

Updated Operating Protocols

Town and Village Courts

Effective March 29, 2021

Eighth District

These are very modest changes to the protocols disseminated on February 16, 2021. Chief Administrative Judge Lawrence Marks' Memorandum dated November 13, 2020 is incorporated herein and this document is intended to provide enhanced guidance thereto.

Commencing March 29, 2021 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 15 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 **unless being handled virtually**. Bench trials and hearings may only be conducted in person 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 **or through an approved virtual plan which has been submitted and approved by the Supervising and/or Administrative Judge**. 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, **or through an approved virtual plan which has been submitted and approved by the Supervising and/or Administrative Judge**. All CAP and VAP protocols for after-hour, holiday and weekend arraignments shall continue virtually.
- D. Judges may conduct **in person** arraignments where the Court receives desk appearance tickets that involve a request for an order of protection, or that may lead to a suspension of driving privileges pending prosecution, or when the court is notified of a request for an arraignment by either the prosecution or the defense. These in person appearances are to be limited to no more than **fifteen (15)** per hour maintaining courtroom limitations, distancing, mask wearing at all times.
- 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/further proceedings 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 mail in 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 **except for eviction proceedings**. All other civil matters may be conducted virtually or telephonically. **Eviction filings and proceedings must conform to all current legislation according to the directives in the memo to all town and village courts from the Office of Justice Court Support dated March 2, 2021 along with the December memorandum of Chief Administrative Judge Lawrence Marks and attention to the filing of Hardship Declarations.**
- I. No in person appearances for desk appearance tickets except as noted in "D" above. All other non-custodial arraignments and traffic court appearances are to be **done virtually through an approved plan that has been submitted to the Supervising and/or Administrative Judge and approved or adjourned.**
- J. If the court has submitted an approved Virtual plan to the Administrative Judge, virtual court hearings may be permissible in both civil and criminal matters where all parties have access and ability to appear virtually.
- 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 must be virtual in accordance with an approved virtual plan.
- M. In person sentences may be permitted in limited circumstances if they are not able to be accomplished virtually with proper social distancing and all the protocols listed in K above.
- N. **Notwithstanding (I.) above appearances on appearance tickets may be scheduled in the following counties as set out below, the numbers set forth below are a total number and are to be combined with allowable appearances under (D) for a total of no more than fifteen (15) per hour:**
Cattaraugus County Town and Village courts may resume scheduling of all appearance tickets, no more than 15 per hour commencing on April 12, 2021;
Erie County Town and Village courts may resume scheduling of all appearance tickets, not more than 15 per hour commencing on April 12, 2021;
Niagara County Town and Village courts may resume scheduling of all appearance tickets, not more than 15 per hour commencing on April 19, 2021;
Orleans County Town and Village courts may resume scheduling of all appearance tickets, not more than 15 per hour commencing April 19, 2021.
- O. **Allegany, Chautauqua, Genesee and Wyoming counties will be re-evaluated on a weekly schedule to determine when additional appearance tickets matters may be scheduled, other than as set forth in (D) above.**