riti Singh, Vice President of Gender & LGBTQ Equity, South Asian Bar Association of New York
- Hon. Mary Slisz, Justice, Erie County Supreme Court, 8th Judicial District
- Kara Smith, Clerical Assistant, Cayuga Supreme and County Courts

# Appendix A: Testifying Witnesses

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- Cynthia Snodgrass, Court Attorney-Referee, Monroe County Supreme Court
- Lindsey Song, Deputy Director, Courtroom Advocates Project, Sanctuary for Families
- Felipe Sostre, Court Officer, Schenectady City Court
- Alan Sputz, Deputy Commissioner, Family Court Legal Services, New York City Administration for Children’s Services
- Vincent Stark, Bureau Chief, Legal Affairs Unit, Albany County Office of the District Attorney
- Judith Stern, Director of Appeals, Juvenile Rights Practice, The Legal Aid Society
- Sanford Strenger , Partner, Salamon Gruber Blaymore & Strenger, P.C.
- John Sullivan, Statewide ADA Coordinator, Unified Court System
- Hon. Jeffrey Sunshine, Statewide Coordinating Judge for Matrimonial Cases, Unified Court System
- Thandie Sykes, Court Clerk, Monroe Family Court
- Hon. Mary Tarantelli, Judge, Chemung County Family Court; Supervising Family Court Judge, 6th Judicial District
- Danielle Tarantolo, Director, Special Litigation Unit, New York Legal Assistance Group
- Fawn Tatro, Chief Clerk, Franklin County Supreme and County Court
- Monique Taylor-Isaacs, Senior Management Analyst, Division of Profession and Court Services, Office of Court Administration
- Jacinta Testa Ciccone, Support Magistrate, Tioga County Family Court
- John Teufel, Of Counsel, Berkman Bottger Newman & Schein LL
- Raymond Tierney, Suffolk County District Attorney
- Sandro Tomasi, Court Interpreter, Bronx Criminal Court
- Stacey Trien, Partner, Adams Leclair LLP
- Xiomara Umana, Director of Advocacy, Brighter Tomorrows
- Gloria Vargas, American Sign Language Staff Interpreter, Unified Court System
- Darryl Vernon, Partner, Vernon & Ginsburg, LLP
- Donald Vetter, Chief Clerk, Nassau County
- Sherry Levin Wallach, President, New York State Bar Association; Board of Directors, Westchester County Bar Association
- Lori Warfield, Deputy Chief Clerk, Tompkins County Family Court
- Jeffrey Weiner, Attorney, New York, N.Y.
- Ruth Whalen, Clerk of Court, Bronx Family Court
- Adam White, Principal, Vaccaro & White
- Kristian Whiteleather, Court User
- Victoria Wickman, Attorney, Law Office of Victoria Wickman
- Keisha Williams, Deputy Director, Western New York Law Center
- Darran Winslow, President, Kings County Criminal Bar Association
- Kadeem Wolliaston, Associate, Wilson Elser Moskowitz Edelman & Dicker LLP
- Ching Wong, Court Interpreter, Queens Criminal Court
- Elizabeth Worth, Court Attorney, Oneida County Family Court
- Yan Ping Xu, Court User
- Renee Zaytsev, Partner, Thompson Hine LLP

## Appendix B: Overview of New York Courts

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UCS is made up of hundreds of different courts of different types from New York State<sup>60</sup>. There are at least ten different types of trial courts alone. These courts form a vast and often confusing and burdensome labyrinth for litigants to navigate.

At the lowest level are civil courts, which can hear civil claims below a certain damages threshold, and may have a small claims and/or a housing part, and criminal courts which handle misdemeanors and lesser offenses, and may conduct arraignments and preliminary matters for felonies. In New York City, these are called the **Civil Court of the City of New York** and the **Criminal Court of the City of New York**. On Long Island, these are called **District Courts**. Elsewhere throughout the state, these matters are handled by **Town and Village Justice Courts**, which handle civil claims up to \$3,000 and misdemeanors and lesser offenses; **City Courts**, which handle civil claims up to \$15,000 and misdemeanors and lesser offenses; and **County Courts**, which handle claims up to \$25,000 and have exclusive authority over felonies outside of New York City. The **Supreme Court** generally hears cases outside of the authority of the lower courts mentioned above, such as civil matters with higher dollar amounts; divorce, separation, and annulment proceedings; and, in New York City, criminal prosecution of felonies. There are also three specialized courts: **Family Court**,

which hears matters involving children and families; **Surrogate's Court**, which hears cases relating to individuals who have passed away; and the **Court of Claims**, which has exclusive authority over lawsuits seeking money damages from the State of New York and may hear suits against state-related entities.

Appeals from these trial courts are heard by various intermediate appellate courts. **Appellate Terms of the Supreme Court** in the First and Second Departments hear appeals of decisions in cases that are brought in the New York City Civil and Criminal Courts. In the Second Department, the Appellate Terms also hear appeals of decisions in cases that were brought in the District, City, or Town and Village Courts. The County Courts in the Third and Fourth Departments, while primarily trial courts, hear appeals of decisions in cases that were brought in the City Courts and Town and Village Courts. There are four **Appellate Divisions of the Supreme Court**, one in each judicial department, which hear civil and criminal appeals from the trial courts as well as civil appeals from the Appellate Terms and County Courts. Finally, the **Court of Appeals** is the highest court in New York and hears appeals from the intermediate appellate courts.

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<sup>60</sup> This overview comes from Online Courts Working Group of the Commission to Reimagine the Future of New York's Courts, "Initial Report on the Goals and Recommendations for New York State's Online Court System" (November 9, 2020), <https://www.nycourts.gov/whatsnew/pdf/OCWG-Report.pdf>.

# Appendix C: Guidelines for In-Person, Hybrid, and Virtual Proceedings

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**Proceedings identified as “In-Person” should generally proceed in person. The following non-exclusive factors should be considered for any deviation:**

- **Consent** – where all parties consent to proceeding virtually
- **Health** – where the health of the parties and/or counsel would be jeopardized by an in-person proceeding
- **Disability** – where a disability of one or more of the parties presents a serious impediment to an in-person appearance
- **Hardship** – where in-person appearance would present a serious hardship to one or more of the parties, such as inability to retain childcare, lack of transportation, or inability to miss work
- **Safety Concerns** – where in-person appearance would present serious safety concerns to one or more parties
- **Other Needs of Counsel, Parties, and/or the Case**

**Proceedings identified as “Virtual” should generally proceed virtually. The following non-exclusive factors should be considered for any deviation:**

- **Consent** – where all parties consent to proceeding in-person
- **Inability to Access Necessary Technology** – where one or more counsel or parties are unable to access equipment or other technology needed to participate virtually
- **Other Needs of Counsel, Parties, and/or the Case**

## Appendix C: Guidelines for In-Person, Hybrid, and Virtual Proceedings

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### Criminal Courts

<b>Arrest / Initial Appearance</b>	<i>Not Confined</i>	Virtual
	<i>Confined</i>	In-Person
<b>Bail Applications</b>		In-Person
<b>Argument of Motions</b>	<i>Violations</i>	Virtual
	<i>Misdemeanors</i>	Virtual
	<i>Felonies</i>	In-Person
<b>Conferences</b>		Virtual
<b>Evidentiary Hearings</b>		In-Person
<b>Pleas</b>	<i>Violations</i>	Virtual
	<i>Misdemeanors</i>	In-Person
	<i>Felonies</i>	In-Person
<b>Trials</b>		In-Person
<b>Sentences</b>	<i>Violations</i>	Virtual
	<i>Misdemeanors</i>	In-Person
	<i>Felonies</i>	In-Person
<b>Appeals from Local Court</b>		Virtual
<b>Probation Violations – All Stages</b>		In-Person
<b>Sex Offender Registration</b>		In-Person
<b>Problem-Solving Courts</b>		Discretion of the Court

# Appendix C: Guidelines for In-Person, Hybrid, and Virtual Proceedings

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## Family Courts

<b>General Guidelines</b>	<i>Initial Appearances of Confined Individuals</i>	In-Person
	<i>Conferences</i>	Virtual
	<i>Motions</i>	Virtual
	<i>Evidentiary Hearings</i>	In-Person
<b>Child Protective Proceedings</b>	<i>Article 10 Initial Appearances</i>	In-Person
	<i>Conferences</i>	Virtual
	<i>Motions</i>	In-Person
	<i>Evidentiary Hearings and Fact Finding</i>	In-Person
<b>Parentage and Child Support</b>		Virtual
<b>Judicial Surrender of Parental Rights</b>		In-Person
<b>Permanency Planning Hearings</b>		Virtual
<b>Adoptions</b>		In-Person
<b>Petition for Order of Protection (Article 8)</b>	<i>Remote Temporary Orders of Protection – FCA 153</i>	Virtual
	<i>Initial Appearances</i>	In-Person
	<i>Status Appearances and Conferences</i>	Virtual
	<i>Evidentiary Hearings</i>	In-Person
<b>Juvenile Delinquency / PINS</b>	<i>Initial Appearances</i>	In-Person
	<i>Motions</i>	In-Person
	<i>Dispositions</i>	In-Person
<b>Custody and Visitation</b>	<i>Initial Application (Contested)</i>	In-Person
	<i>Initial Application (Uncontested)</i>	Virtual
	<i>Order to Show Cause</i>	In-Person



# Appendix C: Guidelines for In-Person, Hybrid, and Virtual Proceedings

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## Supreme Court / All Courts-Civil

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<b>General Guidelines</b>	<i>Conferences</i>	Virtual
	<i>Motions</i>	Virtual
	<i>Evidentiary Hearings</i>	In-Person
	<i>Final Pre-Trial Conferences</i>	In-Person
	<i>Settlement Conferences</i>	In-Person
<b>Appeals from Local Court</b>		Virtual
<b>Mental Hygiene Law Proceedings / Mental Health Matters</b>	<i>Article 10 (Civil Confinement)</i>	In-Person
	<i>Applications for Assisted Outpatient Treatment</i>	In-Person
	<i>Guardianship Applications (Article 81)</i>	In-Person
	<i>Applications by OSC Asking for Emergency Relief Where Harm to a Person is Alleged</i>	In-Person
	<i>Applications for Temporary Emergency Risk Protection Orders (TERPO)</i>	Virtual
	<i>Applications for Emergency Risk Protection Orders (ERPO)</i>	In-Person
<b>Housing Matters</b>	<i>Lockouts</i>	In-Person
	<i>Serious Code Violations</i>	In-Person
	<i>Serious Repair Orders</i>	In-Person
	<i>Post-Eviction Relief</i>	In-Person

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# Appendix C: Guidelines for In-Person, Hybrid, and Virtual Proceedings

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## Surrogate Court

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<b>General Guidelines</b>	<i>Initial Jurisdictional Return Dates (Citations / OSC)</i>	Virtual
	<i>Conferences</i>	In-Person
	<i>Motions</i>	In-Person
	<i>Evidentiary Hearings and Trials</i>	In-Person
<b>Guardianships</b>		In-Person

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# Appendix D: Sample Protocols and Administrative Orders

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## Sample Administrative Orders

- *Third Amended Order (AO 027), April 14, 2020*
- *Fourth Amended Order (AO 028), May 13, 2020*
- *Tenth Amended Order, November 23, 2020*
- *Twelfth Amended Order, April 23, 2021*

## Sample Protocols

- *Return to In-Person Operations Plan Highlights, Phase I, May 18, 2020*
- *Return to In-Person Operations Plan, Phase II, June 3, 2020*
- *Phase III Return to In-Person Operations Plan, June 17, 2020*
- *Phase IV Return to In-Person Operations Plan, July 1, 2020*
- *Phase 4.1 Return to In-Person Operations Plan, August 10, 2020*
- *Return to In-Person Operations Plan Updates, October 19, 2020*
- *Updated Operating Protocols, November 23, 2020*
- *Updated Operating Protocols, December 9, 2020*
- *Updated Operating Protocols, February 22, 2021*
- *Updated Operating Protocols, April 26, 2021*
- *Town and Village Courts Phase IV*
- *Updated Operating Protocols, Town and Village Courts, April 26, 2021*
- *Virtual Chambers Protocol, Family Court – Phase I Summary*

*(The full documents follow this page)*



**THIRD AMENDED ADMINISTRATIVE ORDER      AO 027**  
**SEVENTH 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 immediately the following rules be put into effect in the 7th Judicial District until rescinded.

As hereinafter used, "Assigned Judge" shall refer to the judge assigned to hear the case on and before March 16, 2020. "Designated Judge" shall refer to the judge assigned to hear the case pursuant to this Order (Attachment B). "Essential Staff" shall refer to chambers staff of Designated Judges, chambers staff of additional judges as designated by the Administrative Judge and non-judicial staff as designated by the District Executive.

**A. General matters and matters applicable to more than one case type**

1. Pending eviction proceedings are stayed; no eviction orders shall be signed or served. Reference is made to Executive Order 202.8 signed by the Governor on March 20, 2020 with regard to eviction matters.
2. No default judgments shall be granted.
3. All Family Court and all County Court Judges are cross-assigned to the County and Family Courts in all counties of the District.
4. The Virtual Courtroom Protocol (attached hereto) enacted by 7<sup>th</sup> Judicial District Administrative Order No. 26 signed on March 30, 2020 remains in full force and effect and all provisions of this Third Amended Administrative Order shall be read in conjunction with the Virtual Courtroom Protocol.
5. All Essential Court proceedings will occur **virtually** from the locations described in Attachment A and presided over by the judges listed in Attachment B unless otherwise approved by the Administrative Judge.
6. Maximum occupancy of ALL courtrooms, waiting rooms and meeting rooms in Court Facilities and other rooms where court functions occur conform to current recommendations, which is the lesser of 10 people or ½ the posted room occupancy per code. All room occupants shall remain six feet apart.
7. Naturalization Ceremonies, wherever they occur, shall comply with the room occupancy limits stated herein.
8. After 5:00 PM on March 16, 2020 only Designated Judges and Essential Staff may report to the courthouse for work unless approved by the Administrative Judge. After 9:00 AM on April 13, 2020, entrance to the courthouse by Chambers Staff and Judges shall be by permission of the Administrative Judge or his designee.

9. All deadlines established per judicial directive (including those contained in scheduling orders, service dates and “local rules”) that occur during the pendency of this Administrative Order shall be extended for a period of 90 days from the date of the stated deadline, unless further application is made or the parties agree otherwise (reference is made to Administrative Order AO/71/20 signed by the Chief Administrative Judge of the Courts on March 19, 2020 as it relates to civil litigation). Further reference is made to Executive Order 202.8 signed by the Governor on March 20, 2020 with regard to statutory deadlines and time frames.
10. All Temporary Orders of Protection issued in any criminal or civil matter that has expired or is due to expire on or after March 19, 2020 “shall be extended under the same terms and conditions until the date the matter is re-calendared, unless the order is sooner terminated or modified by a judge or justice of the court that issued the order” pursuant to Administrative Order AO/73/20 signed by the Chief Administrative Judge of the Courts on March 19, 2020.
11. All vouchers submitted pursuant to County Law § 722-b(4) and Family Court Act §§ 243(c), 245(c) are deemed approved pursuant to the Order signed by the Administrative Judge of the 7th Judicial District dated March 20, 2020.
12. “All individuals seeking legal representation pursuant to Article 18-B of the County Law shall be deemed eligible, regardless of financial ability to obtain counsel” pursuant to the Order signed by the Administrative Judge of the 7th Judicial District dated March 20, 2020.

## **B. Supreme Civil**

1. All non-essential matters are administratively adjourned until a date on or after April 30, 2020 (to be determined by the Assigned or Designated Judge - Essential Staff shall be responsible for notifying attorneys or pro-se litigants of the adjourned dates).
2. All civil trials that have commenced may continue.
3. “Essential matters” includes those matters as listed in Exhibit A attached to Administrative Order AO/78/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020 and as amended hereafter and any other matter determined to be essential after application by the Assigned Justice or Designated Justice to the Administrative Judge.
4. All Mental Hygiene Law proceedings in which a party is confined to a hospital or other facility shall be conducted with appearances by means of remote audiovisual technology or telephone pursuant to Administrative Order AO/72/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020.
5. All foreclosure proceedings are stayed; no foreclosure auctions shall be scheduled or held. Reference is made to Executive Order 202.8 signed by the Governor on March 20, 2020, as extended by Executive Order 202.14 signed by the Governor on April 7, 2020 with regard to foreclosures.

## **C. Superior Court Criminal Cases**

1. Any trial in which jeopardy has attached will continue.

2. For Defendants not in custody, all non-essential matters are administratively adjourned to a date on or after May 30, 2020 or to another date selected by the Assigned Judge in consultation with the District Attorney and Defense Attorney. With regard to defendants in custody, all matters are administratively adjourned to May 7, 2020 or to another date selected by the Assigned Judge in consultation with the District Attorney and Defense Attorney. Prior to May 7, 2020 each Assigned Judge shall review each case in which a defendant is in custody. In no event shall the matter be adjourned to a date that is more than 30 days from the date the matter is reviewed by the Judge. Essential Staff or Chambers Staff shall be responsible for notifying attorneys or pro-se litigants of the adjourned date.
3. "Essential matters" includes those matters as listed in Exhibit A attached to Administrative Order AO/78/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020 and as amended hereafter and any other matters determined to be essential after application by the Assigned Judge or Designated Judge to the Supervising Judge. The Supervising Judge, in consultation with the Administrative Judge, shall permit a matter to proceed if warranted.
4. "Grand juries set to be impaneled within terms four and five of the courts for the year 2020 shall be postponed." Currently seated grand juries "may continue, upon application of the appropriate district attorney to the administrative judge" pursuant to Administrative Order AO/77/20 signed by Deputy Chief Administrative Judge Vito Caruso on March 21, 2020.
5. The Accessible Magistrate procedure (for Adolescent Offenders) currently in place shall continue.

#### **D. Treatment Courts/OSP**

1. Treatment courts and Opioid Stabilization Parts will be handled by the designated City Court Judge or the designated County Court Judge in counties with no City Court.
2. Treatment courts will continue to the extent appearances are deemed essential in acute cases by the designated judge after application to the Coordinating Judge of Treatment Courts. The Coordinating Judge of Treatment Courts, after consultation with the Administrative Judge, shall permit a matter to proceed if warranted.
3. Essential Staff designated to work in these Courts shall be responsible for notifying attorneys or pro-se defendants of the adjourned dates.

#### **E. Family Court**

1. All non-essential matters are administratively adjourned until a date on or after April 30, 2020 (to be determined by the Assigned or Designated Judge - Essential Staff shall be responsible for notifying attorneys or pro-se litigants of the adjourned dates).
2. "Essential matters" includes those matters as listed in Exhibit A attached to Administrative Order AO/78/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020 and as amended hereafter, and any other matters determined to be essential after application by the Designated Judge to the

Supervising Judge. The Supervising Judge, in consultation with the Administrative Judge, shall permit a matter to proceed if warranted.

3. Judges are required to immediately bring to his/her Supervising Judge's attention any Permanency Planning Hearings that pursuant to existing Federal or State Law require a determination that the matter be deemed essential so as to provide a timely calendar date.
4. All remand/removal/placement orders issued in the 7th Judicial District under Family Court Act Articles 3, 6, 7, 8 and 10 that are due to expire while this Administrative Order is in effect, shall be deemed extended under the same terms and conditions for a period of 90 days from the date the order is scheduled to expire, unless the order is terminated or modified by the Designated Judge or Assigned Judge. To the extent practicable, the Designated Judge or Assigned Judge shall issue an amended order and the lawyers and pro-se litigants notified.

#### **F. Surrogate's Court**

1. All non-essential matters are administratively adjourned until a date on or after April 30, 2020 (to be determined by the assigned or designated judge - Essential Staff shall be responsible for notifying attorneys or pro-se litigants of the adjourned dates).
2. "Essential matters" includes those matters as listed in Exhibit A attached to Administrative Order AO/78/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020 and other matters as determined to be essential after application by the Surrogate to the Administrative Judge.

#### **G. City Court**

1. For Defendants not in custody, all non-essential matters are administratively adjourned to a date on or after May 30, 2020 or to another date selected by the Assigned Judge in consultation with the District Attorney and Defense Attorney. With regard to defendants in custody, all matters are administratively adjourned to May 7, 2020 or to another date selected by the Assigned Judge in consultation with the District Attorney and Defense Attorney. Prior to May 7, 2020 each Assigned Judge shall review each case in which a defendant is in custody. In no event shall the matter be adjourned to a date that is more than 30 days from the date the matter is reviewed by the Judge. Essential Staff shall be responsible for notifying attorneys or pro-se litigants of the adjourned date.
2. "Essential matters" includes those matters as listed in Exhibit A attached to Administrative Order AO/78/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020 and as amended hereafter and any matter deemed to be essential after application by the Designated Judge to the Supervising Judge. The Supervising Judge, in consultation with the Administrative Judge, shall permit a matter to proceed if warranted.

## H. Town and Village Courts

1. All non-essential matters are administratively adjourned until a date on or after May 30, 2020 for defendants not in custody and for civil matters. With regard to defendants in custody, all matters are administratively adjourned to May 7, 2020 or to another date selected by the Designated Judge in consultation with the District Attorney and Defense Attorney. Prior to May 7, 2020, the Designated Judge shall review each case in which a defendant is in custody. In no event shall the matter be adjourned to a date that is more than 30 days from the date the matter is reviewed by the Judge. Town and Village staff shall be responsible for notifying attorneys or pro-se litigants/defendants of the adjourned dates.
2. "Essential matters" includes those matters as listed in Exhibit A attached to Administrative Order AO/78/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020 and as amended hereafter and any matter deemed to be essential after application by the Designated Judge to the Supervising Judge. The Supervising Judge, in consultation with the Administrative Judge, shall permit a matter to proceed if warranted.
3. Any matter scheduled prior to 5:00 PM on March 16, 2020 shall be adjourned to a date on or after April 30, 2020 using the Court notification system. Town and Village personnel should post a sign indicating that defendants should check back with the Court after April 30, 2020.
4. For Monroe County, any arraignments that must occur during the hours of 9AM to 5PM shall take place before a Designated County Court Judge or Acting County Court Judge, pursuant to the Virtual Courtroom protocol. For Monroe County, after hours arraignments shall be conducted by the Accessible Magistrate.
5. In all other counties, all arraignments shall be conducted in the Centralized Arraignment Part.

Dated: April 14, 2020  
Rochester, New York



Hon. Craig J. Doran  
Administrative Judge  
Seventh Judicial District

Distribution:  
HON. VITO CARUSO





FOURTH AMENDED ADMINISTRATIVE ORDER      AO 028  
SEVENTH JUDICIAL DISTRICT

Pursuant to the authority vested in me, in accordance with the recent operational protocols issued by the Chief Administrative Judge for the trial courts of the Unified Court System and after consultation with the Chief Administrative Judge and the Deputy Chief Administrative Judge and

WHEREAS, New York State and the nation are now in the midst of an unprecedented public health crisis surrounding the outbreak of COVID-19 (coronavirus); and

WHEREAS, COVID-19 is known to be a highly infectious disease, and there is much community concern that large gatherings of people can result in greater public exposure to possible contagion or “community spread”; and

WHEREAS, on a daily basis, in courts across the State, hundreds if not thousands of people representing a broad cross-section of the community gather to conduct business in large groups in close proximity to one another, it is hereby

ORDRED that effective immediately the following rules be put into effect in the 7th Judicial District until rescinded.

As hereinafter used, “Assigned Judge” shall refer to the judge assigned to hear the case on and before March 16, 2020. “Designated Judge” shall refer to the judge assigned to hear the case pursuant to this Order (Attachment B). “Essential Staff” shall refer to chambers staff of Designated Judges, chambers staff of additional judges as designated by the Administrative Judge and non-judicial staff as designated by the District Executive.

**A. General matters and matters applicable to more than one case type**

1. Pending eviction proceedings are stayed; no eviction orders shall be signed or served. Reference is made to Executive Order 202.8 signed by the Governor on March 20, 2020, Executive Order 202.14 signed by the Governor on April 7, 2020 and Executive Order 202.28 signed by the Governor on May 7, 2020 with regard to eviction matters.
2. No default judgments shall 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.

3. All Family Court and all County Court Judges are cross-assigned to the County and Family Courts in all counties of the District.
4. The Virtual Courtroom Protocol (attached hereto) enacted by 7<sup>th</sup> Judicial District Administrative Order No. 26 signed on March 30, 2020 remains in full force and effect and all provisions of this Fourth Amended Administrative Order shall be read in conjunction with the Virtual Courtroom Protocol and any subsequent amendments thereto.
5. Essential Court proceedings shall be heard by either the Assigned Judge or the Designated Judge (as contained in Attachment B) and will occur virtually from the locations described in Attachment A.
6. Maximum occupancy of ALL courtrooms, waiting rooms and meeting rooms in Court Facilities and other rooms where court functions occur conform to current recommendations, which is the lesser of 10 people or ½ the posted room occupancy per code. All room occupants shall remain six feet apart.
7. Naturalization Ceremonies, wherever they occur, shall comply with the room occupancy limits stated herein.
8. Only Essential Staff may report to the courthouse for work. Other judges and non-judicial staff may report to the courthouse only with the permission of the Administrative Judge or his designee.
9. All deadlines established per judicial directive (including those contained in scheduling orders, service dates and “local rules”) that occur on or after March 17, 2020 and during the pendency of this Administrative Order shall be extended for a period of 90 days from the date of the stated deadline, unless otherwise directed by the Assigned Judge or agreed upon by the parties (reference is made to Administrative Order AO/71/20 signed by the Chief Administrative Judge of the Courts on March 19, 2020 as it relates to civil litigation). Further reference is made to Executive Order 202.8 signed by the Governor on March 20, 2020, Executive Order 202.14 signed by the Governor on April 7, 2020 and Executive Order 202.28 signed by the Governor on May 7, 2020 with regard to statutory deadlines and time frames.
10. All Temporary Orders of Protection issued in any criminal or civil matter that has expired or is due to expire on or after March 19, 2020 “shall be extended under the same terms and conditions until the date the matter is re-calendared, unless the order is sooner terminated or modified by a judge or justice of the court that issued the order” pursuant to Administrative Order AO/73/20 signed by the Chief Administrative Judge of the Courts on March 19, 2020.
11. All vouchers submitted pursuant to County Law § 722-b(4), Judiciary Law § 35(8) and Family Court Act §§ 243(c), 245(c) are deemed approved pursuant to the Amended Order signed by the Administrative Judge of the 7th Judicial District dated April 20, 2020.
12. “All individuals seeking legal representation pursuant to Article 18-B of the County Law shall be deemed eligible, regardless of financial ability to obtain counsel” pursuant to the Order signed by the Administrative Judge of the 7th Judicial District dated March 20, 2020.

## **B. Supreme Civil**

1. All non-essential matters shall be addressed by the Assigned Judge and appropriately scheduled.
2. "Essential matters" includes those matters as listed in Exhibit A attached to Administrative Order AO/78/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020 and as amended hereafter and any other matter determined to be essential after application by the Assigned Justice or Designated Justice to the Administrative Judge.
3. All Mental Hygiene Law proceedings in which a party is confined to a hospital or other facility shall be conducted with appearances by means of remote audiovisual technology or telephone pursuant to Administrative Order AO/72/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020.
4. All foreclosure proceedings are stayed; no foreclosure auctions shall be scheduled or held. Reference is made to Executive Order 202.8 signed by the Governor on March 20, 2020, Executive Order 202.14 signed by the Governor on April 7, 2020 and Executive Order 202.28 signed by the Governor on May 7, 2020.

## **C. Superior Court Criminal Cases**

1. All pending criminal cases shall be addressed by the Assigned Judge and appropriately scheduled consistent with applicable Executive Orders and Administrative Orders. The issuance of the new return date shall occur on or before the currently scheduled adjourned date or within 7 days of the signing of this order, whichever is later. For Defendants not in custody, there shall be no adjournment of a matter that is greater than 60 days. For defendants in custody, there shall be no adjournment of a matter that greater than 30 days.
2. "Essential matters" includes those matters as listed in Exhibit A attached to Administrative Order AO/78/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020 and as amended hereafter and any other matters determined to be essential after application by the Assigned Judge or Designated Judge to the Supervising Judge. The Supervising Judge, in consultation with the Administrative Judge, shall permit a matter to proceed if warranted.
3. "Grand juries set to be impaneled within terms four and five of the courts for the year 2020 shall be postponed." Currently seated grand juries "may continue, upon application of the appropriate district attorney to the administrative judge" pursuant to Administrative Order AO/77/20 signed by Deputy Chief Administrative Judge Vito Caruso on March 21, 2020.
4. The Accessible Magistrate procedure (for Adolescent Offenders) currently in place shall continue.

## **D. Treatment Courts/OSP**

1. Treatment courts and Opioid Stabilization Parts will be handled by the Assigned Judge.
2. Pursuant to the memorandum of Chief Administrative Judge Lawrence Marks dated April 30, 2020, "Problem-solving courts may conduct virtual court conferences with counsel, court staff, and service providers, via Skype for Business."

3. The Assigned Judge may make application to the Coordinating Judge of Treatment Courts to have a matter deemed essential. The Coordinating Judge of Treatment Courts, after consultation with the Administrative Judge, shall permit a matter to proceed if warranted.

#### **E. Family Court**

1. All non-essential matters shall be addressed by the Assigned Judge and appropriately scheduled.
2. "Essential matters" includes those matters as listed in Exhibit A attached to Administrative Order AO/78/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020 and as amended hereafter, and any other matters determined to be essential after application by the Designated Judge to the Supervising Judge. The Supervising Judge, in consultation with the Administrative Judge, shall permit a matter to proceed if warranted.
3. Judges are required to immediately bring to his/her Supervising Judge's attention any Permanency Planning Hearings that pursuant to existing Federal or State Law require a determination that the matter be deemed essential so as to provide a timely calendar date.
4. All remand/removal/placement orders issued in the 7th Judicial District under Family Court Act Articles 3, 6, 7, 8 and 10 that are due to expire while this Administrative Order is in effect, shall be deemed extended under the same terms and conditions for a period of 90 days from the date the order is scheduled to expire, unless the order is terminated or modified by the Designated Judge or Assigned Judge. To the extent practicable, the Designated Judge or Assigned Judge shall issue an amended order and the lawyers and pro-se litigants notified.
5. All cases involving a youth that is currently in detention shall be reviewed by the Assigned Judge or Designated Judge, at a minimum, at least once every fourteen days.

#### **F. Surrogate's Court**

1. All non-essential matters shall be addressed by the Assigned Judge and appropriately scheduled.
2. "Essential matters" includes those matters as listed in Exhibit A attached to Administrative Order AO/78/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020 and other matters as determined to be essential after application by the Surrogate to the Administrative Judge.

#### **G. City Court**

1. All pending criminal cases shall be addressed by the Assigned Judge and appropriately scheduled consistent with applicable Executive Orders and Administrative Orders. The issuance of the new return date shall occur on or before the currently scheduled adjourned date or within 7 days of the signing of this order, whichever is later. For Defendants not in custody, there shall be no adjournment of a matter that is greater than 60 days. For defendants in custody, there shall be no adjournment of a matter that greater than 30 days.

2. All non-essential Civil matters shall be addressed by the Assigned Judge and appropriately scheduled.
3. "Essential matters" includes those matters as listed in Exhibit A attached to Administrative Order AO/78/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020 and as amended hereafter and any matter deemed to be essential after application by the Designated Judge to the Supervising Judge. The Supervising Judge, in consultation with the Administrative Judge, shall permit a matter to proceed if warranted.

#### **H. Town and Village Courts**

1. All non-essential matters are administratively adjourned until a date on or after May 30, 2020 for defendants not in custody and for civil matters. With regard to defendants in custody, all misdemeanor cases shall be conferenced by the Designated Judge and thereafter adjourned to a date no later than June 5, 2020.
2. "Essential matters" include those matters as listed in Exhibit A attached to Administrative Order AO/78/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020 and as amended hereafter and any matter deemed to be essential after application by the Designated Judge to the Supervising Judge. The Supervising Judge, in consultation with the Administrative Judge, shall permit a matter to proceed if warranted.
3. For Monroe County, any arraignments that must occur during the hours of 9AM to 5PM shall take place before a Designated County Court Judge or Acting County Court Judge, pursuant to the Virtual Courtroom Protocol and any subsequent amendments. For Monroe County, after hours arraignments shall be conducted by the Accessible Magistrate.
4. In Cayuga, Livingston, Ontario, Seneca, Steuben, and Wayne Counties, all arraignments shall be conducted in the Centralized Arraignment Part by a designated T&V judge.
5. In Yates County, Monday through Friday, all arraignments shall be conducted in the Centralized Arraignment Part by the Designated Judge listed in Attachment B. On Saturday and Sunday, all arraignments shall be conducted in the Centralized Arraignment Part by a designated T&V judge.

Dated: May 13, 2020  
Rochester, New York



Hon. Craig J. Doran  
Administrative Judge  
Seventh Judicial District

Distribution:  
HON. VITO CARUSO



TENTH AMENDED ADMINISTRATIVE ORDER  
SEVENTH JUDICIAL DISTRICT

Pursuant to the authority vested in me, in accordance with the recent operational protocols issued by the Chief Administrative Judge for the trial courts of the Unified Court System and after consultation with the Chief Administrative Judge and the Deputy Chief Administrative Judge and

WHEREAS, New York State and the nation are now in the midst of an unprecedented public health crisis surrounding the outbreak of COVID-19 (coronavirus); and

WHEREAS, COVID-19 is known to be a highly infectious disease, and there is much community concern that large gatherings of people can result in greater public exposure to possible contagion or “community spread”; and

WHEREAS, on a daily basis, in courts across the State, hundreds if not thousands of people representing a broad cross-section of the community gather to conduct business in large groups in close proximity to one another; and

WHEREAS the Courts of the 7<sup>th</sup> Judicial District commenced Phase I of the Return to In-Person Operations Plan (“RIOP”) on May 18, 2020 (May 20, 2020 for Cayuga County), Phase II of the RIOP on June 3, 2020, Phase III of the RIOP on June 17, 2020, Phase IV of the RIOP on July 1, 2020, Phase 4.1 of the RIOP on August 10, 2020, the Updated RIOP on October 19, 2020 (with the Updated Operating Protocols to be effective November 23, 2020) (Attachment – Highlights, Summaries & Protocols); it is hereby

ORDERED that effective immediately the following rules be put into effect in the 7<sup>th</sup> Judicial District until rescinded.

As hereinafter used, “Assigned Judge” shall refer to the judge assigned to hear the case on and before March 16, 2020.

- A. General matters and matters applicable to more than one case type
  - 1. Until further Administrative Order or Executive Order, residential eviction matters may proceed pursuant to the protocol established in the memoranda from Chief Administrative Judge Lawrence Marks dated October 9, 2020 and November 17,

2020 and pursuant to Administrative Orders AO/231/20 and AO/268/20. Further reference is made to Executive Order 202.72 signed by the Governor on November 3, 2020, the Tenant Safe Harbor Act (Ch. 127, L. 2020) and the CDC Agency Order filed on September 1, 2020.

2. Until further Administrative order or Executive Order, Default judgments shall not be granted where, pursuant to CPLR 3215, the default occurred after March 16, 2020. Notwithstanding the foregoing, a judge presiding over a matter wherein a party has defaulted may grant a default judgment where, after inquiry, the judge determines that (a) the defaulting party has received actual notice of the action or proceeding; (b) the failure of the defaulting party to respond to the action or proceeding is not due to the COVID-19 pandemic; and (c) the granting of the default judgment is not contrary to any statute, Executive Order or Administrative Order.
3. All Family Court and all County Court Judges are cross-assigned to the County and Family Courts in all counties of the District.
4. The Return to In-Person Operations Plan (“RIOP”) (Phase I) implemented on May 18, 2020 (May 20, 2020 for Cayuga County), the RIOP (Phase II) implemented on June 3, 2020, the RIOP (Phase III) implemented on June 17, 2020, the RIOP (Phase IV) implemented on July 1, 2020, the RIOP (Phase 4.1) implemented on August 10, 2020, the Updated RIOP implemented on October 19, 2020 (with the Updated Operating Protocols to be implemented on November 23, 2020), and any further updated operating protocols are incorporated herein and all provisions of this Administrative Order shall be read in conjunction with the protocols.
5. The Virtual Courtroom Protocol enacted by 7<sup>th</sup> Judicial District Administrative Order No. 26 signed on March 30, 2020, to the extent not inconsistent with the Updated Operating Protocols, remains in full force and effect and all provisions of this Administrative Order shall be read in conjunction with the Virtual Courtroom Protocol and any subsequent amendments thereto.
  - Commencing immediately, all virtual court proceedings must be scheduled using Microsoft Teams.
  - Any court proceeding that was previously scheduled using Skype for Business that will be held on or before November 25, 2020 may proceed using Skype for Business.
  - Notwithstanding the foregoing, after November 25, 2020, all virtual court proceedings must be conducted using Microsoft Teams.
6. Occupancy of all courtrooms shall be limited to the lesser of 10 people or ½ the posted room occupancy per code. An exception shall be granted for ongoing grand juries currently in progress (in those instances, occupancy shall be limited to the lesser of 25 people or ½ the posted room occupancy per code). Any exceptions that were previously granted to the occupancy limits are rescinded until further notice.
7. Naturalization Ceremonies, wherever they occur, shall comply with the room occupancy limits stated herein.
8. Staff shall report to the courthouse as determined by his/her supervisor. All Judges and Chambers’ staff should report to the courthouse. Any requests for exemptions must be discussed with the Administrative Judge.

9. All Temporary Orders of Protection issued in any criminal or civil matter that has expired or is due to expire on or after March 19, 2020 “shall be extended under the same terms and conditions until the date the matter is re-calendared, unless the order is sooner terminated or modified by a judge or justice of the court that issued the order” pursuant to Administrative Order AO/73/20 signed by the Chief Administrative Judge of the Courts on March 19, 2020.
10. All filings shall be pursuant to the Administrative Order signed by the Chief Administrative Judge of the Courts (AO/267/20 and any amendments thereto).
11. The Judges should encourage or require, to the greatest extent possible, the use of virtual technology in matters that occur off court premises (depositions, discovery, etc.). Such language should be included in any scheduling orders.

#### B. Supreme Civil

1. All Mental Hygiene Law proceedings in which a party is confined to a hospital or other facility shall be conducted with appearances by means of remote audiovisual technology or telephone pursuant to Administrative Order AO/72/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020.
2. Until further Administrative Order or Executive Order, foreclosure matters may proceed pursuant to the protocol established in the memoranda from Chief Administrative Judge Lawrence Marks dated July 24, 2020 and October 22, 2020 and pursuant to Administrative Orders AO/157/20 dated July 23, 2020 and AO/232/20 dated October 22, 2020. Further reference is made to Executive Order 202.28 signed by the Governor on May 7, 2020, Executive Order 202.64 signed by the Governor on September 18, 2020, Executive Order 202.67 signed by the Governor on October 4, 2020, and the Laws of New York 2020, Chapters 112 and 126. All Foreclosure Auctions must adhere to the Seventh Judicial District Foreclosure Auction Plan.

#### C. Superior Court Criminal Cases

1. All pending criminal cases shall be addressed by the Assigned Judge and appropriately scheduled consistent with applicable Executive Orders and Administrative Orders. The issuance of the new return date shall occur on or before the currently scheduled adjourned date or within 7 days of the signing of this order, whichever is later. For Defendants not in custody, there shall be no adjournment of a matter that is greater than 60 days. For defendants in custody, there shall be no adjournment of a matter that greater than 30 days.
2. No new prospective grand jurors will be summoned for grand jury service until further notice. Existing grand juries, pursuant to Section 190.15 of the Criminal Procedure Law, may continue.
3. The Youth Part arraignment procedure established in the Virtual Courtroom Protocol is modified only as follows:
  - a. For all counties, during regular court hours, Youth Part arraignments shall be conducted by the designated Youth Part Judge from the courthouse.
  - b. In Livingston, Ontario, Seneca, Wayne and Yates Counties, after-hours Youth Part arraignments shall be held in person, at the CAP before the on-call CAP Judge (as



an Accessible Magistrate), during regularly scheduled CAP hours, or on an immediate/emergency basis where necessary. In Monroe, Cayuga and Steuben, the procedure remains virtual as stated in the Virtual Courtroom Protocol.

4. Each County, in consultation with the Sheriff, shall develop a plan for the imposition of intermittent sentences.

#### D. Treatment Courts/OSP

1. Treatment courts and Opioid Stabilization Parts will be handled by the Assigned Judge and reference is made to Paragraph (II)(E)(1) of the Updated Operating Protocols Effective November 23, 2020.
2. Virtual conferences are encouraged (reference is made to Administrative Order AO/87/20 of Chief Administrative Judge Lawrence Marks dated May 1, 2020, "Problem-solving courts may conduct virtual court conferences with counsel, court staff, service providers, and, where practicable, clients").

#### E. Family Court

1. All matters shall be addressed by the Assigned Judge and appropriately scheduled. Virtual calendars are encouraged.
2. Judges should ensure that all Permanency Planning Hearings are timely scheduled and heard pursuant to existing Federal or State Law. Difficulties in scheduling the hearings should immediately be brought to the attention of the supervising judge.
3. All cases involving a youth that is currently in detention shall be reviewed by the Assigned Judge, at a minimum, at least once every fourteen days.
4. No new S (PINS), F (Support), P (Paternity), or U (UIFSA) warrants may be issued unless approved by the Supervising Judge. Only D (Juvenile Delinquent) warrants may be issued in the discretion of the Assigned Judge.

#### F. Surrogate's Court

All matters shall be calendared consistent with all Administrative Orders and Executive Orders at the discretion of the Presiding Surrogate.

#### G. City Court

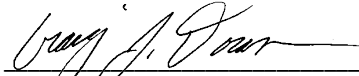
All pending criminal cases shall be addressed by the Assigned Judge and appropriately scheduled consistent with applicable Executive Orders, Administrative Orders and the Updated Operating Protocols Effective November 23, 2020. The issuance of the new return date shall occur on or before the currently scheduled adjourned date or within 7 days of the signing of this order, whichever is later. For Defendants not in custody, there shall be no adjournment of a matter that is greater than 60 days. For defendants in custody, there shall be no adjournment of a matter that greater than 30 days.

#### H. Town and Village Courts

1. All matters shall be addressed by the Assigned Town or Village Judge and appropriately calendared.
2. In Monroe County, all arraignments shall be conducted by a Town or Village Justice.

3. In Cayuga, Livingston, Ontario, Seneca, Steuben, and Wayne and Yates Counties, all arraignments shall be conducted in the Centralized Arraignment Part by a Town, Village or City Court Judge.

Dated: November 23, 2020  
Rochester, New York



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Hon. Craig J. Doran  
Administrative Judge  
Seventh Judicial District

Distribution:  
HON. VITO CARUSO



TWELFTH AMENDED ADMINISTRATIVE ORDER  
7th JUDICIAL DISTRICT

Pursuant to the authority vested in me, in accordance with the recent operational protocols issued by the Chief Administrative Judge for the trial courts of the Unified Court System and after consultation with the Chief Administrative Judge and the Deputy Chief Administrative Judge and

WHEREAS, New York State and the nation continue to be in the midst of an unprecedented public health crisis surrounding the outbreak of COVID-19 (coronavirus); and

WHEREAS, while a steadily increasing number of New Yorkers have received a COVID-19 vaccine and the metrics regarding the rate of infection show continued improvement across the state, there is still community concern that large gatherings of people can result in greater public exposure to possible contagion or “community spread”; and

WHEREAS, on a daily basis, in courts across the State, hundreds if not thousands of people representing a broad cross-section of the community have reason to and potentially gather to conduct business in large groups in close proximity to one another; and

WHEREAS the Courts of the 7th Judicial District commenced Phase I of the Return to In-Person Operations Plan (“RIOP”) on May 18, 2020 (May 20, 2020 for Cayuga County), Phase II of the RIOP on June 3, 2020, Phase III of the RIOP on June 17, 2020, Phase IV of the RIOP on July 1, 2020, Phase 4.1 of the RIOP on August 10, 2020, the Updated RIOP on October 19, 2020, the Updated Operating Protocols Effective November 23, 2020, the Updated Operating Protocols Effective December 9, 2020, the Updated Operating Protocols Effective February 22, 2021, and the Updated Operating Protocols to be Effective April 26, 2021 (Attachment – Highlights, Summaries & Protocols); it is hereby

ORDERED that effective immediately the following rules be put into effect in the 7th Judicial District until rescinded.

- A. General matters and matters applicable to more than one case type
  1. Until further Administrative Order or Executive Order, residential eviction matters may proceed pursuant to the protocol established in the memoranda from Chief Administrative Judge Lawrence Marks dated October 9, 2020, November 17, 2020, and December 30, 2020 and pursuant to Administrative Orders AO/231/20, AO/268/20, AO/340/20 and AO/37/21. Further reference is made to the Tenant

Safe Harbor Act (Ch. 127, L. 2020), the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (Ch. 381, L. 2020), the CDC Agency Order filed on September 1, 2020, and any applicable Executive Orders issued by the Governor.

2. Default judgments may be granted pursuant to CPLR 3215 provided that the granting of the default judgment is not contrary to any statute, Executive Order or Administrative Order.
3. The Return to In-Person Operations Plan (“RIOP”) (Phase I) implemented on May 18, 2020 (May 20, 2020 for Cayuga County), the RIOP (Phase II) implemented on June 3, 2020, the RIOP (Phase III) implemented on June 17, 2020, the RIOP (Phase IV) implemented on July 1, 2020, the RIOP (Phase 4.1) implemented on August 10, 2020, the Updated RIOP implemented on October 19, 2020, the Updated Operating Protocols implemented on November 23, 2020, Updated Operating Protocols implemented on December 9, 2020, the Updated Operating Protocols effective February 22, 2021 and the Updated Operating Protocols to be effective on April 26, 2021 and any further updated operating protocols are incorporated herein and all provisions of this Administrative Order shall be read in conjunction with the protocols.
4. Naturalization Ceremonies, wherever they occur, shall comply with the room occupancy limits stated herein.
5. All Temporary Orders of Protection issued in any criminal or civil matter that has expired or is due to expire on or after March 19, 2020 “shall be extended under the same terms and conditions until the date the matter is re-calendared, unless the order is sooner terminated or modified by a judge or justice of the court that issued the order” pursuant to Administrative Order AO/73/20 signed by the Chief Administrative Judge of the Courts on March 19, 2020. The terms of such orders shall be extended either through the Division of Technology or as addressed by each Court.
6. The Judges should encourage or require, to the greatest extent possible, the use of virtual technology in matters that occur off court premises (depositions, discovery, etc.). Such language should be included in any scheduling orders.

#### B. Supreme Civil

1. All Mental Hygiene Law proceedings in which a party is confined to a hospital or other facility shall be conducted with appearances by means of remote audiovisual technology or telephone pursuant to Administrative Order AO/72/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020.
2. Until further Administrative Order or Executive Order, foreclosure matters may proceed pursuant to the protocol established in the memoranda from Chief Administrative Judge Lawrence Marks dated July 24, 2020, October 22, 2020, December 31, 2020, and March 15, 2021 and pursuant to Administrative Orders AO/157/20 dated July 23, 2020, AO/232/20 dated October 22, 2020, AO/341/20 dated December 31, 2020, and AO/95/21 dated March 15, 2021. . Further reference is made to the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (Ch. 381, L. 2020).

3. All Foreclosure Auctions must adhere to the 7th Judicial District Foreclosure Auction Plan.

C. Superior Court Criminal Cases

1. All pending criminal cases shall be addressed by the Assigned Judge and appropriately scheduled consistent with applicable Executive Orders and Administrative Orders for Defendants not in custody, there shall be no adjournment of a matter that is greater than 60 days. For defendants in custody, there shall be no adjournment of a matter that is greater than 30 days.
2. The Youth Part arraignment procedure is as follows:  
For all counties, during regular court hours, Youth Part arraignments shall be conducted by the designated Youth Part Judge from the courthouse.  
In Livingston, Ontario, Seneca, Wayne and Yates Counties, after-hours Youth Part arraignments shall be held at the CAP before the on-call CAP Judge (as an Accessible Magistrate), during regularly scheduled CAP hours, or on an immediate/emergency basis where necessary. In Monroe, Cayuga and Steuben, the procedure remains virtual as stated in the Virtual Courtroom Protocol.
3. Each County, in consultation with the Sheriff, shall develop a plan for the imposition of intermittent sentences.

D. Family Court

1. Judges should ensure that all Permanency Planning Hearings are timely scheduled and heard pursuant to existing Federal or State Law. Difficulties in scheduling the hearings should immediately be brought to the attention of the supervising judge.
2. All cases involving a youth that is currently in detention shall be reviewed by the Assigned Judge, at a minimum, at least once every fourteen days.
3. No new S (PINS), F (Support), P (Paternity), or U (UIFSA) warrants may be issued unless approved by the Supervising Judge. All other Family Court warrants may be issued in the discretion of the Assigned Judge.

E. Surrogate's Court

All matters shall be calendared consistent with all Administrative Orders and Executive Orders at the discretion of the Presiding Surrogate.


F. City Court

All pending criminal cases shall be addressed by the Assigned Judge and appropriately scheduled consistent with applicable Executive Orders, Administrative Orders and the Updated Operating Protocols to be Effective April 26, 2021. For Defendants not in custody, there shall be no adjournment of a matter that is greater than 90 days. For defendants in custody, there shall be no adjournment of a matter that greater than 30 days.

G. Town and Village Courts

1. All matters shall be addressed by the Assigned Town or Village Judge and appropriately calendared.
2. In Monroe County, all off-hour arraignments shall be conducted by a Town or Village Justice.
3. In Cayuga, Livingston, Ontario, Seneca, Steuben, and Wayne and Yates Counties, all off-hour arraignments shall be conducted in the Centralized Arraignment Part by a Town, Village or City Court Judge.

Dated: April 23, 2021  
Rochester, New York



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Hon. Craig J. Doran  
Administrative Judge  
7th Judicial District

Distribution:  
HON. VITO CARUSO

## Return to In-Person Operations Plan Highlights

### Phase I

May 18, 2020

Good News! Our region has met established bench-marks, triggering the first phase of a return to more in-person operations. Throughout this public health crisis, the courts have remained opened and, while limiting foot traffic, have continued to hear Essential Matters.

Over the past several weeks, courts have been steadily increasing cases handled and clearing up existing pending matters. Thanks to the dedication and hard work of our remarkable judges and court staff, we are ready to begin Phase I of the Return to In-Person Operations

We will begin a flexible, measured and steady return to in-person operations commencing on May 18, 2020. We will continue to ensure the safety of all who enter the Courthouses – Judges, Staff and the public by assuring that appropriate safety measures are followed.

- Judges and Chambers Staff in Livingston, Monroe, Ontario, Seneca, Steuben, Wayne and Yates Counties will return to their courthouses commencing May 18, 2020.
  - Use of appropriate PPE required
- On May 18, 2020, the Court will begin accepting filings in new matters by electronic means. On May 18, 2020, the Courts will begin accepting paper filings in new matters, where otherwise permitted.
- All County and City Courthouses in Livingston, Monroe, Ontario, Seneca, Steuben, Wayne and Yates Counties will be open and staffed. Cayuga County will open as appropriate following the Governor's opening of the New York Central Region.
- County Courthouse operations will continue as they are presently.
- Town & Village Court Justices and clerks may return to work in their courthouses handling clerical matters and working on decisions.
- Town & Village Courts will be open but there will be no calendars and foot traffic will not be encouraged.
- Security personnel to ensure proper PPE (masks, hand sanitizer) and spatial distancing for public who enter the courthouse
- Employees
  - Use of masks/gloves
  - Spatial distancing at work stations
  - Provisions for vulnerable employees

## **SUMMARY**

7<sup>th</sup> Judicial District

Return to In-Person Operations Plan (“RIOP”)

Phase II

To Commence June 3, 2020

On May 18, 2020 (May 20, 2020 for Cayuga County) the 7<sup>th</sup> Judicial District implemented Phase I of the RIOP (summary attached). All measures included in Phase I of the RIOP to protect the health and safety of the employees, judges, litigants, lawyers and members of the public who enter the courthouses pursuant to the Amended Return to In-Court Operations Plan dated May 14, 2020 will continue and be enhanced during Phase II.

The goal of Phase II is to increase foot traffic in the courthouse in a gradual, measured manner so that the Court can begin to address matters that require an in-person appearance. The success on Phase II depends upon the Court’s ability to prioritize those matters that require an in-person appearance while continuing to maximize the use of virtual appearances.

- Phase II operates with certain presumptions:
  1. Essential Matters (except as follows in Number 2) will be conducted in-person and heard by the Assigned Judge.
  2. Criminal, Juvenile Delinquency and Mental Hygiene Law Proceedings pertaining to a hospitalized adult shall be virtual and heard by the Assigned Judge.
  3. Non-Essential matters shall be virtual and heard by the Assigned Judge.In all case types, a request to deviate from the presumption may be made to the Assigned Judge. If such request is granted, the Administrative Judge shall be notified.
- ADR shall be conducted virtually
- Steps shall be taken by staggering case types, court calendars and courtroom use, to reduce the number of court users entering the building at the same time and to reduce the number of court users congregating on any floor/at any courtroom.
- Non-judicial staffing levels may again be minimally increased to support necessary administrative functions such as adjournments/calendaring/chambers as well as to provide support for the increase in foot traffic into the courthouse. In-person court staff will rotate with non-reporting staff to work virtually.



## SUMMARY

7<sup>th</sup> Judicial District

Phase III Return to In-Person Operations Plan (“RIOP”)

To Commence June 17, 2020

- All measures contained in the Amended RIOP dated May 14, 2020 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.
  - Judges should continue to expand their use of the virtual format where legally permissible and logistically possible.
  - **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.**
  - 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).
- In all instances under (1) or (2), 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.
- ADR shall be conducted virtually (Chief Administrative Judge Lawrence Marks’ AO/87/20).
  - Courts should note the following:
    - 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.
    - 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).
  - 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.

SUMMARY  
7<sup>th</sup> Judicial District  
Phase IV Return to In-Person Operations Plan (“RIOP”)  
To Commence July 1, 2020

- All measures contained in the Amended RIOP dated May 14, 2020 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 herein.
- It is essential that Judges make maximum use of out of court time utilizing virtual technology.
- 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.
- Phase IV, like Phases II & 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. Surrogates’ 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

In all instances under (1) or (2), 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.

- 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 (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
  - 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 JD Seventh Amended AO).
  - 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.

## 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.

## SUMMARY

### 7<sup>th</sup> Judicial District

#### Phase 4.1 Return to In-Person Operations Plan ("RIOP") To Commence August 10, 2020

- All measures contained in the Amended RIOP 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. **Updates regarding housing matters will be forthcoming in the near future.**
    - 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 (7th 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. Summonses may be mailed and trials commenced upon the approval of said plans.

SUMMARY  
7<sup>th</sup> Judicial District  
Return to In-Person Operations Plan (“RIOP”) Updates Effective October 19, 2020

- All measures contained in the Amended RIOP dated May 14, 2020 will continue. All measures contained in the Memoranda of John McConnell and Nancy Barry dated February 28, 2020, March 6, 2020, March 31, 2020, May 15, 2020, May 29, 2020, June 8, 2020, June 17, 2020, August 5, 2020 and August 18, 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.
- 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 or where there is a concern that the defendant is not compliant.
      - 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
    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 or where there is a concern that the defendant is not compliant.
  - 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 MHL proceedings in which a petitioner or other necessary party is confined to a hospital be conducted with appearances by means of remote audiovisual technology).
    - 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. Eviction Proceedings
    - d. 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 until the conversion to Microsoft Teams is fully implemented. The transition to Microsoft Teams will commence on October 1, 2020. After November 25, 2020 all virtual court proceedings will be conducted using Microsoft Teams. In the event that a self-represented litigant is unable to access Skype for Business or Microsoft Teams, 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 October 9, 2020 and pursuant to Administrative Order AO/231/20.
    - 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. Notwithstanding the foregoing, a judge presiding over a matter wherein a party has defaulted may grant a default judgment where, after inquiry, the judge determines that (a) the defaulting party has received actual notice of the action or proceeding; (b) the failure of the defaulting party to respond to the action or proceeding is not due to the COVID-19 pandemic; and (c) the granting of the default judgment is not contrary to any statute, Executive Order or Administrative Order. Note: Executive Order 202.60 extends the toll on statutes of limitations (first set forth in EO 202.8 on March 20, 2020 and later extended by 202.48, 202.38, 202.28, and 202.14) through October 4, 2020. Default judgments may be governed by the suspension of "any specific time limit for the commencement, filing or service of any legal action, notice, motion or other process or proceeding, as described by the procedural laws of the state." 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.
    - Superior Court Criminal trials may be conducted in all counties in Term 12 and thereafter. Supreme Court civil trials may be conducted in all counties in Term 11 and thereafter. Those counties approved to conduct criminal and civil jury trials as part of the pilot plan may continue to conduct trials. Planning for a Special City Court Criminal Jury Trial Pilot shall commence in Term 11 with Jury Summonses to be sent in Term 12 and trials to be held in Term 13 (in selected jurisdictions). Scheduling of trials in all courts must be approved by the Administrative Judge.



# Updated Operating Protocols

## Effective November 23, 2020

### District 7

For the past many months, the Unified Court System has permitted in-person proceedings in accordance with the Governor's un-PAUSE New York plan. Foot traffic in the courthouses has been gradually increased to correspond with an improvement in the metrics measuring the spread of the Coronavirus. Recently, the metrics have indicated the need to once again reduce foot traffic in the courthouses to protect the health and safety of litigants, lawyers, court staff and judges. Chief Administrative Judge Lawrence Marks' Memorandum dated November 13, 2020 is incorporated herein and this document is intended to provide enhanced guidance thereto.

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

This Plan should be considered an update to the Return to In-Person Operations Plan effective October 19, 2020 and to Judge Marks' Memorandum "Revised Pandemic Procedures in the Trial Courts" dated November 13, 2020. Commencing Monday, November 23, 2020 all court operations in the 7th Judicial District of the State of New York shall be conducted pursuant to this Plan.

#### 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. Judges shall not conduct virtual and in-person proceedings in the same ½ day. For example, if a judge has a virtual proceeding in the morning, no in-person proceedings shall be conducted in the morning.
3. In courts where judges have been allotted a block of time in which to hold in-person proceedings, the judge shall schedule in-person appearances only during that block of time.
4. No more than 50% of the number of courtrooms in a facility will be in use at the same time. If there is a conflict that cannot be resolved by the chief clerk working with chambers, the Supervising Judge or Administrative Judge shall be notified.
5. No more than 50% of the judges/referees/magistrates of one court type (Family Court, Criminal Court, Civil Court) may hold in-person calendars at any one time.
6. **In each court, there shall be a maximum of 10 cases/proceedings scheduled in-person per hour.**

- B. Occupancy of all courtrooms shall be limited to the lesser of 10 people or ½ the posted room occupancy per code. An exception shall be granted for ongoing grand juries currently in progress (in those instances, occupancy shall be limited to the lesser of 25 people or ½ the posted room occupancy per code). Any exceptions that were previously granted to the occupancy limits are rescinded until further notice.
- C. The number of non-judicial staff reporting to the courthouse shall be reduced in the discretion of the Administrative Judge to the minimum number necessary to ensure safe operation and to ensure sufficient "remote" staff is available to replace the staff reporting to the courthouse in the event there is a workplace Coronavirus exposure. All staff not reporting to the courthouse shall work remotely.
- 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 times.

## II. Court Proceedings

- A. No new prospective trial jurors (criminal or civil) will be summoned for jury service until further notice. Pending criminal and civil jury trials will continue to conclusion.
- B. No new prospective grand jurors will be summoned for grand jury service until further notice. Existing grand juries, pursuant to Section 190.15 of the Criminal Procedure Law, may continue, upon application of the appropriate district attorney to the Administrative Judge.
- C. 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.
- D. Matters that **may** be heard in-person (or a hybrid of in-person and virtual) **PROVIDED THAT THE PRESIDING JUDGE FIRST FIND THAT IT IS UNLAWFUL OR IMPRACTICAL TO CONDUCT THE PROCEEDING VIRTUALLY:**
  1. Matters as designated in Exhibit A
  2. Family Court Act Article 10 evidentiary hearings
  3. Permanency Hearings
  4. Criminal Preliminary Hearings
  5. Pleas and Sentences
  6. Arraignments
- E. Matters that **may** be heard in-person (or a hybrid of in-person and virtual)
  1. Treatment court and Judicial Diversion appearances where the presiding judge determines, that an appearance in an acute case is necessary to protect the health and safety of a defendant.
  2. 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.
- F. ALL other matters MUST be heard virtually using Microsoft Teams, including but not limited to:
  1. Bench Trials in Civil and Criminal cases. (For compelling reasons, the presiding judge may forward a request for permission to conduct a bench trial in-person to the Administrative Judge. If deemed appropriate, the Administrative Judge will forward the request to the Deputy Chief Administrative Judge, whose permission is required if the matter is to be held in-person.)
  2. Evidentiary Hearings in Civil and Criminal Cases. (For compelling reasons, the presiding judge may forward a request for permission to conduct a hearing trial in-person to the Administrative Judge. If deemed appropriate, the Administrative Judge will forward the request to the Deputy Chief Administrative Judge, whose permission is required if the matter is to be held in-person.)
  3. Motion arguments
  4. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20)
  5. ADR where both parties are represented by counsel and counsel will be present.
  6. Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program
  7. Small Claims Assessment Review proceedings

## 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.

# Updated Operating Protocols

## Effective December 9, 2020

### District 7

For the past many months, the Unified Court System has permitted in-person proceedings in accordance with the Governor's un-PAUSE New York plan. Foot traffic in the courthouses has been gradually increased to correspond with an improvement in the metrics measuring the spread of the Coronavirus. Recently, the metrics have indicated the need to once again reduce foot traffic in the courthouses to protect the health and safety of litigants, lawyers, court staff and judges. **It is critical that the Courts immediately decrease in-person proceedings in order to protect the health and safety of all court users, court staff and judges and to further reduce the community spread of the Coronavirus. These protocols are intended to create an environment where the "normal" is a virtual appearance and in-person appearances are rare.**

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

This Plan should be considered an update to the Return to In-Person Operations Plan effective October 19, 2020, Judge Marks' Memorandum "Revised Pandemic Procedures in the Trial Courts" dated November 13, 2020, and the Updated Operating Protocols Effective November 23, 2020. Commencing December 9, 2020 all court operations in the 7th Judicial District of the State of New York shall be conducted pursuant to this Plan.

#### 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. Judges may not hold in-person proceedings more than one day per week, unless an exception is requested and granted by the Administrative Judge. The scheduling shall be as coordinated by Supervising Judges and Chief Clerks to assure appropriate limiting of foot traffic.
3. **In each court, there shall be a maximum of 5 cases/proceedings scheduled in-person per hour.**

B. Occupancy of all courtrooms shall be limited to the lesser of 10 people or  $\frac{1}{2}$  the posted room occupancy per code. An exception shall be granted for grand juries (in those instances, occupancy shall be limited to the lesser of 30 people or  $\frac{1}{2}$  the posted room occupancy per code). Any exceptions that were previously granted to the occupancy limits are rescinded until further notice.

C. The number of non-judicial staff reporting to the courthouse shall be reduced in the discretion of the Administrative Judge to the minimum number necessary to ensure safe operation. In-person staffing at these reduced levels 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. Under no circumstance shall the number of non-judicial staff reporting to the courthouse exceed 25% to 40% of normal pre-COVID staffing.

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 times.

#### II. Court Proceedings

- A. No new prospective trial jurors (criminal or civil) will be summoned for jury service until further notice. Pending criminal and civil jury trials will continue to conclusion.

- B. No new prospective grand jurors will be summoned to report for grand jury service unless authorized by appropriate administrative order. Existing grand juries, pursuant to Section 190.15 of the Criminal Procedure Law, may continue, upon application of the appropriate district attorney to the Administrative Judge.
- C. Notwithstanding any other provision herein, no adult in custody in the 7th Judicial District shall be produced to any Court (Supreme, County, Family, City, Town or Village), unless the Administrative Judge grants permission for an in-person appearance. Where an in-person proceeding involves an adult housed at a facility other than one located in the 7<sup>th</sup> Judicial District, that individual shall appear virtually utilizing electronic means unless the presiding judge orders otherwise after appropriate application is made.
- D. Matters that **may** be heard in-person (or a hybrid of in-person and virtual) **PROVIDED THAT THE PRESIDING JUDGE FIRST FIND:**
  - (a) THAT IT IS UNLAWFUL TO CONDUCT THE PROCEEDING VIRTUALLY OR
  - (b) THAT IT IS IMPRACTICAL TO CONDUCT THE PROCEEDING VIRTUALLY AND CRITICAL THAT THE MATTER PROCEED IMMEDIATELY
    - 1. Matters as designated in Exhibit A
    - 2. Family Court Act Article 10 evidentiary hearings
    - 3. Permanency Hearings
    - 4. Criminal Preliminary Hearings
    - 5. Pleas and Sentences
    - 6. Arraignments of in-custody defendants
    - 7. Arraignments where the Court is notified of a request for an arraignment by either the prosecution or the defense.
    - 8. Surrogate's Court Citations
    - 9. Treatment court and Judicial Diversion appearances where the presiding judge determines, that an appearance in an acute case is necessary to protect the health and safety of a defendant.
    - 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.
- E. ALL other matters MUST be heard virtually using Microsoft Teams video conferencing, or telephone, including but not limited to:
  - 1. Bench Trials in Civil and Criminal cases. (For compelling reasons, the presiding judge may forward a request for permission to conduct a bench trial in-person to the Administrative Judge. If deemed appropriate, the Administrative Judge will forward the request to the Deputy Chief Administrative Judge, whose permission is required if the matter is to be held in-person.)
  - 2. Evidentiary Hearings in Civil and Criminal Cases. (For compelling reasons, the presiding judge may forward a request for permission to conduct a hearing trial in-person to the Administrative Judge. If deemed appropriate, the Administrative Judge will forward the request to the Deputy Chief Administrative Judge, whose permission is required if the matter is to be held in-person.)
  - 3. Motion arguments
  - 4. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20)
  - 5. ADR where both parties are represented by counsel and counsel will be present.
  - 6. Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program
  - 7. Small Claims Assessment Review proceedings
  - 8. Other routine court matters, not expressly included in Paragraph II(D).

## 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.

# Updated Operating Protocols

## Effective February 22, 2021

### District 7

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. Early on, the courts dramatically reduced in-person proceedings, limiting those proceedings to essential matters. In the late Spring and into the Fall of 2020, the Unified Court System progressed to permitting in-person proceedings in accordance with the Governor's un-PAUSE New York plan. Foot traffic in the courthouses was gradually increased to correspond with an improvement in the metrics measuring the spread of the Coronavirus. In the Fall of 2020, the metrics indicated the need to once again reduce foot traffic. Courts decreased in-person proceedings beginning on November 23, 2020 and again on December 9, 2020 in order to protect the health and safety of all court users, court staff and judges and to further reduce the community spread of the Coronavirus. Recently, the metrics once again indicate an opportunity to increase in-person proceedings in the courthouses and while the "normal" remains a virtual appearance, in-person proceedings are permitted where access to justice and court operations require an in-person proceeding. The metrics will continue to be monitored. The court system remains nimble and ready to quickly adapt operations as conditions warrant.

In any district, 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 December 9, 2020. Commencing February 22, 2021 all court operations in the 7th 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 the 7th Judicial District Eleventh Amended Administrative Order signed on December 21, 2020 and 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 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, subject to clerk staff, courtroom space and time availability, unless an exception is requested and granted by the Administrative 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. In each court, there shall be a maximum of 10 cases/proceedings scheduled in-person per hour, except as stated in Sections (II)(B)(9) and (II)(B)(11).

B. Occupancy of all courtrooms shall be limited to the lesser of 20 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 30 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 reduced in the discretion of the Administrative Judge to the minimum number necessary to ensure safe operation. In-person staffing at these reduced levels 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. In all circumstances, non-judicial staff reporting to the courthouse shall be between 40% to 60% of normal pre-COVID staffing.

- 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. Notwithstanding any other provision herein and except in the case of a criminal jury 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.
  - B. 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
    - 3. Adoptions
    - 4. Civil and Criminal Evidentiary Hearings and Bench Trials
    - 5. Pleas and Sentences
    - 6. Jury Trials may be scheduled to occur beginning March 22, 2021. The scheduling of the 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 S&C chief clerk and pursuant to the 7<sup>th</sup> Judicial District jury trial plan as approved by the Deputy Chief Administrative Judge. Notwithstanding any provision of the aforementioned plans, occupancy shall be limited to the lesser of 30 people or ½ the posted room occupancy per code. With regard to criminal jury trials, priority should be given to incarcerated defendants. No jury trial shall be conducted before March 22, 2021.
    - 7. Surrogate's Court Citations
    - 8. Eviction proceedings as authorized by law
    - 9. Treatment court and Judicial Diversion appearances where the presiding judge determines that an appearance in an acute case is necessary to protect the health and safety of a defendant. Notwithstanding the provisions of Section (I)(A)(3), there may be a maximum of 10 treatment court or Judicial Diversion cases scheduled every 15 minutes.
    - 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 that it is impractical to conduct the appearance virtually. Notwithstanding the provisions of Section (I)(A)(3), there may be a maximum of 10 traffic violation appearances scheduled every 15 minutes.
  - C. ALL other matters MUST be heard virtually using Microsoft Teams video conferencing, or telephone, including but not limited to:
    - 1. Motion arguments
    - 2. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20)
    - 3. ADR where both parties are represented by counsel and counsel will be present.
    - 4. Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program
    - 5. Small Claims Assessment Review proceedings
    - 6. Other routine court matters, not expressly included in Paragraph II(B).



## 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.

# Updated Operating Protocols

## Effective April 26, 2021

### District 7

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.

In any district, 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, April 26, 2021 all court operations in the 7th 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 the 7th Judicial District Eleventh Amended Administrative Order signed on December 21, 2020 and 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 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 adequately 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. The scheduling shall be as coordinated by Supervising Judges and Chief Clerks to assure appropriate limiting of foot traffic.
3. In each court, there shall be a maximum of 10 cases/proceedings scheduled in-person per hour, except as stated in Sections (II)(C)(9) and (II)(C)(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 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 proceedings shall be conducted from the courtroom, as such courtroom is available.
- 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.
- 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
  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 S&C chief clerk and pursuant to the [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. 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. Family Court evidentiary hearings
  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 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.
  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 that it is impractical to conduct the appearance virtually. Notwithstanding the provisions of Section (I)(A)(3), 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 presumptively be heard virtually, from a courtroom as such courtroom is available using Microsoft Teams video conferencing (using the live courtroom as background; if not appearing from the courtroom, use other appropriate background), 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 who passed away due to COVID-related causes.

## **7<sup>th</sup> Judicial District Town and Village Courts Phase IV SUMMARY**

In the Town and Village Courts, as in the state paid courts, each phase has added additional matters which can be handled by the courts. The return to in person operations has been measured and deliberate, allowing for pull backs if the virus progresses. The following is a bullet point list of all matters that can be handled by Town and Village Courts beginning in Phase IV. Matters which were permitted in Phase I-III are included so that this list is an exhaustive list of everything that can be handled.

- Phase IV matters are in capital letters.
- If a matter is not included in this list, the Town and Village Courts may not handle it at this time.
- At all times, the capacity of the courtroom cannot exceed 25% of previously established maximum capacity.
- Proper PPE must be worn by all present.
- Social distancing must be followed.

### **Criminal Matters:**

- Off hour arraignments. In CAP counties, they will occur in person at the CAP. In all other counties, they will occur in person at the town/village court.
- Preliminary hearings. In-custody defendants should appear virtually unless otherwise ordered by the Presiding Judge after appropriate application by one of the parties.
- Bench Trials and Hearings. These must be scheduled one at a time. In-custody defendants should appear virtually unless otherwise ordered by the Presiding Judge after appropriate application.
- In-person arraignments on Appearance Tickets or Criminal Summons where counsel (either District Attorney or defense counsel) has requested arraignment.
- IN-PERSON ARRAIGNMENTS ON APPEARANCE TICKETS WRITTEN BEFORE JUNE 1, 2020.
- PLEAS AND SENTENCES FOR OUT OF CUSTODY DEFENDANTS WHERE THE SENTENCE DOES NOT INVOLVE INCARCERATION.
- PLEAS AND SENTENCES FOR IN-CUSTODY DEFENDANTS IF SENTENCE WOULD RESULT IN RELEASE OF DEFENDANT.
- In-person appearances regarding appeals.
- IN-PERSON MOTION ARGUMENT.
- 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.

### **Civil Matters:**

- Bench Trials and Hearings. These must be scheduled one at a time.
- Small Claims matters
- TOWN CODE VIOLATIONS
- Landlord/Tenant and Eviction matters in accordance with Judge Marks' AO/127/20 (attached)

### **Vehicle and Traffic Matters:**

- IN-PERSON VTL TICKET RETURNS WHERE TICKET WRITTEN BEFORE JUNE 1, 2020.
- 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

**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                      Date:

\_\_\_\_\_  
Defendant                      Date:

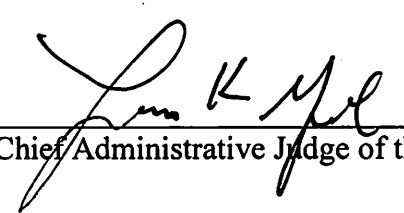
\_\_\_\_\_  
Town/Village Justice      Date:

**ADMINISTRATIVE ORDER OF THE  
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, I hereby order and direct that, effective June 20, 2020, petitions in eviction proceedings involving residential or commercial property pursuant to Article 7 of the Real Property Actions and Proceedings Law (RPAPL), whether brought on the ground that the respondent has defaulted in the payment of rent or on some other ground, shall require the inclusion of (1)(a) an attorney affirmation in the form attached as Exh. 1a, in cases where the petitioner is represented by counsel, or (1)(b) a petitioner's affidavit in the form attached as Exh. 1b, in cases where the petitioner is self-represented; and (2) a Notice to Respondent Tenant in the form attached as Exh. 2a (if filing within the City of New York) or Exh. 2b (if filing outside the City of New York).

Consistent with prior and current gubernatorial Executive Orders (EO/202.8, EO/202.14, EO/202.28, EO/202.38) and Administrative Order AO/68/20, RPAPL eviction matters commenced on or before March 16, 2020 shall continue to be suspended until further order; eviction proceedings filed after March 16, 2020 shall, upon the filing of a petition (if no answer is filed thereafter) or the filing of an answer, be suspended until further order. Notwithstanding the foregoing, eviction matters in which all parties are represented by counsel shall be eligible for calendaring for virtual settlement conferences.

This order shall take effect on June 20, 2020, and shall remain in effect for such time as state and federal emergency measures addressing the COVID-19 pandemic amend or suspend statutory provisions governing eviction proceedings, or until further order.

  
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Chief Administrative Judge of the Courts

Dated: June 18, 2020

AO/127/20

Updated Operating Protocols  
Town and Village Courts  
Effective April 26, 2021  
District 7

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.

This Plan supersedes the Updated Operating Protocols Effective February 22, 2021. Commencing April 26, 2021, all Town & Village Court operations in the 7th Judicial District of the State of New York shall be conducted pursuant to this Plan.

Unless expressly prohibited or restricted by any law, Administrative Order or Executive Order, all matters may be heard in Town & Village Courts subject 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. 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 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. 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.
- D. A distance of a minimum of six feet must be kept between all individuals at all times.
- E. Scheduling
  - 1. Traffic infractions/violations: No more than 25 cases will be scheduled every 15 minutes.
  - 2. Criminal matters (to include all penal law and misdemeanor traffic charges): No more than 25 cases will be scheduled every 30 minutes.
  - 3. Trials: No more than one hearing or bench trial every 30 minutes will be scheduled.

II. Court Proceedings

- A. Trials: Bench trials and evidentiary hearings may proceed in-person but must be scheduled so that there is strict compliance with the room occupancy limits in all courtrooms and public areas. Jury trials may be conducted only with the approval of the Administrative Judge.
- B. Judges are encouraged to more robustly conference criminal matters virtually/telephonically and if acceptable disposition is reached, plea affidavits are strongly encouraged. Please work with your ADA and defense counsel on procedure.
- C. 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.



- D. 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.
- E. Virtual appearances shall be utilized to the greatest extent possible where a virtual appearance is legally permissible and logistically possible.
- F. In-custody defendants may be transported only with the approval of the Administrative Judge.

**VIRTUAL CHAMBERS PROTOCOL**  
**FAMILY COURT – PHASE I SUMMARY**  
**7<sup>TH</sup> JUDICIAL DISTRICT**

This protocol establishes a procedure to allow Family Court Judges of the 7<sup>th</sup> Judicial District to operate virtual courtrooms during the pendency of the Second Amended Administrative Order signed on March 23, 2020. All Family Court judges will be permitted to, at a minimum, conference cases and hear limited motions from remote locations. Every Family Court Judge should have the capability to work remotely through VPN, the use of Skype for Business and phone conferences.

Filings in “Essential Matters” will continue to be considered pursuant to Judge Marks’ AO 78/20 and the 7th Judicial District Second Amended Administrative Order issued on March 23, 2020.

The Virtual Chambers Protocol will be implemented in three phases with Phase I starting on Monday April 13, 2020. Pursuant to the guidelines established below, during Phase I, the Court will be permitted to consider existing cases and pending motions/applications.

1. This plan assumes that all Family Court Judges have phone access – via home phone or cell phone – and email access to the attorneys in cases pending before them. Attorney emails should have, as a routine, phone numbers embedded in them.
2. Judges may contact attorneys involved in matters which were pending before them as of the close of business on March 16, 2020 and all Essential Matters filed after March 16, 2020 by email and schedule a conference call or Skype call to discuss the status of the cases and consider options for resolution.
3. One individual from each chambers will be permitted access to chambers for a two hour time period, during regular business hours. The individual accessing chambers must wear a mask and other PPE and exercise proper social distancing.
4. If, as a result of a conference, the parties either agree on an interim or final order or the Court concludes that an order is necessary, the Court will order the attorneys to formulate the order and, if approved by the attorneys or decided by the Court, the order will be transmitted either through PDF or Microsoft Word to

the Clerk's Office and the Judge will give the Clerk's Office approval, by email, to stamp the Judge's signature, apply an electronic signature or use a conformed signature on the order. The stamped signed order would then be electronically filed.

5. The Supervising Judge or a representative will contact the Family Law Sections of the County Bar Associations and issue a directive that attorneys, who have "important matters" before the Court, may contact the assigned judge by email to inquire about whether a conference is available. The Judges will have discretion in deciding whether to hold such a conference. The judges may schedule such conferences as they deem appropriate and require the submission of such documents or other information as they deemed necessary to conduct an effective conference. All submissions to the judge under this protocol shall be simultaneously forwarded to the Family Court Clerks and all counsel in the matter.
6. Oral argument on motions/order to show cause should be handled via conference call or Skype call. The matter will be scheduled for a remote appearance by the parties at the discretion of the Judge.
7. Trials and evidentiary hearings are held in abeyance during Phase I, unless application is made to the Supervising Judge.
8. Pro Se litigant matters can be addressed on a rotating basis. In order to maintain the current staffing levels, each judge will be assigned a block of time, not to be overlapped by any other judge, during which the stenographer, FTR, or other recording device approved by the Assigned Judge shall be utilized to memorialize the proceeding. These proceedings shall not interfere with essential matters being conducted by the Designated Judge.