

**STATE OF VERMONT  
VERMONT SUPREME COURT  
AUGUST TERM, 2022**

**Order Promulgating Amendments to Administrative Order No. 49**

Pursuant to the Vermont Constitution, Chapter II, § 30 and Administrative Order No. 48, it is hereby ordered:

1. That Administrative Order No. 49 be amended as follows (new matter underlined; deleted matter struck through):

1. Due to the outbreak of the novel coronavirus, COVID-19, on March 13, 2020, the Governor of Vermont declared a state of emergency and instituted evolving limitations on gatherings in Vermont to promote “social distancing,” thereby mitigating the risk to the public and limiting the spread of the infection. On March 16, 2020, this Court issued Administrative Order No. 49 to make temporary changes to court rules and operations in an effort to continue meeting our constitutional responsibilities while protecting the health of court personnel, court users, and the public at large. The Court has amended this Order from time to time to respond to the evolving course of the pandemic and the Judiciary’s evolving operational adaptations. The Governor of Vermont’s initial executive order declaring a state of emergency has expired, but public health risks arising in the specific context of Judiciary operations, while greatly diminished, have not fully resolved. The purpose of this Administrative Order is to reasonably mitigate health risks to Judiciary personnel and court users arising from the continued course of the pandemic in Vermont.
2. For these reasons, the Court hereby declares a judicial emergency pursuant to Administrative Order 48. The emergency will go into effect immediately and will extend until ~~August 31~~ September 30, 2022, unless extended by order of this Court, to allow for the adoption of permanent rules and policies that originated in this Order and the timely sunseting of the Order’s remaining provisions. This Order supersedes any previously issued administrative directive or order, including orders issued in the Superior Court, related to COVID-19.
3. ~~**Jury Trials:**~~
  - a. ~~Superior courts may schedule and hold individual jury trials in criminal proceedings and civil proceedings after January 1, 2021, only with a unit plan approved by the Chief Superior Judge and the Chief of Trial Court Operations. Factors to be considered by the superior judge in holding a jury draw and trial include: whether the ventilation and air flow of the courthouse has been deemed sufficient; whether the building allows for socially distanced seating and movement of all participants and jurors through the course of a jury draw and trial to the extent required to reasonably protect public health; the availability of staff and other resources to support court proceedings; the potential disruption to proceedings due to COVID-19 infections in~~

~~jurors or participants or the need for jurors or participants to isolate due to close contact with an infected person; any other circumstances particular to the case to be tried; and the rights and interests of the litigants.~~

- b. ~~Notwithstanding the limit in V.R.Cr.P. 24(d)(1), the trial court may impanel as many alternate jurors as reasonably required to accommodate disruptions that may occur during jury draw or trial if jurors become infected or are notified they are a close contact with an infected person.~~
- e. ~~In the interest of justice, the Chief Superior Judge is authorized to transfer a civil or criminal proceeding to another unit (transferee unit) for purpose of a jury trial. In exercising this authority, the Chief Superior Judge should consider whether any building in the unit where the case was filed (or to which it was previously transferred) (transferring unit) is, or is expected to be, available for jury trials; how many other cases are trial ready in the transferring unit, and their relative priority; how many other cases are trial ready in the transferee unit, and their relative priority; and any other factors pertinent to the determination.~~
- d. ~~Notwithstanding V.R.C.P. 79.2(d)(5), prospective and seated jurors may use devices authorized by the court for purposes of remote jury trials.~~

#### 4. **DELETED.**

#### 5. **Remote participation in hearings:**

- a. ~~Civil, Environmental, Family, and Probate Divisions.~~  
~~The following provisions apply in proceedings in the civil, environmental, family, and probate divisions that would otherwise be governed by V.R.C.P. 43.1, V.R.F.P. 17 (incorporating Rule 43.1 of the Vermont Rules of Civil Procedure for certain proceedings in the family division), and V.R.P.P. 43.1 (collectively “Rule 43.1”). Notwithstanding Rule 43.1 or any other rule inconsistent with this order:~~
  - i. ~~Video conference: The Judicial Emergency recognized by this Administrative Order constitutes good cause pursuant to Rule 43.1(c)(5) to waive time requirements of paragraphs 43.1(c)(1)–(4). Accordingly, pursuant to V.R.C.P. 43.1(c)(3), the court may preside remotely and may on its own motion require parties, witnesses, counsel, or other necessary persons to participate or testify in a trial or other proceeding by video conference upon reasonable notice. Any objections to a hearing notice or order requiring video participation or testimony, or response to objections filed, should be filed as soon as possible. In ruling on any objections to the order requiring video participation or testimony, the court will consider the factors set forth in Rule 43.1(c)(6).~~
  - ii. ~~Audio conference: Notwithstanding the requirements of V.R.C.P. 43.1(d), on its own motion, by agreement of the parties, or pursuant to motion of a party, the court may preside remotely and may set hearings, whether evidentiary or nonevidentiary, for audio conference such that parties, counsel, witnesses,~~

~~counsel, and other necessary people participate or testify by audio conference from a remote location. Any objections to a hearing notice or order requiring video participation or testimony, or response to objections filed, should be filed as soon as possible. In ruling on any objections to the court's taking evidence by audio means, the court will be guided by the factors in V.R.C.P. 43.1(d)(3) and (4), except that the court need not find that any individual is physically unable to be present.~~

~~b. Criminal Division and Juvenile Delinquency Proceedings.~~

- ~~i. In nonevidentiary proceedings such as status conferences, and any other proceedings where the presence of the defendant is not required by law, on its own motion, the court may preside remotely and may require parties, witnesses, counsel, or other necessary persons to participate by audio or video conference upon reasonable notice.~~
- ~~ii. In evidentiary proceedings, the court may preside remotely and may require parties, witnesses, or other necessary persons to participate by audio or video conference in matters where not otherwise authorized by Administrative Order 38, § 1(a), upon agreement of all parties. In deciding whether to take remote testimony by agreement of the parties in a manner not otherwise authorized by Administrative Order 38, the court will consider the factors in V.R.C.P. 43.1(c)(6) (video) and V.R.C.P. 43.1(d)(3) and (4) (audio).~~

~~c. Judicial Bureau. Notwithstanding the provisions of V.R.C.P. 80.6(d)(4) and V.R.S.C.P. 6(a) or any other rule inconsistent with this order, the hearing officer may preside remotely and all parties, witnesses, counsel, and other necessary persons must participate by remote audio or video conference. Any objection to remote participation must be filed as soon as possible. In assessing the motion, the hearing officer must consider the factors in V.R.C.P. 43.1(c)(6) (video), (d)(3)(B) and (d)(4) (audio). If the hearing officer finds that there is good cause to allow in-person participation, the hearing may be rescheduled as an in-person hearing.~~

~~d. Scheduling Remote Hearings~~

- ~~i. Limited Entry Courthouses. The Court Administrator in consultation with the Chief Superior Judge may limit in-person hearings in courthouses without adequate air flow systems. The Court Administrator will identify the locations and any restrictions on in-person hearings in these buildings on the Vermont Judiciary website.~~
- ~~ii. Remote Hearings Encouraged. In courthouses not subject to ¶ 5(d)(i), superior courts should schedule hearings for remote participation to the extent reasonably possible given the nature of the hearing, the constraints of the above rules, the available technology, staffing availability, and participants' access to adequate means for remote participation.~~

- e. The Special Advisory Committee on Remote Hearings, in consultation with divisional oversight committees, shall make recommendations to the respective divisional rules committees for permanent rule changes to the rules governing remote participation in court proceedings.

6. ~~Email filings and service:~~

- a. ~~If the 2020 Vermont Rules for Electronic Filing apply and require electronic filing through Odyssey File and Serve, or electronic service through a specified means, those rules must be followed.~~
- b. ~~Filing by Email. If the 2020 Vermont Rules for Electronic Filing do not apply, notwithstanding the provisions of V.R.A.P. 25 and V.R.C.P. 5(e) (incorporated by reference in V.R.Cr.P. 49, V.R.F.P. 4.0(a)(2)(A), V.R.E.C.P. 3, 4(a), 5(a)(2)) and V.R.P.P. 5(f)), or any other rule, parties may file documents with the court using email, subject to the following requirements if a party opts to file by email.~~
  - i. ~~Filings to the superior courts must be sent as an attachment to the email account for the unit where the filing will be made. The subject line must indicate the division where it is being filed and the case docket number. Filings to the Supreme Court must be sent as an attachment to [jud.supremecourt@vermont.gov](mailto:jud.supremecourt@vermont.gov) and the subject line should contain the Supreme Court docket number.~~
  - ii. ~~Further details concerning the method of filing by email will be posted on the [vermontjudiciary.org](http://vermontjudiciary.org) website, and may change from time to time. Parties and lawyers should check the guidance on the website before filing by email.~~
  - iii. ~~A signature block containing the filer's typed in name preceded by "/s/," or an electronic facsimile of the filer's signature, a scanned copy of it, or another form of electronic signature as defined in 9 V.S.A. § 271(9), will serve as a party's signature on pleadings, motions, and other documents that must be filed with a signature. This exception does not apply to affidavits, verified pleadings, or other signatures that must be notarized by statute.~~
- e. ~~Service by Email. Notwithstanding the requirements of V.R.P.P. 5(b) and V.R.C.P. 5(b) (incorporated into other divisions by V.R.A.P. 25, V.R.Cr.P. 49, V.R.F.P. 4.0(a)(2)(A), and V.R.E.C.P. 3, 4(a), 5(a)(2)), or any other rule, until the conclusion of this judicial emergency or further amendment to this Administrative Order:~~
  - i. ~~Where service is made by or to a non-filer, service may be made by electronic means by mutual agreement between the sending and receiving parties. The parties are not required to enter into such an agreement. If the parties agree to service by electronic means, they must document their agreement to electronic transmission in a writing filed with the court. The written agreement must describe with specificity any email addresses, digital storage systems, or other means the parties agree to use.~~

- ii. ~~Where service is made by electronic means pursuant to this emergency order, the following applies:
  - 1. ~~The sender of any document by electronic means must follow any applicable standards regarding electronic transmission of confidential documents.~~
  - 2. ~~The parties must mutually agree in writing to any changes in the method of service, and parties must immediately notify one another of any changes that affect the method of service, including changes in email addresses.~~
  - 3. ~~Service by email to an email address provided pursuant to this emergency order is complete upon transmission, provided that such service is not effective if the sending party learns that the attempted service did not reach the receiving party.~~
  - 4. ~~Any certificate of service filed with the court must indicate the method by which the document was served. If the document was served by email, the certificate of service should specify the email address or addresses to which it was sent.~~~~
- d. ~~Filings sent by email will be considered filed on that date if the email is received before 4:30 p.m.~~
- e. ~~The Advisory Committee on the Rules of Civil Procedure shall propose a permanent rule change to authorize non-filers to file documents with the court by email, and shall consider whether a permanent rule amendment relating to electronic service on or by non-filers is advisable.~~

**7. Access to Court Buildings:**

- a. ~~Court Administrator Directives: As reasonably necessary to mitigate risk to the health of court users or court personnel, the Court Administrator is authorized to issue directives regarding entry to and conduct in Judiciary buildings including requirements relating to screening, social distancing, and masks. In all instances where a mask is required by the Court Administrator's directive, there is a preference for an N95, KN95, or KF94 mask that covers the nose and mouth.~~
- b. ~~Limited Entry Courthouses: In those courthouses designated by the Court Administrator as limited entry courthouses pursuant to ¶ 5(d)(i), the Court Administrator in consultation with the Chief Superior Judge may implement policies to limit access by persons, other than judicial officers, Judiciary employees, contractors, and volunteers on Judiciary business. The Court Administrator will identify the locations and any restrictions on in-person access to these buildings on the Vermont Judiciary website.~~
- c. ~~Buildings Shared with State or County Offices: Where the Judiciary shares space with other state agencies, entry shall be permitted to such other agencies only in accord with policies mutually agreed to between the Commissioner of Buildings and General Services and the State Court Administrator. Where the Judiciary shares a common entrance to space occupied by county government offices in a county courthouse, entry shall be permitted to such county offices only in accord with policies mutually~~

~~agreed to between Assistant Judges and the State Court Administrator for county buildings. In either case, in the absence of mutual agreement, to the extent that policies are in conflict, entry shall be permitted only in accord with those policies that are the more protective of public health and safety. In addition, a judicial officer in a proceeding may impose requirements relating to the use of the courtroom for that proceeding consistent with guidance from the Court Administrator and Chief Superior Judge.~~

8. **Public Access to Court Records:** ~~For the duration of this Order, the Court directs Judiciary staff to make reasonable efforts to comply with the timelines set forth in Vermont Rules for Public Access to Court Records Rule §§ 6, 8. However, for the duration of this Order, the Court suspends strict enforcement of these deadlines.~~
9. **Court Administration:** ~~The Court Administrator will develop forward looking management strategies, and will continue to balance public health considerations and the Court's constitutional responsibilities to serve the public, in responding to evolving conditions.~~
10. **Deadlines:** ~~Nothing in this Order extends statutes of limitations or other filing deadlines.~~
11. **DELETED.**
12. **Discretion Concerning Oral Arguments in the Supreme Court:** Notwithstanding V.R.A.P. 33.1, V.R.A.P. 34, or any other rule or timeline inconsistent with this order, the Supreme Court may hold oral arguments remotely by telephone, video or other electronic means for summary and full-Court proceedings. In addition, in its discretion, and with notice to the parties, the Court may decide appeals, for summary and full-Court cases, without argument and on the basis of the briefs. Public access to the remote hearings will be provided solely through electronic means and no individual, including registered members of the media, will be admitted to the Supreme Court building.
13. **Participation in Court-Ordered Mediation:** ~~Notwithstanding V.R.F.P. 18(d)(4) and V.R.P.P. 16.1(d)(4), parties to matters in the family and probate divisions may attend court-ordered mediation remotely, by video or telephone. The Advisory Committee on the Rules of Family Procedure and the Advisory Committee on the Rules of Probate Procedure shall each consider whether a permanent change to their respective rules relating to remote participation in mediation is advisable.~~
14. **DELETED.**
15. **Committees, Boards, and Commissions Established or Governed by Supreme Court Rules:**
  - a. **Scope:** This section applies to the committees, subcommittees, boards, commissions, and similar bodies (collectively, "committees") established or governed by the Supreme Court. This includes those established or governed by the following

Supreme Court Administrative Orders: 9 (Professional Responsibility Program), 17 (Civil Rules Committee), 20 (Criminal Rules Committee), 23 (Evidence Rules Committee), 24 (Probate Rules Committee), 29 (Family Rules Committee), 35 (Judicial Ethics Committee), and 40 (Public Access to Court Records Committee). It also includes those established by the following Supreme Court Rules: Rules of the Supreme Court for Disciplinary Control of Judges (Judicial Conduct Board), the Rules of Admission to the Bar (Board of Bar Examiners and Character and Fitness Committee), and the Rules for Mandatory Continuing Legal Education (Board of Mandatory Continuing Legal Education).

- b. **Continuing Operations:** Committees will continue to perform their core functions to the extent possible consistent with this section and their obligation to mitigate the risks associated with the COVID-19 pandemic.
- c. **Committee Meetings:** Committees are authorized to meet remotely, by telephone or video, and, where required pursuant to applicable rules, must take reasonable steps to facilitate public observation or participation. They are also authorized to conduct business by email. Notwithstanding any rule to the contrary, committees may act through remote means (video, telephone, email) without facilitating public observation where reasonably necessary to respond to urgent matters. In addition, assistance panels convened under Rule 4 of Administrative Order 9 may continue to meet if participation is accomplished through video or audio means and not in person.
- d. **Committee Hearings:**
  - i. In the discretion of the Board or Committee, and subject to staffing limitations, probable cause hearings and nonevidentiary hearings may be conducted by the Judicial Conduct Board, Professional Responsibility Board, Board of Bar Examiners, and Character and Fitness Committee, or any panels of these committees, if all persons participate through remote means.
  - ii. The Judicial Conduct Board, Professional Responsibility Board, Board of Bar Examiners, and Character and Fitness Committee, or any panels of these committees, may conduct evidentiary hearings, subject to staffing and resource availability. To the maximum extent possible, evidentiary hearings should be conducted using remote video or audio conferencing. Notwithstanding Vermont Rule of Civil Procedure 43.1 or any other rule inconsistent with this order, a Board or Panel may preside remotely and may on its own motion require parties, witnesses, counsel, or other necessary persons to participate or testify by remote means, subject to participants' access to adequate means for remote participation. Any objection to conducting the hearing by video or audio conference must be filed as soon as possible. In ruling on any objection, the Board or Committee should consider the factors in Vermont Rule of Civil Procedure 43.1(c)(6) (video) and Rule 43.1(d)(3) (audio), except the Board or Committee need not find that any individual is physically unable to be present. If the Board or Committee

allows some or all participants in a hearing to participate or attend physically, they must follow the protocols for entering judiciary buildings as set forth in ¶ 7.

e. **Board of Bar Examiners—Oaths of Admission:**

Pursuant to Rule 20(e) of the Vermont Rules for Admission to the Bar, the oath of admission may be administered by one of the authorized individuals remotely in real time using video.

f. **MCLE Rule Waivers:**

For the license renewal period ending June 30, 2020, under the Mandatory Continuing Legal Education Rules that were in effect through June 30, 2020:

- i. The 10-hour limit on the number of self-study hours that can be claimed for a reporting period, as specified in Mandatory Continuing Legal Education Rules § 5(a)(2), is suspended for the 2018-2020 reporting period.
- ii. The limits on the number of hours that can be claimed under § 5(b)(10) for a reporting period, including both the limits for specific types of activities and the 10-hour limit on the total number of hours for all such activities, are suspended for the 2018-2020 reporting period.

For the license renewal periods ending June 30, 2021 and June 30, 2022, under the Mandatory Continuing Legal Education Rules as amended effective July 1, 2020:

- iii. The 6-hour limit on the number of hours for programs delivered as Non-Moderated Programming Without Interactivity that can be claimed for a reporting period, as specified in Rule 3(A)(3) of Rules of Mandatory Continuing Legal Education, is suspended for the 2019-2021 and 2020-2022 reporting periods.
- iv. The 12-hour minimum number of hours for programs delivered as either Moderated Programming or Non-Moderated Programming With Interactivity as a Key Component that must be taken in a reporting period, as specified in Rule 3(A)(2), is suspended for the 2019-2021 and 2020-2022 reporting periods.
- v. The limits on the number of hours that can be claimed under all sections of Rule 6 for a reporting period are suspended for the 2019-2021 and 2020-2022 reporting periods.

g. **Email Filings:**

Notwithstanding any court rule or administrative order to the contrary, parties may file documents with any board or committee subject to this rule by email, subject to the following requirements. Filings must be sent as an attachment to the email address associated with the board or committee on the Vermont Judiciary web site. The subject line must indicate the case or subject matter of the filing. Further details concerning the method of filing by email will be posted on the [vermontjudiciary.org](http://vermontjudiciary.org) website, and may change from time to time. Parties and lawyers should check the guidance on the website before filing by email.

h. **Permanent Rule Changes:**

The committees, boards, and commissions identified above shall review their governing rules and propose for promulgation any rule changes necessary to enable the use of remote meetings or proceedings, where applicable; to authorize email

filings, if the committee, board or commission deems advisable; and to permanently enable the committee, board, or commission to maintain any temporary operational changes adopted during this Judicial Emergency they deem advisable.

16. **DELETED.**

17. **Notarization and Oaths:**

a. ~~In depositions upon oral examination, notwithstanding requirements of V.R.C.P. 30(e) (incorporated into other divisions by V.R.Cr.P. 15(d), V.R.P.P. 26, V.R.F.P. 4.0(g), and V.R.E.C.P. 2(e)) or any other rule, at any deposition taken pursuant to Vermont rules or court orders, an officer or other person authorized to administer an oath may administer the oath remotely, without being in the physical presence of the deponent as long as the administering person can both see and hear the deponent using audio-video communication for the purpose of positively identifying the deponent.~~

b. ~~In court hearings in which a witness testifies by video or audio conference pursuant to V.R.C.P. 43.1, as incorporated in to the rules of other divisions, and as impacted by this Administrative Order, the court may administer the oath remotely provided the court is satisfied as to the identity of any witness testifying remotely.~~

18. **DELETED**

19. **DELETED.**

20. **Scheduling Priorities:** ~~In scheduling, priority shall be given to juvenile cases and those involving defendants detained pretrial.~~

21. **Pleading Requirements in Eviction Proceedings:**

- a. Notwithstanding the provisions of Rules 8 and 9 of the Vermont Rules of Civil Procedure, in any action for eviction of a tenant of residential housing filed on or after March 27, 2020, the plaintiff must attach to the complaint the plaintiff's certification that the filing complies with the federal CARES Act. In particular, the plaintiff must certify either that the plaintiff has complied with the restrictions of the CARES Act, or that the CARES Act is inapplicable to the property from which plaintiff seeks to evict a tenant.
- b. Any complaint filed after December 1, 2021, without the certification required in ¶ 21(a) may be dismissed by the court.
- c. The certification required in ¶ 21(a) must be in substantially the form reflected in [Appendix A](#) to ¶ 21.
- d. Notice of Emergency Rental Assistance.

(1) In any action for eviction of a residential tenant based solely or in part on nonpayment of rent filed after December 1, 2021, the summons and complaint must be accompanied by a notice in the form provided in [Appendix D](#) concerning the availability of Vermont Emergency Rental Assistance (VERAP) funds. The notice must be served as the cover page of the documents, and the sheriff's return of service

must state whether such a notice has been served. A failure to serve the notice may be corrected within 30 days, or the court may dismiss the case. A failure to serve such a notice may, if the tenant requests, be grounds to reschedule the rent escrow hearing or final hearing for up to thirty days to allow the tenant to file a VERAP application.

(2) When sufficient evidence has been submitted that the tenant has applied for VERAP funds, the court, in its discretion, may take any action that it deems appropriate in determining the fashioning of a rent escrow order or writ of possession, including the timing and amount of payment, the timing of issuance of a rent escrow order, or the timing of issuance of a writ of possession.

- e. Permanent Rule Changes. The Advisory Committee on the Rules of Civil Procedure shall review the current state of state and federal law concerning eviction proceedings and propose any necessary changes to the Civil Rules to take effect upon expiration of this Administrative Order.

## 22. Pleading Requirements in Foreclosure Proceedings:

- a. Notwithstanding the provisions of Rule 80.1 of the Vermont Rules of Civil Procedure, in any action for residential foreclosure filed between March 27, 2020, and December 31, 2020, the plaintiff must attach to the complaint the plaintiff's certification that the filing complies with the federal CARES Act and Regulation X, 12 C.F.R. § 1024.39, or that the CARES Act does not apply to the filing.
- b. If the complaint was filed without the certification required in ¶ 22(a), such certification must be filed with the court by August 14, 2020.
- c. The certification required in ¶ 22(a) must be in substantially the form reflected in [Appendix B](#) to this amendment.
- d. In all foreclosures of a one-to-four-unit residential property filed after the effective date of this amendment, and prior to midnight, December 31, 2021, the plaintiff shall attest that the foreclosure filing complies with or is exempt from the requirements of the Consumer Financial Protection Bureau's Temporary COVID-19 Procedural Safeguards Rule at 12 C.F.R. § 1024.41(f)(3), by completing and filing [Appendix C](#), a Certification of Compliance with or Exemption from 12 C.F.R. § 1024.41(f)(3), with the foreclosure complaint.
- e. In all foreclosures of a one-to-four-unit residential property filed on or after August 31, 2021, but before the effective date of this amendment, the Plaintiff shall attest that the foreclosure filing complies with or is exempt from the requirements of the Consumer Financial Protection Bureau's Temporary COVID-19 Procedural Safeguards Rule at 12 C.F.R. § 1024.41(f)(3), by completing and filing Appendix C, a Certification of Compliance with or Exemption from 12 C.F.R. § 1024.41(f)(3), no later than 21 days from the effective date of this amendment.
- f. The action may be subject to dismissal without prejudice for plaintiff's failure to comply with ¶ 22(d) or (e).

g. Vermont Homeowner Assistance Program (VHAP). The requirements of ¶ 22(g) apply in all one-to-four-unit residential property foreclosure actions pursuant to 12 V.S.A. § 4941 or 12 V.S.A. § 4945 and residential mobile home replevin actions pursuant to 9A V.S.A. § 9-609.

i. Notice and Pleading Requirement.

For actions filed on or after February 22, 2022, the plaintiff must complete and file with proof of service of the complaint, a certification in substantially the form of [Appendix E](#), attesting that the plaintiff served the defendant with notice of the availability of the VHAP at the time of service of the complaint, or that ¶ 22(g) does not apply because the subject property is not owned and occupied by a borrower defendant as a primary residence. The notice must be in the form provided by [Appendix F](#).

In all pending actions filed before February 22, 2022, the plaintiff must file a certification in substantially the form of [Appendix E](#) within 21 days of February 22, 2022.

If the plaintiff fails to file the certification required by ¶ 22(g)(i), the court may stay the case until the certification is filed.

ii. Automatic Stay. In any action under ¶ 22(g) where a defendant files a request to stay, and sends a copy to the plaintiff, representing that the defendant has submitted a VHAP application and believes the requirements of the program are met, any entry of judgment, notice of sale, sale of the property, or issuance of an order of replevin will be automatically stayed without further order of the court for a period of 60 days from the date the court received the request. The request need not comply with the requirements of Rule 7 of the Vermont Rules of Civil Procedure.

Any plaintiff objecting to the 60-day automatic stay may file a motion to terminate the stay. The court may terminate the stay if it finds that the request to stay has been filed solely for the purpose of delay, the arrearage exceeds the \$30,000 VHAP program maximum and the defendant is unable to make up the difference through other sources, or a stay is not necessary for the borrower to access VHAP funds. If neither party notifies the court of a decision on the VHAP application prior to the end of the 60-day period or seeks an extension of the stay, the stay will automatically expire.

If a plaintiff has knowledge that a defendant in the action has applied for VHAP, the plaintiff must timely inform the court of the pending VHAP application, and the court may stay the case or take other appropriate action.

iii. Mediation. Unless otherwise agreed by the parties or ordered by the court, a stay under ¶ 22(g) will not stay an order for foreclosure mediation pursuant to

12 V.S.A. § 4632 and the parties may participate in foreclosure mediation while the stay is in effect.

- iv. Denial of VHAP Application. Upon notice from the plaintiff or the defendant that the VHAP application has been denied, the court will terminate the stay.
- v. Expiration. Paragraph 22(g) will expire on September 30, 2025, or upon notice to the Court Administrator from the Vermont Housing Finance Agency that VHAP funding has been exhausted, whichever is earlier. The Court Administrator will notify members of the Vermont Bar upon receipt of notice from the Vermont Housing Finance Agency that VHAP funding has been exhausted.
- h. Permanent Rule Changes. The Advisory Committee on Rules of Civil Procedure shall review the current state of state and federal law concerning foreclosure proceedings and propose any necessary changes to the Civil Rules to take effect upon expiration of this Administrative Order.

23. ~~Bar Examinations:~~

- ~~a. **February 2021 and July 21 Bar Examinations:** The Board of Bar Examiners is authorized to administer the February 2021 and July 2021 Uniform Bar Examinations by remote means.~~
- ~~b. **Health and Safety Requirements.** The Board of Bar Examiners is authorized to establish requirements for the bar examination necessary to protect the health and safety of applicants and bar administration staff. These requirements may include, but are not limited to, social distancing, masking, disclosure and proof of vaccination status, and proof of a negative COVID-19 PCR test prior to the examination date. The Board may refuse admission to any applicant not meeting these requirements and may remove applicants who fail to comply. The Board may also limit the number of people taking the bar exam due to space limitations. Any such limitations and requirements will be published on the Vermont Judiciary website and provided to all exam applicants prior to the examination.~~

24. **DELETED eff. June 20, 2022.**

**Explanatory Note—August 9, 2022**

The COVID-19 pandemic required the Judiciary to amend procedures and adapt processes to protect public health while meeting its critical role in protecting individual rights, maintaining the rule of law, and administering justice. In response to this challenge, the Judiciary implemented through this Order public-safety measures and increased use of remote hearings to protect staff and accommodate individuals who use Judiciary buildings and services to preserve their rights and to participate as jury members, among other things. As the pandemic-related risks have

evolved, the Court has responded by amending the interim measures included in this Order. The Court is now undertaking the process of adopting policies and promulgating permanent rules, where appropriate, so that the temporary measures in Administrative Order 49 can be either phased out or, where appropriate, incorporated in permanent rules. The Court is acting in a deliberative manner to accomplish this important transition. Promulgating permanent rules requires collaboration with outside partners and time to collect comment from the bar and the public. Therefore, as detailed below, several provisions of the Order are deleted, effective September 6, 2022, when permanent amendments will take effect, and the remaining provisions of the order are extended until September 30, 2022, to allow for the necessary time to make the remainder of the transition.

Paragraph 3, related to jury trials, is deleted effective September 6, 2022. This paragraph currently has four requirements related to jury trials. First, it requires a unit plan to be approved by the Chief Superior Judge and Chief of Trial Court Operations prior to conducting jury trials. Under simultaneously amended Administrative Order 3, the State Court Administrator will have authority to regulate court operations and can continue to require the use of unit plans. Second, ¶ 3(b) currently allows the court to impanel more alternate jurors to accommodate disruptions from COVID-19 infection or exposure. Simultaneously amended Vermont Rule of Criminal Procedure 24 will allow the court to impanel as many jurors as reasonably necessary under the circumstances. See the Reporter's Notes to that Rule Amendment. Third, ¶ 3(c) allows the Chief Superior Judge to transfer a proceeding from its original unit to an alternate unit. This provision will expire without replacement as there are sufficient rules and statutes on venue change where necessary. Finally, ¶ 3(d) allows jurors in remote trials to use devices notwithstanding V.R.C.P. 79.2(d)(5). This allowance was already incorporated into Administrative Order 52 regarding remote civil jury trials.

Most of paragraph 5 regarding remote participation is also deleted effective September 6, 2022. Remote participation in civil, environmental, probate, and most family proceedings will be governed by existing Vermont Rule of Civil Procedure 43.1, subject to any changes that might result from the work of the Special Advisory Committee on Remote Hearings. Remote participation in criminal and delinquency proceedings will be governed by simultaneously amended Administrative Order 38. Paragraph 5(c), which relates to remote proceedings in the judicial bureau, remains in effect to allow for consideration and promulgation of amendments to V.R.S.C.P. 6 and V.R.C.P. 80.6(n), which are currently out for comment.

Paragraph 6, which provides processes related to email filing and service, is deleted effective September 6, 2022, when permanent amendments to Vermont Rule of Civil Procedure 5, Vermont Rule of

Appellate Procedure 25, and Vermont Rule of Probate Procedure 5 will go into effect.

Paragraph 7, regarding access to court buildings, is deleted effective September 6, 2022. Simultaneously amended Administrative Order 3 provides the State Court Administrator with authority to regulate court operations, including procedures governing entry to and conduct in judiciary buildings.

Paragraph 8, which suspended strict enforcement of the deadlines related to public records requests, will expire on September 6, 2022. Paragraphs 9 and 10 will also expire without replacement.

Paragraph 12, regarding oral argument in the Supreme Court, remains in effect until September 30, 2022, and amended Vermont Rules of Appellate Procedure 9, 33.1, and 34 will go into effect on October 1, 2022.

Paragraph 13, which governed remote mediation, is deleted effective September 6, 2022. Permanent amendments to Vermont Rule for Family Proceedings 18(d)(2) went into effect June 20, 2022.

Paragraph 15 governing committees, boards, and commissions established by the Supreme Court remains in effect until permanent amendments can be promulgated.

Paragraph 17, related to notarization and oaths, will expire on September 6, 2022.

Paragraph 20 that required giving priority to juvenile cases and those involving defendants detained pretrial will expire on September 6, 2022. These cases should continue to have priority on the courts' dockets, but it is not necessary to outline that in an order.

Paragraphs 21 and 22 relate to pleading and notification requirements in foreclosure and eviction proceedings. The Advisory Committee on the Vermont Rules of Civil Procedure has proposed the addition of new Rules 9.2 and 9.3, which are currently out for comment. Once permanent rules are implemented, they can replace the emergency provisions.

2. That the amendment to ¶ 2 extending the emergency to September 30, 2022, be effective immediately and the remaining amendments to this order be effective September 6, 2022.

3. That the Chief Justice is authorized to report this order to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 9<sup>th</sup> day of August, 2022.



Signed by the Vermont Supreme Court

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice

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Nancy J. Waples, Associate Justice