

## **NINTH JUDICIAL DISTRICT VIRTUAL CHAMBERS PROTOCOL (PHASE I)**

Due to the COVID-19 pandemic, the Ninth Judicial District is currently operating pursuant to prior Administrative Orders from a designated central location in each county (“Central Location”) and is handling certain “essential” matters established by the Chief Administrative Judge pursuant to existing Administrative Orders. The Central Locations are now being operated virtually with remote appearances only and being staffed primarily by a small group of court clerks pursuant to rotating schedules. Those dedicated court clerks are monitoring and accepting filings for “essential” matters pursuant to the previous Administrative Orders and scheduling remote Skype for Business appearances for all interested parties, including the scheduled judge. All other court facilities, other than the Central Locations, remain closed.

Following on the success of establishing Virtual Courtrooms in the Central Locations throughout the District, the Ninth District now desires to continue to serve the public and court users ,while maintaining safe protocols limiting personal interaction and potential COVID-19 exposures, by establishing “Virtual Chambers” in order to address matters that go beyond those previously deemed “essential” matters during the public health crisis caused by the COVID-19 pandemic.

The following protocols apply to all courts in the Ninth 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, 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 Ninth District (Westchester, Rockland, Orange, Dutchess and Putnam 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 NYSCEF system, a judge or one designated chambers’ representative (principal court attorney or secretary) may, upon notice to and coordination with court security, enter the closed chambers on one designated day per week to retrieve any files needed by the judge to conduct remote conferences, appearances or other work scheduled for that week. Said access to chambers shall be scheduled with and approved by the Administrative Judge or his designee. Working from the closed buildings remains prohibited.

3. Priority shall be given to overdue “undecided” matters and pending motions. The judge shall process these first. Pending motions shall be decided on a first in/first out basis, unless the judge determines a certain matter to be urgent.

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. The e-file system, initially, shall not be utilized for any other existing business or new case filings, unless exceptions are granted by the District Administrative Judge. This policy will be reviewed weekly considering the requests from court users with the intent of gradually increasing the number of cases being handled in the Virtual Chambers. Nothing contained herein prevents a Court from uploading any document for any matter.

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. Contact with the assigned judge shall preferably be made by email and the designated Chambers representative shall regularly monitor and respond to all emails. Each Chambers shall designate one representative to

receive email contact and that list shall be published to the respective County and specialty Bar associations, and also made available through the designated informational telephone number or numbers in the District.

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 absolutely necessary. Court users are hereby advised that non-email communication may not be timely processed. Traditional mail is to be handled, then 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 law clerk/court attorney. Skype for Business video conferencing is the only approved video platform at this time.

9. E-filing is available to Court Users for all documents, including Court notices. If for any reason the e-filing system is not available, then each Chambers keep a central "upload" digital file for all original decisions and orders, until such time as e-filing becomes available. If a case is not authorized for e-filing, then the Court shall maintain all original signed orders for filing when the County Clerk's Office is able to accept them. The use of conformed signatures and facsimile signatures, as authorized by the Chief Administrative Judge, are permitted.

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

11. All judges shall keep track of all work performed remotely, including the:

- a. Type of case
- b. Type of court action (settlement conferences, motions, decisions, re-scheduling trials, etc.)
- c. Date held

- d. Outcome of any appearances
- e. Any other pertinent information.

12. At this time, individual chamber's existing telephone numbers should be forwarded to the designated chambers staff member working remotely who is assigned to answer telephone calls. This will help minimize staffing at the general information telephone lines. A better software option is currently being reviewed.

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

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

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

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

## **B. GENERAL EXCEPTIONS**

1. This protocol shall not apply to cases where one or more parties are self-represented unless all parties are able to have access to remote technology and capability. Such cases will be adjourned to a future date where personal appearance is possible. In exigent circumstances, a Judge may address such cases under this protocol with approval of his or her Supervising Judge.

2. This protocol shall not apply to cases where there is a showing of good cause by counsel that the matter should be adjourned for reasons related to COVID-19 or otherwise. Such cases will be adjourned to a future date where personal appearance is possible.

3. This protocol shall not apply to cases involving the enforcement of money judgments, default proceedings, foreclosure, or eviction. Such cases will be adjourned to a future date where personal appearance is possible.

Additional specific protocols for each court (except Town and Village) are detailed as follows:

**C. SUPREME COURT CIVIL**

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.
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 outlined above.
10. New Motions and Orders to Show Cause (“OTSC”) in “Urgent” Non-Essential Matters:
  - a. Motions and OTSC in “urgent” non-essential, new matters shall be filed with the Chief Clerk at the Central Locations and processed by the Designated Judge on duty pursuant to existing Virtual Court Room procedures to determine if it is an “urgent” matter to be considered.
11. Mediation and ADR:
  - a. Courts and Court mediators may schedule and conduct mediations using the same protocol used by the Court for case conferencing outlined above.

**D. SUPREME COURT MATRIMONIAL**

Pursuant to Administrative Order AO/78/20, no matrimonial actions are deemed “essential” matters warranting appearances in the Central Locations and NYSCEF is not accepting documents for filing. Nonetheless, pending matrimonial actions have certain urgent issues that shall be addressed as follows:

1. The General Provisions and Exceptions discussed above shall apply.
2. Identify and Prioritize Pending Urgent Matters:

a. Matrimonial Judges shall prioritize the completion of all pending motions and decisions.

b. The Court handling matrimonial actions shall also identify, prioritize and address all other urgent and overdue pending, undecided matters.

3. 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 including, but not limited to, re-scheduling trials and hearings where the parties are represented, management of pending cases, motions, OTSC, settlement conferences, other ADR processes and any other matter the Court deems necessary to be heard in the interest of justice.

2. 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.

3. 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.

4. If the Judge does not have access to the paper file, the attorneys shall provide all necessary information (for example, the date of marriage, the date of commencement, the parties' incomes, the ages of any children, existing Orders and/or Agreements, etc.). The attorneys shall scan and email the parties' Statements of Net Worth and any other necessary documents to the Judge, Principal Court Attorney and Secretary.

5. Pro se litigants requesting Court action should proceed to the Central Location and the request should be processed by the Designated Judge on duty pursuant to existing Virtual Court Room procedures to determine if it is an "urgent" matter to be considered.

6. Any settlement that arises from the conference shall be memorialized by a stipulated order or separation\opting out agreement. Executive Order 202.7 provides for remote notarial acts so separation agreements can be properly acknowledged during this Phase.

7. Orders to Show Cause: If an emergency Order to Show Cause is filed in a pending matrimonial action, the Designated Judge at the Central Location shall contact the Assigned Judge to determine whether the Assigned Judge wants to conference the case remotely instead of the Designated Judge deciding the matter on the papers.

8. Chambers staff shall collect and report data daily on the matters the Court remotely hears during this Phase. Relevant data may include the case type (contested or uncontested matrimonial), index file number, action taken (motions, compliance/status conference, settlement conference) appearance dates, and outcomes.

#### **D. SURROGATE'S COURT**

1. The General Provisions and Exceptions discussed above shall apply, unless specifically excepted below as to certain new filings.

2. Any pending motions and decisions shall be the first priority, along with pending cases and existing filings.

3. The filing of new estate/administration petitions shall be permitted for a fiduciary to be appointed in order to protect estate assets while matters are pending, including preliminary appointment with restrictions, if appropriate. The petition shall be e-filed if NYSCEF is available. If NYSCEF is not available, the petition shall be filed with the Surrogate or Supreme Court Clerk designee on duty at the Central Location and processed manually until such time that the NYSCEF system is available.

4. Individual Chambers are not open for business and all hearing/conferences on essential or other urgent matters shall be conducted remotely and processed pursuant to existing Virtual Courtroom procedures at the Central Location. No citations to appear in court will be issued.

5. A representative of the Court or a Court e-mail address shall be designated as the contact to address information hotline messages, questions and requests for permission to file petitions. A designated Court representative will constantly monitor these matters during regular court hours. The contact information shall be posted where possible and shared with local law firms and bar associations, in addition to being available through the District informational telephone lines.

6. If a party seeks to file a petition requiring court action that does not qualify as “essential” but is of an urgent nature, the party shall do the following:

a. Submit a short worksheet, approved by the Administrative Judge, explaining the reasons the petition requires immediate action to the Court via the identified contact email. The clerk will review or discuss with the Judge and a reply will be sent to the party directly as to whether they have permission to file their petition.

b. All petitions approved for filing shall be submitted via e-filing and credit cards used for filing fees so that clerks can access remotely and perform all relevant tasks to process and review the petition. Using a credit card for filing fees is necessary for remote chambers so an employee does not have to enter the courthouse to manually deposit filing fees.

c. The e-filing system should be available for the filings of new estates, administrations and the matters reference above paragraph A (1) or on an individual basis once the court has approved the filing.

7. The filing of new guardianship applications for disabled individuals or infants who have no current guardian where it is essential for their health, safety or well-being; applications for withdrawal of funds from restricted accounts during the economic hardship caused by pandemic; uncontested wrongful death compromises and accounting procedures; and other matters that require attention shall be permitted, at the Surrogate’s discretion, as prescribed above using prior approval by the court through submission of the worksheet.

8. Mail will be opened at least one day a week by a designated Court representative coming to the Central Location upon notice to and coordination with Court Security. Matters that meet

the “urgent” criteria established herein will be scanned or emailed to the appropriate clerk or judge, if necessary.

9. Judges may schedule one day a week, upon notice and approval of the Administrative Judge, to come into chambers for the sole purpose of accessing their papers files. This trip shall be coordinated with the authorized mail trip referenced above so as to minimize physical appearances.

10. The Court shall collect, and report, data daily as directed by the Administrative Judge for all matters addressed remotely during this time period.

#### **E. FAMILY COURT**

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

2. The Judge and Court Attorney shall prioritize pending Trial, Motion and Objection 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. 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 matter deemed urgent by the Assigned Judge upon consultation with the Administrative Judge shall be processed accordingly by the Assigned Judge or the Designated Judge on duty at the Central location.

3. Designated Chambers staff shall answer telephone inquiries and check their emails regularly throughout the day.

4. Mail and email shall be processed by Chambers staff as may be required to answer any urgent inquiry or request.

5. The Family Court Clerk is the Clerk of the Family Court (as opposed to the County Clerk for the Supreme Court), so the file that the Judge’s use for court is the Family Court’s file. Accordingly, the Court shall use the case management system-UCMS- for all case information and shall not remove the Family Court’s “hard file” from the Courthouse unless the documents cannot otherwise be viewed in UCMS. If needed, the Court shall request each attorney to submit a brief summary of the case history.

6. Judges may contact attorneys involved in matters which were pending before them, both prior to the court's closure and all essential matters filed after closure, by email, and invite those attorneys to participate in conference calls to discuss the status of the cases and consider options for resolution.

7. If, as a result of such conferences, the parties either agree on an interim or final order or the Court concludes that an order is necessary, the Court will order the attorneys to formulate the order and, if approved by the attorneys or decided by the Court, the order will be transmitted either through PDF or Microsoft Word to the Clerk's Office and the Judge will give the Clerk's Office approval, by email, to stamp the Judge's signature on the order. The stamped signed order would then be electronically filed. This provision is an alternative to the electronic signature process that is also available to judges.

8. In addition, the Administrative Judge or a representative will contact the County and Specialty Bar Associations and legal services providers and issue a directive that attorneys, who have "important matters" before the Court, may contact the Assigned Judge, preferably by email, to inquire about whether a remote conference is available. The Judge will have sole discretion in deciding whether to hold such a conference. The Judge may schedule such remote conferences as he or she deems appropriate and require the submission of such documents or other information as deemed necessary to conduct an effective conference. All submissions to the judge under this protocol shall be simultaneously forwarded to the Family Court Clerks and all counsel in the matter.

9. Trials and evidentiary hearings are held in abeyance until the Court re-opens. The right of confrontation and other procedural safeguards are difficult to replicate during this time. However, such proceedings are not precluded in the event all parties, including the Judge, consent.

10. Pro Se litigant matters can be dealt with at the Central Location by the Designated Judge on duty or the Assigned Judge, in conjunction and coordination with the Family Court Clerks on duty. In order to maintain the current staffing levels, each Judge can be assigned a block of time, not to be overlapped by any other Judge, during which a court reporter, or FTR, or a judge operating a recording device a court clerk can be utilized to memorialize the proceeding. These proceedings shall NOT interfere with essential matters being conducted by the Designated Judge on duty.

**F. 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.
6. 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.
7. 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.

8. 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.

9. If the Judge does not have access to the paper file, the attorneys shall provide all necessary information requested by the Court via email.

#### **G. 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 by the Court via email.

