

9th Judicial District
Return to In-Person Operations Plan (“RIOP”)
Phase III
To Commence June 25, 2020

On May 27, 2020 the 9th Judicial District implemented Phase I of the RIOP and On June 11, 2020 the 9th Judicial District implemented Phase II of the RIOP. All measures included in Phase I and Phase II of the RIOP to protect the health and safety of the employees, judges, litigants, lawyers and members of the public who enter the courthouses will continue and be enhanced during Phase III. Furthermore, 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.

The goal of Phase III is to continue to enhance foot traffic in the courthouse in a measured manner and to expand the categories of proceedings that are heard in-person. Should the volume of foot traffic exceed expectations, amendments to the Plan may be necessary. The success of Phase III relies heavily upon communication among judges and clerks to ensure that available court space is used to optimize safety and efficiency. **Being mindful of the increasing backlog of cases and the need to address newly filed cases, Judges should continue to expand their use of the virtual format where legally permissible and logistically possible.** It is vital to the ongoing operation of the court system that available resources and space are reserved for those matters that mandate an in-person appearance.

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.

The determination of what matters are heard in-person and what matters are heard virtually is governed by presumptions that are detailed herein. The Assigned Judge may grant a request to deviate from a presumption for compelling reasons.

I. When:

Phase III of the RIOP provides for enhanced in-person operations to occur in all Courts in the Ninth Judicial District commencing on June 25, 2020 (to coincide with Phase III of New York Forward).

II. Where:

All courts within all counties of the 9th Judicial District have returned to in-person operations pursuant to Phase I and Phase II. Phase III shall apply to all those courts as detailed herein.

III. What:

A. Courthouse Facilities: Court facilities that will be used during Phase III will include chamber suites (Judge/Law Clerk/Secretary), Court-Attorney Referee and Support Magistrate Offices, court clerks offices, clerical staff offices, a limited number of courtrooms, and a small anteroom(s) for self-represented litigants. Public spaces in the Courthouses have all been configured to maintain appropriate social distancing. The signs, floor markings and chair markings shall remain in place.

B. Court/Case types:

1. Matters that shall presumptively be heard in-person:

- a. Essential Matters (Chief Administrative Judge Lawrence Marks' Administrative order AO/78/20, Chief Administrative Judge Lawrence Marks' Administrative Order AO/99/20 or the 9th Judicial District's Sixth Amended Administrative Order) (excepting those matters that are presumptively virtual as noted in [B][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 (with careful planning and controls to limit transports and courthouse traffic). Incarcerated Defendants shall appear virtually utilizing electronic means unless otherwise ordered by the presiding judge after an appropriate application.
- 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 Article 31 of the Vehicle and Traffic Law (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. Matters that shall presumptively be heard virtually:

- a. Non-essential matters (excepting those matters that are presumptively in-person as noted [B][1] above)
- b. Criminal Proceedings (excepting those matters noted in [B][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 (B)(1) may be conducted with the consent of the parties, where legally permissible and logistically possible.
- f. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20).

3. In all instances, a request to deviate from the presumption stated in (B)(1) or (B)(2) may be made by an attorney or litigant to the Assigned Judge (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). If a request to appear in-person is granted, the Administrative Judge shall be notified.

4. ADR shall be conducted virtually (Chief Administrative Judge Lawrence Marks' AO/87/20).

5. Courts should note the following:

- a. **Housing matters (Landlord/Tenant, evictions, and foreclosures)** may proceed in accordance with AO/121/20 and AO/127/20 (see attached), and only for purposes of Alternative Dispute Resolution (ADR) and settlements where all parties are represented by counsel.
- b. **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 (9th Judicial District's Sixth Amended Administrative Order).
- c. 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.

IV. How:

A. Building Entrance Issues

1. Case times will be staggered in the morning and afternoon for the high-volume Courts.
2. While the buildings remain open, foot traffic shall be monitored.
3. Media access and requests shall be addressed pursuant to standard protocol.

B. Calendars

1. Court calendar/docket times shall be staggered to reduce the number of individuals in the courthouse and courtrooms. Courts shall determine the appropriate staggering of cases based on the type and nature of the proceeding.
2. Judges/referees/magistrates of one court type (Family Court, Criminal Court, Civil Court) may hold in-person calendars at any one time provided the non-judicial resources are available in consultation with the Chief Clerk and with the plan of the designated Supervising Judge.

V. Who:

A. Clerk's Office staff

1. Non-judicial staffing levels may again be increased (not to exceed 70%) 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.
2. Clerical staff will be rotated with some staff reporting to the courthouse to send notices, calendar cases, support chambers operations, and clerk essential matters; and other staff working remotely.
3. All efforts will be made to space staff in shared offices to ensure a 6 ft distance. Appropriate face shields will be provided where a six-foot distance cannot be maintained and/or where employees request them consistent with appropriate protocols.
4. Employees who face additional challenges returning at work due to the existence of an underlying medical condition (would be considered high risk applying the Center for Disease Control (CDC) criteria) or other extenuating circumstances should remain working remotely if possible.

- B. Judges, Chambers Staff, Court Attorney Referees and Support Magistrates** shall report to the courthouse unless permission is granted by the Administrative Judge to work remotely and in consultation with the Supervising Judge when appropriate.

C. Other staff: Law clerks not assigned to a judge, district office staff, court reporters, court interpreters, law library staff, Commissioner of Jurors Staff, and other staff not included above shall report to the courthouse as directed by his/her court manager or supervisor in consultation with the District Executive or Administrative Judge. All staff not reporting to the courthouse shall continue to work virtually.