

Updated Operating Protocols

Town and Village Courts

Effective December 9, 2020

Eighth District

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.

Commencing December 9, 2020 all Town and Village Court operations in the 8th Judicial District of the State of New York shall be conducted pursuant to this Plan. **If a matter is not specifically mentioned below, the Court MAY NOT hear the matter in person.**

I. Courthouse Operations

- A. Occupancy of all courtrooms shall be limited to the lesser of 10 people or 25% of the posted room occupancy per code. This includes lawyers/litigants/spectators/court personnel and security.
- B. All current safety measures and protocols will continue.

II. Court Proceedings

- A. No trial jurors (criminal or civil) will be summoned for jury service until further notice.
- B. No bench trials or hearings in civil or criminal cases will be conducted. Bench trials and hearings may only be conducted after a request is made to the Administrative Judge and Deputy Chief Administrative Judge. All felony hearings for defendants in custody shall continue to be held at the central courthouse within each county of the 8th Judicial District. These must be scheduled and handled virtually through the appropriate county courthouse in coordination with the Supreme and County Court chief Clerk's Office.
- C. Judges in Cattaraugus County may conduct in-person business hour custodial arraignments. In all other counties of the 8th Judicial District, all business hour custodial arraignments shall be conducted through the central courthouse location virtually. All CAP and VAP protocols for after-hour, holiday and weekend arraignments shall continue virtually.
- D. Judges may conduct non-custodial arraignments where the Court is notified of a request for an arraignment by either the prosecution or the defense. (Eg. need for an Order of Protection, revocation of driver's license).
- E. 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. These matters may not be handled in person and report back conferences shall not be held.
- F. 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 local prosecutor or ADA and defense counsel on procedure. **Absent this virtual handling there are to be no traffic court in person appearances or calendars.**
- G. 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. No scofflaws or civil judgments should be entered for failure to pay at this time.

- H. No in person civil calendars. These may be conducted virtually or telephonically.
- I. No in person appearances for desk appearance tickets. All non-custodial arraignments and traffic court appearances are to be adjourned for 60 days. As noted above a Court may conduct a non-custodial arraignment where the prosecution or the defense and the court makes a finding on a case by case basis that it is critical that the matter proceed immediately.
- J. If the court has submitted an approved Virtual plan to the Administrative Judge, virtual court hearings may be permissible.
- K. Should there be an in-person matter, (extremely rare and limited circumstance) face masks and face coverings must be worn at all times, a minimum of six feet between everyone is required, and the court must have proper PPE available.
- L. Pleas and sentences must be virtual in accordance with an approved virtual plan. In-person pleas and sentences are not permitted.