

RETURN TO IN-PERSON OPERATIONS – PHASE FOUR
FOURTH JUDICIAL DISTRICT (DRAFT 7/1/2020)

The various preliminary phases of the Fourth District’s “Return to In-Person Operations Plan” have focused on returning judges and staff to the courthouses, completing facility modifications to ensure the safety of all and gradually expanding in-person appearances. These goals have met with success. Now, consistent with the Governor’s move to Phase Four of economic reopening, the courts in the Fourth District will expand as well.

PHASE FOUR

Phase Four represents a gradual expansion of in-person proceedings. However, in order to maintain reduced facility density, the policy will remain that all in-person proceedings occur only in specially designated courtrooms. These courtrooms represent approximately 50% of available courtroom space in each facility and their in-person use remains conditioned upon compliance with density restrictions and established health and safety protocols, including proper social distancing and wearing a face covering. Commencing with Phase Four, the added precaution of temperature screening will be instituted in all State-paid court facilities for members of the public.

- I. **TIMING:** Phase Four is designed to coincide generally with Phase Four of the Governor’s UNPAUSE New York schedule, but has been modified slightly to ensure synchronicity within the District. Phase Four will begin on Monday, July 6, 2020.

- II. **IN-PERSON PROCEEDINGS:** Phase Four will be guided by certain “presumptions”, as follows:
 - A. **Matters Involving Incarcerated Defendants:** Where a proceeding involves an incarcerated defendant, it is presumed that he or she will appear virtually using electronic means, unless the Assigned Judge determines otherwise, taking into account the position of the parties.

 - B. **Matters that presumptively will be heard in-person:**
 1. **Superior Civil:**
 - Bench Trials
 - Evidentiary Hearings and Inquests, including Assisted Outpatient Treatment Hearings (new filings and extensions)
 - All appearances and conferences, **excluding foreclosures**, where at least one party is self-represented
 - Other appearances, as deemed necessary by the Assigned Judge taking into account the position of the parties
 - Essential Matters as defined in Administrative Orders 78/20 and 99/20

 2. **Superior Criminal:**
 - Bench Trials
 - Evidentiary Hearings
 - Non-custodial Arraignments
 - Waivers of Indictment, Pleas and Sentencings for defendants at liberty
 - Sentencings for defendants in custody
 - Motion arguments
 - Treatment Court and Judicial Diversion where the Judge determines that an appearance is necessary to protect the health and safety of a defendant
 - Grand Jury proceedings (on or after July 13, 2020)
 - Essential Matters as defined in Administrative Orders 78/20 and 99/20

3. Family Court:

- Evidentiary Hearings (priority given to matters filed first)
- Child Support proceedings filed prior to June 1, 2020
- Adoptions
- Warrant returns
- Permanency Hearings
- Article 10 consents, admissions and surrenders
- Essential Matters as defined in Administrative Orders 78/20 and 99/20

4. Surrogate's Court:

- Citations and Show Cause orders
- Bench Trials
- Evidentiary Hearings
- Adoptions
- Article 17 and 17-A Guardianship proceedings
- Wrongful death settlements
- All appearances and conferences where at least one party is self-represented
- Other appearances, as deemed necessary by the Assigned Judge, taking into account the position of the parties
- Essential Matters as defined in Administrative Orders 78/20 and 99/20

5. City Court -- Civil:

- Bench Trials
- Evidentiary Hearings
- Small Claims matters (including small claims arbitrations)
- Dangerous dog proceedings
- Local code violation proceedings
- Appearances regarding appeals
- Essential Matters as defined in Administrative Orders 78/20 and 99/20

6. City Court -- Criminal/Traffic:

- Custodial Arraignments will be conducted pursuant to standard business practices in each respective City Court
- Non-Custodial Arraignments -- Desk Appearance Tickets (DAT's):
 - (i). DAT's alleging DWI;
 - (ii). DAT's alleging other felonies or misdemeanors *issued prior to June 1, 2020*;
 - (iii). DAT's alleging other felonies or misdemeanors *issued on or after June 1, 2020*, and accompanied by an arraignment request by the prosecution or defense; and
 - (iv). DAT's alleging VTL infractions issued prior to June 1, 2020.
- Warrant Returns
- Bail applications and reviews
- Preliminary Hearings
- Evidentiary Hearings
- Motion arguments
- Pleas and Sentencings for defendants at liberty whose anticipated sentence does not involve a period of incarceration
- Sentencings for defendants in custody
- Bench Trials

- Treatment Court where the Judge determines that an appearance is necessary to protect the health and safety of a defendant
- Appearances regarding appeals
- Essential Matters as defined in Administrative Orders 78/20 and 99/20

C. Matters that presumptively will be heard virtually:

1. Superior Civil:

- All conferences, including foreclosures, where all parties are represented by counsel
- Motion arguments where all parties are represented by counsel
- Mental Hygiene Law proceedings pertaining to a hospitalized adult (Administrative Order 72/20)
- All other proceedings not listed in (B)(1) above

2. Superior Criminal:

- Conferences
- Waivers of Indictment and Pleas for defendants in custody

3. Family Court:

- Conferences
- PINS Proceedings
- Appearance Calendars
- All other proceedings not listed in (B)(3) above

4. Surrogate's Court:

- Conferences where all parties are represented by counsel
- Motion arguments where all parties are represented by counsel
- All other proceedings not listed in (B)(4) above

5. City Court -- Civil

- Conferences
- Landlord/Tenant proceedings in accordance with Administrative Order 127/20 and Executive Order 202.28.
- Landlord/Tenant proceedings for the purposes of pursuing Alternate Dispute Resolution and/or settlement in cases where all parties are represented
- Motion arguments
- All other proceedings not listed in (B)(5) above

6. City Court – Criminal/Traffic

- Custodial Arraignments will be conducted pursuant to standard business practices in each respective City Court
- Conferences
- Pleas where the defendant is in custody
- All other proceedings not listed in (B)(6) above

D. Town and Village Courts: The following will apply in the Town and Village Courts during Phase Four:

1. Criminal/VTL Matters – Presumptively In-Person:

- a. Custodial Arraignments – evenings after 5:00 P.M., weekends and holidays:
 - (i) CAP Counties: In counties with a Centralized Arraignment Part (CAP), the presumption is that these will occur in-person; however, they may be virtual if necessary (Warren and Washington).

- (ii) VAP Counties: In those counties where there is an approved Virtual Arraignment Part (VAP), the presumption is that these will continue to be virtual (Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, St. Lawrence, Saratoga, Schenectady).
- b. Custodial Arraignments from 9:00 A.M. to 5:00 P.M. on business days:
 - (i) CAP Counties: Normal operations remain in place.
 - (ii) VAP Counties: These will occur in-person at the court of geographic jurisdiction, but may also be conducted by the assigned VAP judge.
- c. Non-Custodial Arraignments on Desk Appearance Tickets (DAT's):
 - (i). DAT's alleging DWIⁱⁱ;
 - (ii). DAT's alleging other felonies or misdemeanors *issued prior to June 1, 2020*;
 - (iii). DAT's alleging other felonies or misdemeanors *issued on or after June 1, 2020*, and accompanied by an arraignment request by the prosecution or defense; and
 - (iv). DAT's alleging VTL infractions issued prior to June 1, 2020.
- d. Warrant Returns
- e. Bail applications and reviews
- f. Preliminary Hearings
- g. Evidentiary Hearings
- h. Motion arguments
- i. Pleas and Sentencings for defendants at liberty whose anticipated sentence does not involve a period of incarceration
- j. Pleas and Sentencings for defendants in-custody
- k. Bench Trials
- l. Appearances regarding appeals

2. **Criminal/VTL Matters– Presumptively Virtual:** Virtual conferences continue to be encouraged, particularly the use of permissible plea-by-mail forms.

3. **Civil Matters – Presumptively In-Person:**

- a. Small Claims Proceedings
- b. Dangerous Dog Hearings
- c. Town and Village Code Violation Proceedings
- d. Appearances regarding appeals

4. **Civil Matters – Presumptively Virtual**

- a. Landlord/Tenant Proceedings in accordance with Administrative Order #127/20 and Executive Order 202.28.
- b. Landlord/Tenant Proceedings for purposes of pursuing Alternate Dispute Resolution and/or settlement in cases where all parties are represented.

E. **Deviations from Presumptions:** In the Supreme, County, Family, Surrogate's and City Courts, a request to deviate from the presumptions identified in subdivisions (B) and (C), may be made on motion of the parties or sua sponte by the Court, taking into account the position of the parties.

III. **DESIGNATED COURTROOMS, SCHEDULING and SAFETY:**

A. **Designated Courtrooms and Scheduling In-Person Appearances:**

- 1. **Town and Village Courts:** A strict maximum occupancy of 25% is in place for all Town and Village Courtrooms. Only one Bench trial or hearing may be scheduled at a time. All in-person activity will be conducted so as to ensure compliance with established

social distancing rules. Facial coverings continue to be required at all times by all who enter the court facility. Municipalities are encouraged to institute temperature screening for all members of the public who enter Town or Village Court facilities.

2. **Supreme, County, Family, Surrogate and City Courts:** In Phase Four, in-person proceedings in the Supreme, County, Family, Surrogate and City Courts will continue to be limited to the specially designated courtrooms (bolded) below. Courtroom scheduling blocks will continue in Phase Four to ensure that facility-wide density limits are maintained at 50% of capacity (**Attachment A**).

In the Supreme, County, Family and Surrogate’s Courts, each designated courtroom now has a specifically designated waiting area. These areas will be used in the event that a prior appearance runs beyond its scheduled time, resulting in a need to wait. Maximum density limits for these designated waiting areas have been established. If the capacity of a designated waiting area exceeds the density limits, individuals will be asked to wait outside the facility. This will ensure that in-person proceedings occur in an orderly manner and do not result in increased density which impedes access by self-represented litigants and other walk-in traffic or compromises health and safety.

NOTE: No in-person proceedings will be conducted in a designated courtroom if the number of participants – including counsel, litigants, witnesses, the judge, court clerk, court reporter, law clerk and spectators – exceeds the specified density limits. These density limits reflect the total number of persons who can be accommodated in the room while maintaining a six-foot perimeter around each person. Court Officers will be responsible for ensuring that the density limits are not exceeded.

CLINTON COUNTY:

COURTROOM	MAXIMUM COVID-19 DENSITY
Courtroom #1	18
Courtroom #2	12
Courtroom #3	11
Courtroom #4	11
Support Magistrate Hearing Room	6

ESSEX COUNTY:

COURTROOM	MAXIMUM COVID-19 DENSITY
Supreme Courtroom	18
County Courtroom	20
Family Courtroom	8
Surrogate Courtroom	11
Support Magistrate Hearing Room	8

FRANKLIN COUNTY:

COURTROOM	MAXIMUM COVID-19 DENSITY
Supreme Courtroom	37
County Courtroom	19
Family Courtroom	8
Support Magistrate Hearing Room	10

FULTON COUNTY:

COURTROOM	MAXIMUM COVID-19 DENSITY
Supreme Courtroom	40
County Courtroom	23
Mini Hearing Room	12
Family Courtroom	12
Surrogate Courtroom	10
Support Magistrate Hearing Room	17

HAMILTON COUNTY:

COURTROOM	MAXIMUM COVID-19 DENSITY
Main Courtroom	22

MONTGOMERY COUNTY:

COURTROOM	MAXIMUM COVID-19 DENSITY
Supreme Courtroom	32
County Courtroom	25
Family Courtroom	9
Surrogate Courtroom	10
Room #48	23

ST. LAWRENCE COUNTY:

COURTROOM	MAXIMUM COVID-19 DENSITY
Courtroom A	27
Courtroom B	24
Courtroom C	45
Family Courtroom	11
Support Magistrate Hearing Room	8
First Appearance Hearing Room	7

SARATOGA COUNTY – BUILDING #3 (Supreme, County and Surrogate’s Courts)

COURTROOM	MAXIMUM COVID-19 DENSITY
Supreme Courtroom – Part One (#217)	35
Supreme Courtroom – Part Two (#203)	24
County Courtroom	21
Surrogate Courtroom	10

SARATOGA COUNTY – BUILDING #2 (Family Court)

COURTROOM	MAXIMUM COVID-19 DENSITY
Family Courtroom Part 1 (#121)	9
Family Courtroom Part 2 (#221)	12
Support Magistrate Hearing Room (#106)	7
Support Magistrate Hearing Room (#111)	9

SCHENECTADY COUNTY – 612 State Street (Supreme, County and Surrogate’s Courts)

COURTROOM	MAXIMUM COVID-19 DENSITY
Courtroom #1	27
Courtroom #2	19
Courtroom #3	14
Courtroom #4	25
Courtroom #5	14
Courtroom #6	14

SCHENECTADY COUNTY – 620 State Street (Family Court)

COURTROOM	MAXIMUM COVID-19 DENSITY
Judge Burke Courtroom	8
Judge Blanchfield Courtroom	8
Judge Polk Courtroom	10
Magistrate Bowles Hearing Room	6
Magistrate Jennings Hearing Room	7

SCHENECTADY COUNTY – Shaffer Heights Supreme Court Annex

COURTROOM	MAXIMUM COVID-19 DENSITY
Central Courtroom	23

WARREN COUNTY

COURTROOM	MAXIMUM COVID-19 DENSITY
Supreme Courtroom	43
New County Courtroom	38
Old County Courtroom	20
Family Courtroom – Part 1	11
Family Courtroom – Part 2	11
Support Magistrate Hearing Room	7

WASHINGTON COUNTY

COURTROOM	MAXIMUM COVID-19 DENSITY
Supreme Courtroom	31
County Courtroom	34
Surrogate Courtroom	7
Family Courtroom	16
Support Magistrate Hearing Room	9

AMSTERDAM CITY COURT

COURTROOM	MAXIMUM COVID-19 DENSITY
Main City Courtroom	24

GLENS FALLS CITY COURT

COURTROOM	MAXIMUM COVID-19 DENSITY
Main City Courtroom	27

GLOVERSVILLE CITY COURT

COURTROOM	MAXIMUM COVID-19 DENSITY
Main City Courtroom	16

JOHNSTOWN CITY COURT

COURTROOM	MAXIMUM COVID-19 DENSITY
Main City Courtroom	14

MECHANICVILLE CITY COURT

COURTROOM	MAXIMUM COVID-19 DENSITY
Main City Courtroom	13

OGDENSBURG CITY COURT

COURTROOM	MAXIMUM COVID-19 DENSITY
Main City Courtroom	24

PLATTSBURGH CITY COURT

COURTROOM	MAXIMUM COVID-19 DENSITY
Main City Courtroom	19

SARATOGA CITY COURT (Temporary Location – Lincoln Baths Building)

COURTROOM	MAXIMUM COVID-19 DENSITY
Main City Courtroom	12

SCHENECTADY CITY COURT

COURTROOM	MAXIMUM COVID-19 DENSITY
Criminal Courtroom – Liberty Street	24
Civil Courtroom – Jay Street	15
Traffic Courtroom – Jay Street	24

- B. Chambers Conferencing:** Judicial case conferencing will continue to occur virtually. If there is a need for an in-person appearance, it should be scheduled in consultation with the Chief Clerk to ensure that the selected day and time is one which, taking into account already scheduled in-person proceedings in designated courtrooms, will not result in facility density limits being exceeded.

IV. GRAND JURY:

- A. Grand Jury Impanelments:** Grand Jurors who were summoned for service in Phase Three will be scheduled to appear in court during Phase Four. Grand Juries will return under the parameters identified in the District’s “Plan for the Return of Jury Service” (**Attachment B**).

V. STAFFING: Staffing in Court Clerk’s offices will increase to no more than 80%. *Court Officer staffing will increase to 100% in order to accomplish thermal screening.* In addition:

- A.** Court Reporters will continue to return to the courthouse only as necessary to handle in-person proceedings.
- B.** All other staff not included above or in any prior Phase shall report to the courthouse as directed by his or her supervisor, following consultation with and approval by the Administrative Judge or District Executive.

VI. ABSTRACTORS: Abstractors will continue be permitted in Surrogate’s Court by appointment only. A schedule will be created and maintained by the Surrogate Court Chief Clerk and it will be restricted to one abstractor per hour and will be limited to the afternoons. Abstractors should call the Chief Clerk to confirm all appointments. This will ensure that the scheduled day and

time is one which, taking into account in-person proceedings, will not result in facility density limits being exceeded.

ⁱ Any provision of Vehicle and Traffic Law Article 31 (1192-1199).

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