

STATE OF NEW YORK
UNIFIED COURT SYSTEM
EIGHTH JUDICIAL DISTRICT
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ANDREW B. ISENBERG,
District Executive

MEMORANDUM

April 5, 2020

TO: HON. VITO CARUSO, Deputy Chief Administrative Judge

FROM: Hon. Paula L. Feroletto, Administrative Judge 8th Judicial District

RE: 8TH JUDICIAL DISTRICT VIRTUAL CHAMBERS PLAN

As we continue to navigate through the Covid-19 public health emergency, the Eighth Judicial District is seeking to expand the virtual courtroom model to a model for virtual chambers. The proposal and guidelines below seek to balance the Eighth Judicial District's priority of furnishing resources to handle essential court proceedings as outlined in the March 22, 2020 Administrative Order of the Chief Administrative Judge (AO 78/2020) with the urgent need to expand access to justice for non-essential matters. The provisions and guidelines below have also been drafted to assure compliance with the Governor's "NYS on PAUSE" as outlined in Executive Order 202.8 which states, in part:

"All businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. Each employer shall reduce the in-person workforce at any work locations by 100% no later than March 22 at 8 p.m. Any essential business or entity providing essential services or functions shall not be subject to the in-person restrictions."

The following protocols apply to all courts in the Eighth District identified below. All interactions involving the

Court shall be virtual and conducted via electronic (Skype for Business) or telephonic means. All references to “the Court” throughout this protocol shall mean a Judge or Justice (referred to as “Judge” throughout), principal court attorney, confidential law clerk, court attorney, secretary and/or court staff. A Court handling cases may engage in case conferencing and settlement discussions, decide motions and issue decisions, orders and/or judgments pursuant to this protocol as detailed below.

Accordingly, effective 8:30 a.m. on Monday, April 13, 2020, Phase I of the Virtual Chambers plan shall begin operations in the Eighth District (Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming Counties), as provided herein.

A. GENERAL PROVISIONS

1. Operations shall continue solely from the established Central Locations in each county with limited court staff consistent with prior Administrative Orders and established protocols. The sole focus of the clerk staff at those locations shall remain on the “essential” matters set forth in prior Administrative Orders.

2. All other court locations shall remain closed and no work shall be performed from those closed locations. In order to accommodate access to existing files not digitally located on the NYSEF system, a judge or chambers’ representative (principal court attorney or secretary may access chambers to retrieve files. To provide for appropriate physical distancing times should be coordinated so as not to overlap with others retrieving files. Said access shall be scheduled with and approved by the Administrative Judge or her designee.

3. Priority shall be given to fully submitted “undecided” matters and pending motions, submitted by March 16, 2020. The judge shall process these first.

4. Initially, no new civil case filings shall be accepted for consideration in Virtual Chambers. Only matters pertaining to existing filed cases shall be considered in the sole discretion of the assigned judge. Any exceptions require prior approval of the Supervising Judge upon consultation with the Administrative Judge.

5. The e-file system shall continue to be utilized only for those “essential” filings set forth in the existing Administrative Orders. Chambers and court users may upload decisions and orders to the NYSCEF system. Outside filers may not access the e-file system except for “essential” filings.

6. Judges assigned and on duty at the Central Locations shall continue with rotating assignments to hear those matters deemed “essential” by prior Administrative Orders. For all other matters, parties or their attorneys are directed to contact the chambers of the assigned judge.

7. Mail shall be delivered only to the designated clerk at the Central Locations unless specifically authorized by the Administrative Judge. Email communication shall continue to be the preferred method of communication for all matters and the use of traditional mail is strongly discouraged unless necessary. Court users are hereby advised that non-email communication may not be timely processed. Traditional mail is to be handled, with proper, safe handling (gloves, disinfectant) shall be utilized.

8. The consideration of specific matters authorized in this Phase shall be solely within the assigned judge’s discretion. All conferences and appearances shall be handled remotely by Skype for Business or telephone conference. No physical appearances are permitted under any circumstances. The attorney(s) requesting a conference shall be responsible for providing all contact information necessary for the Court to be able to initiate the Skype for Business or telephone conference once it is scheduled by the judge’s secretary or principal court attorney. Skype for Business video conferencing is the only approved video platform.

9. All motion practice on essential matters shall be on submission only unless specifically requested by the assigned judge.

10. All judges shall keep track of all work performed remotely; it is anticipated that fillable forms will be provided for case tracking.

11. No party shall make an audio or video recording of a remote telephone or video appearance without the written permission of the Court.

12. All parties and the Court shall promptly disclose the identities of all parties and individuals present during a virtual court appearance.

13. Attorneys shall not disclose the personal cell phone numbers of any Judge or court employee obtained in connection with a virtual appearance.

14. All documents exchanged via e-mail should be sent to the Judge, law clerk, secretary, and opposing counsel.

B. CIVIL Matters in Supreme, Family, Surrogate's Courts

1. The General Provisions and Exceptions discussed above shall apply.

2. As referenced above, priority shall be given to overdue "undecided" matters and pending motions. The judge shall process these first. Pending motions and decisions shall be decided on a first in/first out basis, unless the assigned judge determines a certain pending matter to be urgent. This excludes foreclosure motions, default judgments, consumer credit transactions and evictions as those matters are on hold.

3. Upon substantial completion of priority matters, the Court may consider all judgments, stipulations and orders that have been approved by the parties or are unopposed.

4. Individual Chambers are not open for business as usual and all appearances on "essential" or other urgent matters shall continue to be conducted remotely in the approved Virtual Courtrooms by Skype for Business or telephone conference.

5. Any traditional mail received by chambers previously or hereafter received may be reviewed by the designated chamber's representative accessing files pursuant to General Provisions, paragraph 2, above. Any pending matter deemed urgent by the Assigned Judge shall be processed accordingly.

6. E-filing, for the time being, shall process only these matters deemed "essential" by prior Administrative Order.

7. No new cases shall be accepted. Only requests pertaining to existing files shall be considered for action in the discretion of the judge. Any exceptions require prior approval of the District Administrative Judge.

8. Upon substantial completion of those priority matters identified above, the cases and proceedings handled by Virtual Chambers may be expanded to, address other pressing matters pertaining to "non-essential" pending cases including, but not limited to, re-scheduling trials and hearings, management of pending cases, resolving discovery issues, settlement conferences, other ADR processes and other matters the Court deems necessary to be heard in the interest of justice.

9. Non-essential Pending Cases:

- a. The Court, in its discretion, may contact the attorneys involved via telephone or e-mail to schedule a telephone or video case conference for pending cases.
 - b. Attorneys may request a telephone or video case conference in any matter via e-mail directed to the Court with an email copy to all opposing counsel. Attorneys must state the reason for the requested case conference, and the Judge shall, in their discretion, determine whether a conference is necessary and/or appropriate.
 - c. The Court shall direct the manner - telephone or video - in which the case conference is to be held and who is to initiate said conference.
 - d. The Court shall conduct a case conference and sign and file any appropriate orders as outline.
10. The following matters may be handled in chambers:
- a. ADR Settlement/Dispute Resolution Conferences
 - b. Mediation
 - c. Arbitration
 - d. Conferences that result in a Stipulated Order
 - e. Resolution of Discovery Issues with Stipulated Orders.
 - f. Infant compromise orders

11. For non-essential matters, the Court is not permitted to issue an Order (Stipulated or otherwise) directing a health/medical care provider, law enforcement agency or other COVID-19 “first responder,” including but not limited to entities providing grocery and food services, to comply with non-party discovery demands. This includes requests for government documents and requests for medical records.

12. In the 8th Judicial District, the **asbestos calendar** and **tax certiorari** calendar will continue to have compliance parts and conferencing to keep matters progressing, keeping in mind the limitations imposed by Executive and Administrative Orders.

13. The **Commercial Division** will handle the following:

- a. Motion practice: Filings are limited to “essential” matters only (e.g., OTSC on an application for a TRO, PI, or similar emergency relief, with the new cover sheet attached). Oral argument – only if deemed necessary by the assigned CD Judge would be conducted via Skype, or telephone conference. Submission of applications on the papers is preferred.
- b. Discovery: To the extent counsel (on all sides of the case) are able to do so safely, and remotely (Skype/telephone), discovery may proceed - by agreement among counsel. Understand that, during the current emergency, there may not be an individual available to gather responsive documents or make them available for production; witnesses may be unable to appear remotely for depositions, etc.
- c. Discovery-related conferences: May proceed via telephone, email, or Skype (when deemed appropriate by the Court) upon email notice to the Court, following the protocol previously established in the CD (e.g., counsel shall attempt narrow the issue/dispute, email the CLC,

etc.).

- d. Status/compliance conferences: May resume upon request of counsel (an email to the CLC is enough for the request). Such conferences would be conducted via telephone, Skype, or even email under the appropriate circumstances.

14. All other matters, the IAS Judge will resume regularly scheduled conferencing via SKYPE for Business or phone as the matters are and have been calendared and will reach out to counsel on matters for which conference dates have passed and conduct conferences via phone or SFB. New, additional conferences can be scheduled.

15. The ADR offices known as the Martin Violante ADR offices will take referrals from judges and attorneys directly. Should a matter be resolved, they will submit the name and Index No. of the case to both the IAS judge and the chief clerk's office to notify them of the case resolution. Submission of any case reporting required for statistical purposes will also be submitted.

16. Any other matters settled directly with chambers should send a notification to the Chief clerk's office with the case name and Index no. to notify them of the case resolution.

17. Specific to **Surrogate Courts** and if not otherwise specified above, Surrogate Courts may handle the following matters, but is not limited to handling the following. There may be other essential matters designated by the Judge or matters in which stipulated order may be entered. These matters include:

- a. Guardianships Article 17 and 17A
- b. Adoptions under limited circumstance
- c. Probate, Administration or Voluntary Administration Proceedings
- d. Proceedings by the Public Administrator involving health or welfare;
- e. Such other matters as deemed essential by the Surrogate.

In no case should counsel be having direct contact with clients, nor will the court entertain any in person motions. All the above matters are to be accomplished only if they can be done remotely via e-filing with the Surrogate court, with papers completed virtually by email, fax, scan etc.

C. SUPERIOR CRIMINAL COURTS

1. The General Provisions and Exceptions identified above shall apply.

2. The Judge shall prioritize and complete all pending Trial, Motions, Decisions and Orders. Matters that are overdue on the Quarterly Report shall take precedence, followed by matters that may be pending beyond Standards and Goals.

3. Individual Chambers are not open for business as usual and all appearances on "essential" or other urgent matters shall continue to be conducted remotely in the approved Virtual Courtrooms by Skype for Business or telephone conference.

4. Any traditional mail received by chambers previously or hereafter received may be

reviewed by the designated chamber's representative accessing files pursuant to General Provisions, paragraph 2, above. Any pending matter deemed urgent by the Assigned Judge shall be processed accordingly.

5. Non-essential Pending Cases:

- a. The Court, in its discretion, may contact the attorneys involved via telephone or e-mail to schedule a telephone or video case conference for pending cases.
- b. Attorneys may request a telephone or video case conference in any matter via e-mail directed to the Court with an email copy to all opposing counsel. Attorneys must state the reason for the requested case conference, and the Judge shall, in their discretion, determine whether a conference is necessary and/or appropriate.
- c. The Court shall direct the manner - telephone or video - in which the case conference is to be held and who is to initiate said conference.
- d. The Court shall conduct a case conference and sign and file any appropriate orders as outlined above.
- e. Upon substantial completion of those matters identified as a priority above, the cases and proceedings handled by Virtual Chambers may be expanded to address other pressing matters pertaining to pending cases.
- f. Attorneys may contact the designated Chamber's representative, upon email notice to all parties, and request a remote conference with the Court on a matter they believe to be urgent. The Judge, in his or her sole discretion, shall determine if the matter is urgent and will be considered. Once a request by email for the conference is approved, chambers staff will send out an email to schedule the remote conference.
- g. The attorney requesting the conference shall provide the Court with the Skype for Business address and telephone phone number of all counsel and other necessary participants. The Court shall initiate a Skype for Business video conference by sending invitations to all counsel of record. If the Court determines a telephone conference is appropriate, the attorney requesting the conference shall be responsible for initiating the telephone conference.

2. If the Judge does not have access to the paper file, the attorneys shall provide all necessary information requested to the Court by e-mail. .

D. CITY COURTS

1. The General Provisions and Exceptions identified above shall apply.

2. The Judge shall prioritize and complete all pending Trial, Motions, Decisions and Orders. Matters that are overdue on the Quarterly Report shall take precedence, followed by matters that may be

pending beyond Standards and Goals.

3. Commence telephone settlement conferences of existing court filings (prior to consolidation into the Central Locations) of small claims, commercial claims and civil claims. These existing files shall be reviewed by the Assigned Judge and Court Attorney remotely to determine if the case is viable for a settlement conference. If appropriate, the Court Attorney shall conduct the settlement conferences by telephone conference. If settled, a conformed order to be entered remotely. If a judgment is required, it would be produced and entered after normal operations resume.

4. Individual Chambers are not open for business as usual and all appearances on “essential” or other urgent matters shall continue to be conducted remotely in the approved Virtual Courtrooms by Skype for Business or telephone conference.

5. Any traditional mail received by chambers previously or hereafter received may be reviewed by the designated chamber’s representative accessing files pursuant to General Provisions, paragraph 2, above. Any pending matter deemed urgent by the Assigned Judge shall be processed accordingly.

6. Non-essential Pending Cases:

- a. The Court, in its discretion, may contact the attorneys involved via telephone or e-mail to schedule a telephone or video case conference for pending cases.
- b. Attorneys may request a telephone or video case conference in any matter via e-mail directed to the Court with an email copy to all opposing counsel. Attorneys must state the reason for the requested case conference, and the Judge shall, in their discretion, determine whether a conference is necessary and/or appropriate.
- c. The Court shall direct the manner - telephone or video - in which the case conference is to be held and who is to initiate said conference.
- d. The Court shall conduct a case conference and sign and file any appropriate orders as outlined above.

7. Upon substantial completion of those matters identified as a priority above, the cases and proceedings handled by Virtual Chambers may be expanded to address other pressing matters pertaining to pending cases.

8. Attorneys may contact the designated Chamber’s representative, upon email notice to all parties, and request a remote conference with the Court on a matter they believe to be urgent. The Judge, in his or her sole discretion, shall determine if the matter is urgent and will be considered. Once a request by email for the conference is approved, chambers staff will send out an email to schedule the remote conference.

9. The attorney requesting the conference shall provide the Court with the Skype for Business address and telephone phone number of all counsel and other necessary participants. The Court shall initiate a Skype for Business video conference by sending invitations to all counsel of record. If the Court

determines a telephone conference is appropriate, the attorney requesting the conference shall be responsible for initiating the telephone conference.

10. If the Judge does not have access to the paper file, the attorneys shall provide all necessary information requested to the Court by e-mail.

Any questions about these directions should be sent to Pferolet@nycourts.gov.