

Articles + Publications | May 17, 2021

Locke Lord QuickStudy: The State of New York Courts During COVID-19, Revisited?

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As described in Locke Lord's previous QuickStudies, New York's state and federal courts quickly transformed their procedures and operations as a result of the onset of the COVID-19 pandemic. Now, as more residents across New York are receiving vaccinations and cases of COVID-19 continue to decrease, it is worth revisiting the current state of New York's courts, and what to expect in the near future.

Revised Procedures in New York Lower and Appellate Courts

Most notably, New York's lower and appellate courts have resumed in-person proceedings. On May 10, 2021, Chief Judge DiFiore issued a video message stating that the Court System's plan to bring back all lower court judges and staff by May 24, 2021 is on track. Pursuant to this plan, on March 22, 2021, in-person jury trials in both civil and criminal actions resumed across the state. On that day, there were 26 jury trials – 19 civil and seven criminal – that began in the Supreme courts in New York City. Outside the city, there were a total of 27 trials – 18 criminal and nine civil. Trials continue to be scheduled and courts continue to open for other essential matters.

In the Appellate Division, the [First Judicial Department](#) has resumed in-person oral arguments on Wednesdays for the May and June 2021 Terms. Arguments on Tuesdays and Thursdays will continue to take place virtually. The Court has instructed litigants to fill out the "Remote Oral Argument Survey" and specify their preference for in-person or remote oral argument. The [Second Department](#) is still holding arguments virtually, while the [Third](#) and [Fourth](#) Departments have largely returned to in-person argument for appeals where argument is scheduled.

Though the state's courthouses are open, the majority of bench trials and non-essential proceedings continue to be held virtually. As explained in the [New York Unified Court Systems' Virtual Bench Trial Protocols and Procedures](#), New York's "courts have uniformly transitioned to Microsoft Teams as a platform to conduct oral arguments on motions, preliminary/status/compliance/pre-trial conferences, hearings, A.D.R. settlement conferences, inquests, criminal arraignments, and pleas" The Court System has not yet given any indication as to when these non-essential proceedings may return in-person.

In addition, while parties are now largely permitted to commence new actions and prosecute pending actions, Governor Cuomo did sign an [extension](#) of the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 and the COVID-19 Emergency Protect Our Small Businesses Act, which do place certain limitations on commencing and proceeding with certain types of actions. Pursuant to the extension of the Acts, the moratorium on residential evictions and foreclosures remains in place until August 31, 2021. The moratorium only applies in actions against individuals who submit a declaration to the court, explaining their COVID-19-related hardship. The

extension also continues the moratorium on commercial evictions and foreclosures until August 31, 2021 for businesses with fewer than 50 employees that demonstrate a financial hardship.

Revised Procedures in the Federal Courts in New York

The District Courts for the Southern and Eastern Districts of New York have also began a transition back to in-person proceedings. In the Southern District, the Chief Judge issued a four-phased “[Reentry Plan](#),” outlining the Court’s plan to open for in-person proceedings:

- In Phase I, judicial proceedings, except for emergency matters, are to continue to be held remotely, and the courthouses will continue operating with minimal staffing;
- In Phase II, “subject to the discretion of individual judges, courtrooms are opened for conferences, hearings, pleas, sentencing, and bench trials. However, proceedings may also be held remotely, and judges are encouraged to use video and teleconferencing whenever possible;”
- In Phase III, jury trials will slowly begin to resume, but will only be conducted in “specially designated courtrooms.” Further, courtrooms will be opened for proceedings “at the sole discretion of the presiding judge;” and, finally
- In Phase IV, the Court will be at its “new normal,” where jury trials resume in all courtrooms, other in-person proceedings, such as ceremonial sessions and naturalization ceremonies, resume, and the clerk’s office reopens to the public on a normal schedule.

While the Court has not indicated a timeline for when each of these phases are to begin, [orders entered](#) in some cases indicate that jury trials will resume, pursuant to Phase III, in June and July.

In the Eastern District of New York, the Chief Judge issued [Administrative Order 2021-4-1](#), on March 20, 2021, ordering that both civil and criminal “jury elections and trials, and in-person bench trials, are no longer postponed.” The Order instructs that trials are to take place in accordance with the Court’s “[Plan for Resumption of Jury Trials](#).” Pursuant to this plan, no jury trial – or any other proceeding – may take place with more than 25 people in the courtroom.

Additionally, the Chief Judge’s Order provides that “compliance with all trial-specific deadlines in civil and criminal cases shall be at the discretion of the assigned judge.”

In the Court of Appeals for the Second Circuit, while all arguments and other proceedings are still being held remotely, the Court is reportedly considering reopening for in-person arguments later this summer.

Locke Lord will continue to publish QuickStudies outlining additional changes to New York courts’ procedures and operations. Parties and their attorneys should continue to review the courts’ websites and individual judges’ rules:

[New York Unified Courts System \(New York Supreme and other lower courts\)](#)

New York Supreme Court Appellate Division, First Judicial Department

New York Supreme Court Appellate Division, Second Department

New York Supreme Court Appellate Division, Third Department

New York Supreme Court Appellate Division, Fourth Department

United States District Court, Southern District of New York

United States District Court, Eastern District of New York

United States Bankruptcy Court, Southern District of New York

United States Bankruptcy Court, Eastern District of New York

United States Court of Appeals for the Second Circuit

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