

REIMAGINING THE CIVIL DIVISION

This document summarizes the Civil Division’s plan for onsite courtroom operations after the end of the public health emergency.

The Civil Division includes a wide array of cases and calendars. The plan first summarizes general principles applicable to all calendars. It then discusses each type of calendar, including the three high-volume calendars: landlord and tenant (“L&T”), debt collection, and mortgage foreclosure.

This plan reflects input from (1) judges and court staff and (2) practitioners and other stakeholders, including for each of the high-volume calendars.

We may modify the plan for high-volume calendars in light of additional recommendations from the study by the National Center for State Courts. Furthermore, it is difficult to predict the number of cases that will be filed after the public health emergency ends, especially on the high-volume calendars, and we may modify the plan depending on the volume of post-pandemic cases.

GENERAL PRINCIPLES

The following principles apply to all calendars. Consistent with Rule 1 of the Superior Court Rules of Civil Procedure, the purpose of the plan to secure the just, speedy, and inexpensive determination of every case. Our goal is to provide as much flexibility and predictability as possible for parties and lawyers in scheduling and conducting trials and hearings.

In-person vs. remote: For jury trials, bench trials, evidentiary hearings in which a witness testifies, and pretrial conferences, litigants, lawyers, and witnesses must participate in person unless the judge permits remote participation.

For other types of hearings, there will be a presumption that lawyers and self-represented litigants will participate remotely. We expect a majority of self-represented litigants and an even larger majority of lawyers to choose to participate remotely in pretrial hearings. The ability to participate remotely has made participation easier for some self-represented litigants. However, for technology-related and other reasons, a percentage of self-represented litigants and lawyers may prefer to appear in person at the courthouse for pretrial hearings, and they will have the opportunity to do so.

We will develop protocols for lawyers and self-represented litigants to notify us in advance that they intend to participate in person in these pretrial hearings. We will also develop protocols for when a self-represented person who has not provided advance notice of remote participation comes unexpectedly to the courthouse.

Although there is a presumption about whether a trial or hearing will be in-person or remote, the judge has the discretion to require that participation in any hearing after the initial hearing be either remote or in-person. Judges will hear from lawyers and self-represented litigants before deciding whether a subsequent hearing will be remote or in-person, and judges

will make clear to the parties whether a future hearing is in-person or remote or whether participants have the option to appear in person or remotely. Judges may specify a procedure for lawyers and self-represented litigants to notify the court or file a motion if they later want to participate by a different method.

We will conduct hybrid hearings in which some people appear in person at the courthouse and others participate remotely.

Court notices will provide easy-to-understand instructions for either remote or in-person participation.

Remote sites: We will maintain or, if resources permit, expand the number of remote sites throughout the city to enhance the ability of people to participate remotely, and if resources permit, we will provide on-site assistance at these sites away from the courthouse. In addition, we will continue to provide litigants who come to the courthouse the ability to participate through on-line access from a site in the courthouse.

Access to Counsel: We will give unrepresented litigants the same opportunities to obtain and confer with counsel when they participate remotely as they would have with in-person hearings. We will work with legal services providers to maximize their presence during hearings on the high-volume calendars. We will continue to provide contact information for legal services providers in summonses and hearing notices.

Forms and online information: In consultation with stakeholders, we will continue to review our existing notices, orders, and forms (as well as the information provided on our website) to make them more useful and easier to understand.

E-filing: We will use the case management system to integrate the process of filling out and filing forms so that a person who completes an interview form can file it in the same session.

Staggered hearings: We will set initial, status, and other non-evidentiary hearings on a staggered schedule – generally in one-hour blocks. This applies to all high-volume calendars and to the Friday Civil II calendars. We will continue to refine our plans for how many cases or what type of hearings should be scheduled in each block, taking into account the recommendations of the NCSC study and continuing feedback from practitioners.

Continuances: We want to develop a culture of readiness. Participants should be ready for each hearing, and we will encourage people without lawyers to consult with legal services providers before hearings. We will continue to be liberal in granting continuances so that people can get legal advice. We will continue to give litigants the ability to request continuances by telephone or electronically, and the extent practicable, we will address these electronic or telephonic requests for continuances before the scheduled hearing date.

Defaults and vacating defaults: We want to develop a culture of timeliness. We will continue to decide on a case-by-case basis whether to issue a default or vacate a default. When feasible and appropriate, the court may contact self-represented litigants (and lawyers) who do not show up on time. We will continue in all cases to collect email and telephone contact

information for self-represented parties. We will examine our processes to evaluate whether they contribute to the rate of defaults and whether procedural changes could reduce this rate.

Mediation. On all calendars, we will ordinarily schedule mediation before the day of trial and not on the day of trial. We will work with the Multi-Door Dispute Resolution Division to develop protocols concerning remote vs. in-person mediation.

Language access: We will continue to provide language access in all hearings, whether remote or in-person. We will continue to improve our capacity to provide simultaneous translation when one or more parties participate remotely.

Options for judges and court staff. Judges will conduct hearings from the bench in a physical courtroom, unless the hearing was scheduled as a remote hearing. If the hearing was scheduled as a hearing with only remote participation, the judge may preside remotely.

To the extent consistent with efficient operations, the court will permit courtroom and deputy clerks to work remotely on some days of the week or during some weeks. Consistent with the principle that litigants will have the option to appear in person for initial hearings, the court may schedule only remote hearings on certain days of the week; the feasibility and implementation of this option may be different for different calendars. A courtroom clerk will be present in the courtroom for all jury trials, as well as for all in-person bench trials and evidentiary hearings.

CALENDARS

Civil II calendars: As explained above, we will continue to require participants in jury trials to appear in person, and we will require in-person participation in bench trials and evidentiary hearings unless the judge permits remote participation by some or all parties and witnesses.

We will require lawyers and self-represented litigants to appear in person for pretrial conferences pursuant to Civil Rule 16. We will consider a rule change that permits corporate employees with final settlement authority to participate remotely in mediations.

Other pretrial hearings in Civil II cases generally lend themselves to remote hearings, and the presumption will be that lawyers and self-represented litigants will participate remotely. We will develop protocols for lawyers and self-represented litigants to notify us in advance that they intend to participate in person in these pretrial hearings. Because the presumption that these hearings will be remote is not absolute, judges will have discretion to direct any matter be held in person, remotely, or as a hybrid hearing.

L&T: The court will continue to schedule hearings in L&T cases, including initial hearings, on a staggered basis in one-hour blocks. We will continue to take all reasonable steps to reduce waiting time for parties and lawyers, including prioritizing the calling of cases in which all parties are present. We will implement changes to further simplify and expedite the process for requesting continuances.

For bench trials and evidentiary hearings, lawyers and self-represented litigants must participate in person unless the judge permits remote participation. There will be a presumption that lawyers and self-represented litigants will participate remotely in all other hearings. To continue to maximize access to justice, the court will continue to provide for remote participation in pretrial hearings, and it will ensure that they can do so effectively by providing easy-to-understand instructions for remote participation and access to remote sites for people who do not otherwise have access to the necessary technology. We will develop protocols for self-represented litigants to notify us in advance if they intend to participate in person in these pretrial hearings.

Legislative changes may result in the resolution of more landlord-tenant disputes before an eviction case is filed. In addition, the court will implement an eviction diversion program that incorporates and expands its efforts during the pandemic to facilitate the resolution of cases without an eviction. Elements of the eviction diversion program include:

- Continuing to enable legal services providers to participate in remote hearings and to meet with self-represented litigants who come to the courthouse, including physical space in the courthouse for the Landlord Tenant Resource Center.
- Continuing to provide information to legal services providers about new case filings, upcoming hearings, scheduled evictions, contact information for litigants, and other information to enable them to provide timely and effective assistance to those who need it.
- Continuing to enable providers of rental assistance to participate in remote hearings and to meet with self-represented litigants who come to the courthouse, including providing physical space in the courthouse if their staffing permits.
- Continuing to provide information to providers of rental assistance about new case filings, upcoming hearings, scheduled evictions, contact information for litigants, and other information to enable them to provide timely and effective assistance to those who need it.
- Expanding the court navigator program to assist self-represented people in understanding the court process, in completing forms, and in participating in remote and in-person hearings.
- Modifying the case management plan to establish appropriate paths for each case (including timeframes for accessing rental assistance and participating in mediation), and to create scheduling orders for each case type so that the process is tailored to the particular needs of the case.
- Providing for early mediation in appropriate cases involving non-payment of rent and other lease violations.
- Continuing to provide language access for all participants, whether they participate remotely or in person.
- Ensuring compliance with statutory requirements intended to give tenants an opportunity to resolve disputes with their landlords without litigation and to give them information needed to participate effectively in the legal process.
- Timely sealing closed eviction cases consistent with statutory requirements.

- Continuing regular meetings of the Landlord Tenant Working Group to give stakeholders an opportunity to participate on an effective and timely basis in improving court operations.
- Modifying the L&T Rules as needed with input from the L&T Rules Advisory Committee.

Housing court: The housing calendar will continue to be held once a week. The court will continue to schedule hearings on a staggered basis in one-hour blocks. Unless the judge specifies otherwise, the presumption will be that lawyers and self-represented litigants will appear remotely. We will give participants the option to participate in person, and we will develop protocols for self-represented litigants to notify us in advance if they intend to participate in person.

The court will provide assistance for people who appear in person at the courthouse or to the extent that resources permit, at remote sites. The court will continue to facilitate access to legal services providers.

Mortgage foreclosure cases: Mortgage foreclosure cases are on three calendars: (1) when first filed, they go on the mediation calendar to facilitate a negotiated resolution; (2) if they are not resolved on the mediation calendar and the defendant has not asserted any defense, they go on the judgment calendar; and (3) if the defendant intends to litigate, they are assigned to a Civil II calendar.

Depending on the volume of cases, the mediation calendar will operate two days per week. The judgment calendar will continue to operate two days each week.

On both calendars, the presumption will be that lawyers and self-represented litigants appear remotely. We will give participants the option to participate in person, and we will develop protocols for self-represented litigants to notify us in advance if they intend to participate in person, unless the judge specifies otherwise.

The “people’s court”: The “people’s court” docket includes all small claims cases that are not debt collection cases.

Bench trials and judicial arbitrations will be conducted in person unless a self-represented party or lawyer justifies remote participation. For pretrial hearings, the presumption will be that parties and lawyers will participate remotely. We will develop protocols for self-represented litigants to notify us in advance if they intend to participate in person in pretrial hearings.

The court will provide assistance for people who appear in person at the courthouse or to the extent that resources permit, at remote sites.

Debt collection: There will be a presumption that lawyers and self-represented parties will participate remotely in all pretrial hearings. We will develop protocols for self-represented litigants to notify us in advance if they intend to participate in person in pretrial hearings. . The court will provide assistance for people who appear in person at the courthouse or to the extent that resources permit, at remote sites.

Bench trials and judicial arbitrations will be conducted in person unless a self-represented party or lawyer justifies remote participation.

The court will continue to facilitate access to legal services providers, including by enabling them to participate in remote hearings and to meet with self-represented litigants who come to the courthouse.

Tax sale cases: There will be a presumption that lawyers and self-represented parties will participate remotely in all pretrial hearings. We will develop protocols for self-represented litigants to notify us in advance if they intend to participate in person.

Judge-in-chambers: JIC will continue to operate five days per week and to be staffed by senior judges to the extent possible. There will be a presumption that lawyers and self-represented parties will participate remotely in all hearings, whether the hearings involve requests for emergency relief or changes to vital records, and we will develop protocols for self-represented litigants to notify us in advance if they intend to participate in person.