ADMINISTRATIVE ORDER NO. 49

DECLARATION OF JUDICIAL EMERGENCY AND

CHANGES TO COURT PROCEDURES

PROMULGATED ON 3-16-20; AS AMENDED ON 3-18-20, 3-20-20, 3-24-20, 3-25-20, 4-6-20, 4-9-20, 4-13-20, 4-21-30, 4-30-20, 5-13-20, 6-19-20, 7-17-20, 7-23-20, 8-20-20, 10-5-20, 11-2-20, 11-24-20, 12-4-20, 12-22-20, 3-8-21, 4-8-21, 5-12-21, 6-25-21, 9-1-21, 10-14-21, 11-04-21, 11-15-21, 1-5-22, 1-10-22, 1-14-22, 2-7-22, 3-7-22 AND 5-9-22

The Vermont Supreme Court issues this administrative order pursuant to its authority under the Vermont Constitution, Chapter II, § 30.

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, 2022, unless extended by order of this Court. 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.

c. 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).

PROMULGATED ON 3-16-20; AMENDED ON 3-18-20, 3-20-20, 3-24-20, 3-25-20, 4-06-20, 4-09-20, 4-13-20, 4-21-30, 4-30-20, 5-13-20, 6-19-20, 7-17-20, 7-23-20, 8-20-20, 10-5-10, 11-02-20, 11-24-20, 12-04-20, 12-22-20, 3-8-21, 4-8-21, 5-12-21, 6-25-21, 9-01-21 10-14-21, 11-4-21, 11-15-21, 1-05-22, 1-10-22, 1-14-22, 2-07-22, 3-07-22 and 5-09-22.

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 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 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.

c. 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-efiler, 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-efilers 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 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.**

PROMULGATED ON 3-16-20; AMENDED ON 3-18-20, 3-20-20, 3-24-20, 3-25-20, 4-06-20, 4-09-20, 4-13-20, 4-21-30, 4-30-20, 5-13-20, 6-19-20, 7-17-20, 7-23-20, 8-20-20, 10-5-10, 11-02-20, 11-24-20, 12-04-20, 12-22-20, 3-8-21, 4-8-21, 5-12-21, 6-25-21, 9-01-21 10-14-21, 11-4-21, 11-15-21, 1-05-22, 1-10-22, 1-14-22, 2-07-22, 3-07-22 and 5-09-22.

17. **Notarization and Oaths**:

    a. In depositions upon oral examination, notwithstanding requirements of V.R.C.P. 30(c) (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(c)) 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.

PROMULGATED ON 3-16-20; AMENDED ON 3-18-20, 3-20-20, 3-24-20, 3-25-20, 4-06-20, 4-09-20, 4-13-20, 4-21-30, 4-30-20, 5-13-20, 6-19-20, 7-17-20, 7-23-20, 8-20-20, 10-5-10, 11-02-20, 11-24-20, 12-04-20, 12-22-20, 3-8-21, 4-8-21, 5-12-21, 6-25-21, 9-01-21 10-14-21, 11-4-21, 11-15-21, 1-05-22, 1-10-22, 1-14-22, 2-07-22, 3-07-22 and 5-09-22.

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**. **Extension of Offer of Judgment Rule to Plaintiffs.** Rule 68 of the Vermont Rules of Civil Procedure is amended to read as follows (new matter underlined; deleted matter struck through):

RULE 68. OFFER OF JUDGMENT

At any time more than 14 days before the trial begins or within such shorter time as the court may approve, a party ~~defending against a claim~~ may serve upon ~~the~~ an adverse party an offer to allow judgment to be ~~taken against the defending party~~ entered for the money or property or to the effect specified in the offer, with costs then accrued. If within 14 days after the service of the offer or within such shorter time as the court may order the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally ~~obtained by the offeree~~ entered is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 14 days, or such shorter time as the court may approve, prior to the commencement of hearings to determine the amount or extent of liability.

Explanatory Note

PROMULGATED ON 3-16-20; AMENDED ON 3-18-20, 3-20-20, 3-24-20, 3-25-20, 4-06-20, 4-09-20, 4-13-20, 4-21-30, 4-30-20, 5-13-20, 6-19-20, 7-17-20, 7-23-20, 8-20-20, 10-5-10, 11-02-20, 11-24-20, 12-04-20, 12-22-20, 3-8-21, 4-8-21, 5-12-21, 6-25-21, 9-01-21 10-14-21, 11-4-21, 11-15-21, 1-05-22, 1-10-22, 1-14-22, 2-07-22, 3-07-22 and 5-09-22.

The current COVID-19 pandemic forces the Judiciary to balance critical and to some extent competing objectives.

Importantly, the courts play a critical role in protecting individual rights and maintaining the rule of law that is the backbone of our constitutional democracy. The United States and Vermont Constitutions protect individual rights to life, liberty, and due process. "[T]he judiciary is clearly discernible as the primary means through which these rights may be enforced." Davis v. Passman, 442 U.S. 228, 241 (1979). As James Madison said, independent courts "will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights." Id. at 241-42 (citing 1 Annals of Cong. 439 (1789)).

In addition, the work of Vermont's courts has a profound impact on the daily lives of Vermonters. Courts are charged with deciding critical questions related to the protection of children and the rights of their parents. The criminal justice system cannot fully function without the active engagement of courts. Rather than resorting to destructive self-help strategies, individuals and organizations rely on courts to resolve all manner of disputes by applying established legal principles. Families turn to courts to address vital issues, many involving urgent conflicts. And courts adjudicate civil petitions to protect individuals' safety.

Moreover, open trials are important to the administration of justice. As the U.S. Supreme Court has explained, "The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." Press-Enter. Co. v. Super. Ct. of Cal., Riverside Cty., 464 U.S. 501, 508 (1984). For these reasons, we have recognized that the public has a "constitutional and common law right of access to court records and proceedings," State v. Tallman, 148 Vt. 465, 472, 537 A.2d 422, 427 (1987), and public judicial proceedings are the rule, and closed ones the exception. Herald Ass'n, Inc. v. Ellison, 138 Vt. 529, 533, 419 A.2d 323, 326 (1980).

Nevertheless, the current public-health crisis arising from COVID-19, and the resulting declaration of a judicial emergency, reinforced by the Governor's declaration of a State of Emergency, calls for extreme measures to mitigate the impact of the pandemic. The Governor, based on evidence-based public-health concerns, has declared a State of Emergency in Executive Order 01-20, and has augmented the restrictions in that Executive Order with a series of addenda imposing increasingly restrictive limitations on public gatherings and activities. Through our own

Administrative Order, as amended from time to time, the Vermont Supreme Court has declared a judicial emergency and has implemented increasingly more expansive changes with respect to matters within our authority in an effort to meet the Judiciary's most urgent constitutional obligations while respecting the recommendations of public-health officials, mitigating risks to the dedicated public servants who work in the judiciary, and responding to the staffing challenges arising from the pandemic.

This ongoing process of responding to the evolving public-health crisis, balancing competing concerns, and adjusting court rules and operations will continue until this crisis runs its course. Some changes in court operations will require rule changes or amendments to this Administrative Order. Some operational changes, such as implementation of remote work for many Judiciary staff, fall within existing authority of the Court Administrator and do not require amendments to this Administrative Order.

The Court's initial order, on March 16, 2020, postponed superior court hearings in all but the most urgent cases—those most profoundly impacting individuals' personal liberty, safety, and family attachments. In those cases, the impact of inaction by the courts would be particularly substantial and enduring. In addition, in those cases, the Court sought to maximize the use of remote audio and video to minimize the number of individuals congregating for a hearing. In addition, the Court suspended all judicial bureau hearings as well as rules regarding court filings to allow individuals to use email for most court filings. The Court also suspended strict enforcement of timelines related to public requests for court records, while requiring reasonable efforts under the circumstances in response to public records requests. Finally, the Court imposed restrictions on access to court buildings to exclude anyone at high risk of infection pursuant to Department of Health guidelines, as well as anyone seeking to enter the courthouse for any purpose other than participating in or attending a public proceeding.

The March 18 amendment assigned the Supreme Court discretion to waive oral argument in its own proceedings, or to conduct those arguments by remote audio or video means. The amendment carved out a narrow exception to the general suspension of nonemergency hearings for nonevidentiary, nonemergency hearings that could be conducted entirely remotely. This exception was limited by staff availability, and the amendment authorized the Court Administrator to make real time determinations as to whether and to what extent to schedule or conduct such hearings.

By amendment on March 20, the Court augmented its rule authorizing court filings by email to allow electronic signatures in lieu of "wet" signatures on such documents. It suspended the in-person participation requirement with respect to court-ordered mediation. And it limited the

times and locations that Judiciary employees can conduct Judiciary business.

By amendment on March 24, the Court extended the duration of the restrictions on access to courthouses to be coterminous with the rest of the Administrative Order and made some technical corrections to that provision. In addition, the Court issued a host of general directives concerning committees, boards, and commissions established or governed by the Supreme Court. These measures included suspending in-person committee meetings; suspending most adjudicative hearings by boards except those necessary to protect the public; and authorizing email filings with these committees. The Court also authorized remote administration of the oath of admission to the Bar, and waived certain continuing legal education requirements for the license renewal period ending June 30, 2020. Finally, in recognition of the likelihood that public-health demands and reduced staff availability may require the Judiciary to find creative ways to address the most urgent cases, the Court invoked its statutory authority to make rules concerning venue to authorize the Chief Superior Judge, in consultation with the Court Administrator, to depart from the ordinary rules of venue in certain circumstances.

By amendment on March 25, the Court has adopted this Explanatory Note. The Court has further restricted public access to those court proceedings that are continuing pursuant to this Administrative Order. With narrow exceptions, only participants in those proceedings will be admitted to Judiciary courthouses. The Court has taken this extreme step in recognition of the Governor's March 24 Addendum 6 to Executive Order No. 01-20, which called for Vermonters to stay at home or in their place of residence, leaving only for essential reasons. The Court seeks to mitigate the Constitutional concerns raised by an order temporarily excluding the general public from court proceedings by including an exception allowing registered members of the media to attend court proceedings that are not otherwise confidential by law. Because of the administrative challenges of operating courts under current circumstances, the March 25 amendment provides that no new applications for one-time media certification will be entertained while this order is in effect. The amendment further urges all individuals admitted to a courthouse to observe social distancing.

Explanatory Note—April 6, 2020 Amendment

By amendment to ¶ 3(b) dated April 6, the Court has deferred all jury draws and jury trials to at least May 15, notwithstanding the termination date of the Administrative Order declaring a judicial emergency. In light of the course of the public-health crisis, the fact that jury draws and jury trials require that many people operate in close physical proximity, and the strains on the Judiciary arising from the COVID-19 pandemic, it is virtually impossible that jury draws or jury trials would be consistent with

public health, as well as the health and safety of parties, their lawyers, and Judiciary staff, by May 15. In light of the advance planning jury trials typically require, this amendment gives parties, witnesses, lawyers, and court staff ample notice of the continued suspension of jury trials until at least May 15. The suspension of jury trials implicates fundamental constitutional rights, most acutely in cases in which a criminal defendant is in custody pending trial. For that reason, the Court will revisit the question of jury trials on an ongoing basis through the continuing course of this judicial emergency with a goal of resuming such trials as soon as reasonably safe.

The April 6 amendment also suspends the requirement of filing paper briefs and printed cases in appeals to the Supreme Court. In light of the Governor's March 24 Addendum 6, this amendment removes the paper-filing requirement that would otherwise require most parties to travel to their office to assemble the paper briefs and printed case, and may lead them to call upon other staff for administrative support. The rule requires that within 30 days of the termination of the judicial emergency, or within 30 days of an amendment terminating the suspension of the paper-filing requirement, a party must file the paper briefs and printed cases otherwise required by the appellate rules. Recognizing that in some cases the Court may have already done much of its work on a case by the time the paper-filing requirement applies, the amendment allows parties to request permission to file only a single paper copy of a brief and printed case at that time.

The April 6 amendment makes a minor change to the provision regarding access to courts, replacing an inaccurate description with the proper term "communications specialists."

The April 6 amendment allows the Supreme Court to hold arguments by video or other electronic means, in addition to telephone. Because the Supreme Court arguments will be by remote electronic means, the April 6 amendment clarifies that public access to court hearings will also be effected by remote means. No individuals, whether participants, media, or otherwise, will be admitted to the Supreme Court building for oral arguments because no arguments will be physically held in the Supreme Court.

With respect to notarization and oaths, the April 6 amendment seeks to address the challenges arising from requirements based in court rule that certain documents, such as affidavits and verified complaints, be notarized. The amendment authorizes individuals to essentially self-certify the truthfulness of their statements, subject to the penalty of contempt, where notarization is otherwise required by court rule. It does not purport to change notarization requirements where affidavits are required by statute. In that regard, the remedy provided by these rules is limited. The Legislature is currently considering legislation that would address these problems more broadly, and the Court will revisit this amendment upon passage of any legislation relating to oaths and affidavits filed in court.

To facilitate ongoing discovery in the context of the social-distancing measures currently in place, the April 6 amendment further allows for remote administration of the oath in the context of depositions. Finally, the amendment makes it clear that courts may administer oaths remotely for the purpose of conducting remote hearings where otherwise authorized, provided the court is satisfied as to the identity of the witness testifying remotely.

Finally, in light of the health concerns posed by the ongoing COVID-19 pandemic, the April 6 amendment suspends the administration of July Uniform Bar Exam. This position is consistent with that taken by some neighboring states and is appropriate in Vermont at this time. The Court intends to reschedule the exam for the fall if the NCBE offers the exam at that time and if administration of it is possible without placing those involved at risk.

Explanatory Note—April 9, 2020 Amendment

The April 9 amendment extends the sunset date of this Administrative Order from April 15, 2020 to May 31, 2020. Because of the significant lead time involved in scheduling court proceedings, the continuing uncertainty about when public-health social distancing measures will be relaxed, and the likely need to prioritize certain cases as social distancing requirements ease, unless otherwise specified within Administrative Order 49, the provisions of AO 49 will be extended until May 31, 2020. The April 9 amendment also strikes paragraph 3(b) which established a different period of suspension for jury trials than for other matters. Pursuant to this amendment, the period of suspension of jury draws and jury trials is coterminous with the period in which other hearings are suspended. The Court will revisit this timing as conditions on the ground, and public-health recommendations, evolve.

Explanatory Note—April 13, 2020 Amendment

By amendment to ¶ 6 dated April 13, the Court has suspended some court rules regarding service of pleadings and other documents in Superior Court proceedings to require that lawyers serve documents on one another by email, and to allow by voluntary agreement service on or by self-represented parties by electronic means. This amendment follows from the Governor's March 24 Addendum 6 to Executive Order No. 01-20, which called for Vermonters to stay at home or in their place of residence, leaving only for essential reasons. Because many lawyers and parties are properly remaining in their homes during this time, many do not have regular access to their incoming paper mail and thus may fail to satisfy deadlines for responding to documents served by mail. Many also lack access to copiers, postal meters, and administrative support necessary for

sending pleadings and other papers by mail. The rule does not mandate service by email by or to self-represented parties, who may not have email addresses or ready access to one another's email addresses, but does allow service by email or other electronic means by mutual agreement. The amendment requires an agreement for service to or from a self-represented party to be in writing and filed with the court.

This amendment does not apply to service of process governed by V.R.C.P. 4, or analogous rules in other divisions, and does not apply where applicable electronic filing rules require other means of electronic service. Nor does it alter any rules or statutes concerning when and to whom service of such documents is required. It only addresses the means of serving documents where required by 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 other provisions of law regarding service other than initial service of process.

To facilitate mandatory email service, attorneys must provide an email address on all documents filed with the court or served on another party. Pursuant to Administrative Order 44, attorneys in active status are already required to register up to three email addresses in eCabinet for purposes of receiving notices of hearing and other documents. Attorneys may include staff email addresses among those addresses registered in eCabinet. Because attorneys may not have listed their eCabinet email addresses on documents filed or served as of the effective date of this amendment, the amendment requires attorneys to promptly notify one another of the email addresses at which they will receive service if they have not included this information in any pleadings or filings. Although this amendment establishes email as the default means of service between attorneys, they may agree in writing to alternative methods of service, including service by mail or other electronic means such as a shared digital storage system. This agreement must be made in writing. Any change to the means of service, whether indefinite or for the purpose of serving a specific document, must be documented in writing.

Where a party makes service to the email address provided by the other party pursuant to this rule, or as otherwise provided in the parties' agreement, service is complete upon transmission. However, if the sending party learns that the attempted service did not reach the party to be served, service is not complete.

The April 13 amendment provides that motions and filings in the Supreme Court must be served in the same manner as service of pleadings and other papers in the Superior Court, as outlined in paragraph 6(c). In particular, lawyers must serve one another by electronic means as set forth above, unless they mutually agree otherwise. Self-represented parties may agree to send and/or receive service by email, as described above, but are not required to. The April 13 amendment recognizes that under existing

rules briefs are served on represented parties electronically. Self-represented parties may agree to service by electronic means, but the default remains paper service.

Explanatory Note—April 20, 2020 Amendment

The April 20 amendment adds motions to modify or enforce parent-child contact in juvenile and domestic cases to the list of emergency motions that are not suspended by this Administrative Order. As a practical matter, where parties cannot reach agreement with respect to parent-child contact in the context of the COVID-19 crisis, either parent should be able to bring the matter to the court for resolution—the parent seeking to enforce the existing order as to parent-child contact, or the parent seeking to suspend or modify the order. The amendment clarifies that hearings on such motion are not suspended, whether the motions are to suspend, modify, or enforce that order.

The April 20 amendment also provides trial courts with greater flexibility in setting hearings that are not suspended by this Administrative Order for telephone or video hearings. In the civil, family, and probate divisions, with respect to video hearings and trials, the amendment suspends the timelines in Rule 43.1(c) so that the court may set matters for hearings, both evidentiary and nonevidentiary, on shorter notice. In responding to objections to video testimony, courts will still be guided by the factors in Rule 43.1(c)(6). The amendment allows courts to set hearings, both evidentiary and nonevidentiary, for audio conference. Experience during this crisis has shown that in many cases, telephone hearings can provide all parties a fair opportunity to be heard without compromising individuals' health or the health of others. The amendment makes it clear that courts need not make any specific findings in advance in scheduling hearings for audio, and that the factors set forth in Rule 43.1(d) will still guide courts' consideration of objections to audio testimony. To the extent they are not inconsistent with this amendment, the provisions of Rule 43.1 will continue to apply.

In the criminal division, the April 20 amendment makes it clear that courts may schedule nonevidentiary hearings by remote audio, or may preside remotely, in those cases in which the presence of the defendant is not required by V.R.Cr.P. 43. V.R.Cr.P. 43 and Administrative Order 38 otherwise remain in force with respect to evidentiary and video hearings except that, with the agreement of all parties, courts may take testimony through remote audio or video not otherwise authorized by Administrative Order 38.

As of April 20, the Vermont Department of Health has recommended that people wear cloth face masks, or coverings, if they leave their home for essential purposes. The Department advises that because people may have COVID-19 but no symptoms, wearing a face mask may help keep people from spreading the virus. Face coverings are not a substitute for

physical distancing and other prevention measures. The Vermont Department of Health recommends that people wear face coverings when other people are nearby. The public-health guidance does not define "nearby" in terms of distance. By Addendum 10 to Executive Order 01-20, the Governor has called for all businesses, nonprofit and governmental entities to require employees to wear nonmedical cloth face coverings (bandanna, scarf, or nonmedical mask, etc.) over their nose and mouth when in the presence of others.

Consistent with this guidance, and to protect the health of members of the public required to attend court proceedings, as well as Judiciary and other personnel working in the courts, the April 20 amendment provides that individuals entering Judiciary buildings must wear cloth masks covering the mouth and nose. This rule applies to all who work in the Judiciary as well as participants, lawyers, members of the media, and members of the public. Individuals who are not wearing a mask, whether their own or one provided by the court, will be denied entry at screening points. Individuals who remove their masks after entering the building will be required to immediately leave the building. Judiciary staff in nonpublic workspaces are not required to wear masks if no other people are nearby, but should wear them in nonpublic common spaces such as bathrooms or office breakrooms. The Judiciary recommends that people use their own cloth masks, but will provide masks for people who do not have their own. Like the Governor's Executive Order, this rule requires individuals to wear nonmedical cloth masks, in recognition of the need to conserve medical-grade masks for health-care providers. However, individuals who wear non-cloth medical-grade masks will not be deemed to be in violation of this rule.

Explanatory Note—April 30, 2020 Amendment

The April 30 amendment extends to cases in the Environmental Division the provisions of this Administrative Order regarding remote proceedings in most cases in the civil, family, and probate divisions.

The amendment also provides for remote proceedings in juvenile delinquency proceedings pursuant to V.R.F.P. 1 on the same general terms as in the criminal division, and in the criminal division expands on existing rule V.R.Cr.P. 43(a)(2) and the existing provisions of this Administrative Order. In particular, in the criminal division, the amendment authorizes the court to preside remotely, and to require any or all witnesses to participate remotely by video or audio in nonevidentiary proceedings where the defendant's presence is not required. In the juvenile delinquency docket, the amendment likewise authorizes the court to preside remotely and to require any or all witnesses to participate by remote audio or video in nonevidentiary proceedings where the presence of the juvenile is not required. In nonevidentiary proceedings where the presence of the defendant or juvenile is required, whether pursuant to V.R.Cr.P. 43 for criminal defendants, or provisions in Chapter 52 of Title

33 for juveniles, this amendment does not authorize the court to require defendants to participate remotely. However, pursuant to recent legislative action V.R.Cr.P. 43(d) has been amended, (see S.114, signed into law April 28, 2020), and the requirement that a criminal defendant be present for certain proceedings may be satisfied through remote means under specified circumstances. In addition, the April 30 amendment extends the remote audio and video participation in evidentiary proceedings to juvenile delinquency proceedings by agreement of all parties.

Finally, the April 30 amendment eliminates the special procedure in former ¶ 17(a) that allowed self-attestation to an oath where the oath and notarization are required by court rules. Pursuant to S.114, signed into law April 28, 2020, a party may file without notarization any document that would otherwise require approval or verification of a notary by filing the document with the following language inserted above the signature and date: "I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I will be subject to the penalty of perjury or other sanctions in the discretion of the court." This statute, in effect until 30 days after the Governor terminates the state of emergency by declaration, provides a broader and more effective solution to the problem targeted by prior subdivision (a), and renders that subdivision unnecessary.

Explanatory Note—May 13, 2020 Amendment

The May 13 amendment extends the judicial emergency until September 1, 2020. This does not signal that the existing provisions in the emergency order will necessarily remain in place until that time. The Court anticipates continued amendments to A.O. 49 to meet the evolving conditions. The extension until September 1 reflects a recognition that the public-health crisis that gave rise to this Order is not likely to fully resolve before September 1, and deviations from historical court practice, or modifications to at least some court rules, will be necessary through the upcoming summer.

The May 13 amendment lifts the blanket suspension of nonemergency court proceedings in superior courts and the judicial bureau, and amends ¶¶ 3, 4, 5, and 11 in recognition of that fact. Consistent with the expansion of operations plan, nonemergency hearings in all dockets may begin starting June 1, 2020, and courts may begin scheduling hearings on May 18, 2020. The amendment substitutes in ¶ 3 a continuing suspension of criminal jury trials until September 1, 2020, and civil jury trials until January 1, 2021, and provides that jury summonses shall not be sent prior to August 3, 2020. The lifting of the suspension of nonemergency hearings in ¶ 3 does not signal that hearings will immediately recommence in all dockets. The expansion of judicial operations accompanying the contemporaneous lifting of many of the restrictions in the Governor's Executive Order 01-20 will be gradual and deliberate. In light of the

substantial backlog in urgent hearings, including those that were not formally suspended pursuant to former ¶ 3, courts will resume scheduling hearings taking into account staff availability; the impact of social distancing requirements on the availability of courtrooms; the suitability and availability of remote technologies for particular hearings; and the availability of parties, lawyers, and other participants.

Finally, the May 13 amendment provides that attorneys, who are due for relicensure by June 30 of this year and who have suffered hardship on account of the COVID-19 pandemic, may defer payment of their relicensing fee until September. The online portal for relicensure will be modified to reflect this option. Lawyers invoking the deferral option will be asked to certify that the pandemic has caused hardship, but will not be required to provide additional information about their finances.

Explanatory Note—June 19, 2020 Amendment

The June 19 amendment amends the introductory language to the Administrative Order in recognition of the fact that the specific restrictions on assemblies and interactions incorporated in the Governor's Executive Order 01-20 have evolved considerably since the Governor's initial promulgation of that Order on March 13, 2020.

In addition, the June 19 amendment adds ¶ 5(c) to establish a strong preference for remote proceedings whenever reasonably possible in light of the available technology in the court, the access of the hearing participants to means for remote participation, the nature of the hearing, and the restrictions of the applicable rules. Although the Court has lifted an across-the-board suspension of all but emergency hearings, the goal of minimizing the number of people in Judiciary buildings remains paramount. This is the best way to protect court users, court personnel, and the general public. In some cases, courts may conduct hearings in which some participants are in the courtroom, and others participate remotely; in such cases, courts should take steps to ensure that neither party is disadvantaged by the mode of participation.

The June 19 amendment maintains the requirements in ¶ 7 that individuals entering Judiciary buildings undergo screening and wear masks, but assigns the State Court Administrator responsibility for developing specific protocols for screening and any exceptions to the general policy concerning masks. The State Court Administrator is directed to keep abreast of evolving public-health guidance and to amend her directives or policies concerning screening and masks consistent with that guidance. Effective contemporaneous with the promulgation of this amendment, the State Court Administrator has issued Administrative Directive No. PG-13, which establishes the current screening and other requirements applicable to individuals entering court buildings.

Finally, the June 19 amendment requires that judges and court staff prioritize juvenile cases and those involving defendants detained prior to trial in scheduling hearings. This amendment implements a recommendation of the May 13, 2020 Blueprint for Expansion of Court Operations, adopted by the Court. That document establishes procedures for the gradual expansion of court operations, balancing the needs of staff, judges, attorneys, and litigants to the extent possible. It recognizes that the Judiciary will continue to face resource limitations as well as constraints arising from social-distancing requirements. It calls for the presiding Judge and Clerk of each unit to convene judges and court operations managers within the unit to develop a coordinated plan for expanding operations, ensuring that the highest priority cases receive the necessary resources. The plan may require some judges and staff to work on dockets outside of their current rotation or usual work assignments and may affect the scheduling of certain types of cases altogether. The Court has incorporated the case prioritization provision into this Administrative Order for emphasis and to set appropriate expectations among litigants, lawyers, court staff, judges, and the general public. As long as resources for conducting court proceedings—including court staff, courtroom space, and technological resources for video remote proceedings—remain in short supply, whenever reasonably possible, they should be allocated to the backlog in the juvenile docket and criminal cases where defendants are being detained pretrial. These are the cases in which the liberty interests protected by the court system are at their highest.

Explanatory Note—July 17, 2020 Amendment

The July 17 amendment to ¶ 6(d) eliminates any requirement that multiple paper briefs be filed at the conclusion of the judicial emergency and requires that one set of briefs and printed cases be filed within a week of the electronic filing. The court retains its discretion to, by order, require parties to file additional paper copies of briefs and printed cases. In this amendment, the Court hopes to account for both the challenges of copying and collating multiple briefs in the context of the ongoing pandemic and the necessity that a paper copy of each brief and printed case be filed for the permanent record in each case.

The July 17 amendment also amends ¶ 18 of the Administrative Order regarding the July 2020 bar examination. Due to the ongoing risks to public health from the pandemic, the in-person bar exam originally scheduled for July 2020 and rescheduled to September 2020 is cancelled. The Board of Bar Examiners is authorized to conduct and grade a remote bar examination in the fall of 2020. Applicants who were registered and authorized to sit for the July 2020 examination will be automatically registered for the remote examination. Registered applicants who choose not to take the remote exam may receive a refund or choose to register to sit for the February 2021 exam. To ease the inconvenience and hardship caused by the delayed

exam, those registered applicants choosing to take the exam in February 2021 will be permitted to continue to practice as a legal intern. The Board is also authorized to enter agreements with other states so that scores will be portable.

Explanatory Note—July 23, 2020 Amendment

The July 23 amendments add ¶¶ 21 and 22 to establish special pleading requirements for eviction and foreclosure proceedings potentially affected by the federal CARES Act, Pub. L. No. 116-136. That Act provides specific requirements for evictions for nonpayment from, and foreclosures of, properties financed by federally backed loans or participating in certain federal housing programs.

Paragraph 21 requires that in any eviction action of a tenant in residential housing commenced on or after March 27, 2020, the effective date of the CARES Act, the plaintiff must attach to the complaint a certificate that either the Act does not apply to the leased property or that the plaintiff has complied with the applicable provisions of the Act, specifically § 4024, codified at 15 U.S.C. § 9058. The Act imposes a moratorium on issuing a notice to vacate for property covered by the Act and filing such an action until July 25, 2020, and provides that thereafter plaintiff may not require the tenant to vacate such a property until 30 days after issuing the notice to vacate. 15 U.S.C. § 9058(b), (c). Paragraph 21(b) provides that if the certification was not filed with the complaint, it must be filed by August 14, 2020.

A form for the plaintiff's certification attached as Appendix A is incorporated by reference in ¶ 21(c). Certifications must be in substantially this form. The form requires the plaintiff to make specific statements concerning compliance with the CARES Act under penalty of perjury or other sanctions that the court may impose. If the action was commenced after July 25, 2020, the plaintiff must either certify that plaintiff complied with the 30-day notice period required by the CARES Act, or that the property is not covered by the CARES Act. To establish that the CARES Act requirements do not apply to the property, the plaintiff must attest to conducting a full investigation of the circumstances of the property. Specifically, the plaintiff must certify that no unsatisfied mortgage on the property is subject to a federally backed mortgage and must state that the property does not benefit from any federal housing program. Because mortgagees do not necessarily know whether unsatisfied mortgages are federally backed, in order to determine whether the property is subject to a federally backed mortgage, the plaintiff must search in two databases to see whether unsatisfied mortgages are federally backed: KnowYourOptions.com/loanlookup (Fannie Mae) and FreddieMac.com/mymortgage (Freddie Mac). Because only the plaintiff has ready access to the mortgage and the online tools used to determine whether the mortgages are federally backed, if the plaintiff certifies that

the CARES Act does not apply, the plaintiff must attach a copy of the first page of any unsatisfied mortgages on the property at issue, as well as copies of the results of the searches in these two databases.

Similar provisions of ¶ 22 provide, for actions for residential foreclosure filed between March 27, 2020, and December 31, 2020, that the plaintiff must certify compliance with applicable provisions of the CARES Act that require the lender to grant up to 360 days of forbearance on request of the borrower and of federal regulations that require the lender to advise the borrower of this right. Accordingly, forbearance on a foreclosure proceeding commenced on December 31, 2020, could extend until December 31, 2121. Paragraph 22(c) requires the plaintiff's certification to be in substantially the form as that attached as Appendix B. The form requires that, subject to perjury or other sanctions, the lender either state that the CARES Act does not apply because the subject mortgage does not secure a federally backed loan, or that if it does, the lender has advised the borrower of the opportunity to request forbearance and that the borrower has either not responded to or declined the offer.

Both ¶ 21 and ¶ 22 have a similar justification. In both eviction and foreclosure proceedings, the court must be informed as to whether the CARES Act applies. The information necessary to make that determination is not readily accessible to the individual tenant or homeowner. Plaintiff landlords and lenders have both the need for this information in their operations and the capacity to acquire and present it with relatively little effort. The Judiciary will make both Appendix A and Appendix B available as freestanding forms.

The July 23 amendment also clarifies that victims of crimes and victim advocates are among the individuals allowed to enter courthouses for the purpose of attending hearings in the relevant cases. The Court intends that the term "victim" be understood to include persons who have sustained physical, emotional, or financial injury or death as a direct result of the commission or attempted commission of a crime and include the family members of a minor, a person who has been found to be incompetent, or a homicide victim. The Court anticipates that victim advocates will inform docket clerks of victims who may attend scheduled hearings to facilitate the screening process.

The July 23 amendment also modifies the MCLE requirements for continuing legal education for the 2019-2021 reporting cycle to account for the ongoing limitations on in-person gatherings as a result of the COVID pandemic.

Explanatory Note—August 18, 2020, Amendment

This amendment extends the effective date of this Administrative Order until January 1, 2021. Given the continuing dynamic course of this pandemic, the Court anticipates that it may add, eliminate, or amend individual provisions of this Administrative Order as evolving conditions

require. Given the likelihood that the pandemic will continue to substantially impact the operations of the Judiciary through at least the balance of 2020, the Court is extending Administrative Order 49 through the rest of this year, rather than continuing to extend it in shorter increments.

Paragraph 7(a)(ii), regarding access to court buildings, is amended to clarify that individuals are permitted to enter Judiciary buildings for the purpose of participating in proceedings other than actual hearings including, for example, case manager conferences.

This amendment also amends Appendix A referred to in ¶ 21 of the Order concerning compliance with the Federal CARES Act in connection with evictions, to clarify that the required notice to v acate must give thirty days' notice.

Explanatory Note—October 5, 2020, Amendment

The October 5 amendment deletes language formally suspending jury trials in criminal cases until at least September 1, 2020. Criminal jury trials are no longer suspended but resuming jury trials remains challenging under the circumstances. In preparation for resumption of criminal jury trials, the Judiciary is taking steps to make courthouses and courtrooms as safe as possible for the conduct of jury trials. Given the large number of people involved in jury trials, these steps include evaluations of and, if necessary, adjustments to ventilation systems, enhanced cleaning protocols, installation of plexiglass barriers in some locations, reconfiguration of some courtroom space where necessary to accommodate social distancing, and development of workable traffic flows of parties and trial participants within courthouse space. In addition, courts are revising their protocols for summoning and selecting jurors in an effort to reduce the number of prospective jurors in a courtroom at any given time, and to facilitate the early identification of jurors with conflicts or other grounds to excuse them from service. Courts are also developing staffing plans to safely and effectively meet the needs associated with pandemic-era jury trials. Finally, the Judiciary is undertaking a public-education campaign to communicate to prospective jurors, and the public more broadly, the steps the Judiciary is taking to prepare to safely resume jury trials consistent with CDC and Vermont Department of Health guidelines.

Resumption of criminal jury trials will not happen simultaneously in all units. Some courts are further along than others in the preparations described above, and some courthouses are more amenable to socially distanced jury trials than others. The first criminal jury trial is currently scheduled in Windham County. Other units are expected to begin conducting criminal jury trials on a staggered basis after that time.

The October 5 amendment retains the suspension of civil jury trials, and adds language reflecting that civil jury trials will be suspended until at least January 1, 2021.

Explanatory Note—November 2, 2020 Amendment

The November amendment lifts the ban on evidentiary hearings for Boards and Committees of the Supreme Court. Under the revised language, Boards and Panels can hold evidentiary hearings subject to the availability of adequate staffing and resources. The amendment directs that hearings should be conducted by remote video or audio technology to the maximum extent possible. The Boards or Panels may preside remotely and require participants to participate or testify remotely. Any objection to the use of remote audio or video technology will be evaluated by the Board or Panel using the standards in Vermont Rule of Civil Procedure 43.1. If the Board or Panel concludes that it is necessary to preside in person or have some or all participants in person, the protocols for entering judiciary buildings, including screening and social distancing, must be followed.

Explanatory Note—November 24, 2020 Amendment

The November 19 amendment expressly authorizes the Board of Bar Examiners to administer the February 2021 Uniform Bar Examination (UBE) by remote means. This standard UBE exam will be prepared by the NCBE and scored in the same manner as the UBE is usually scored for in-person administrations.

Paragraph 7(a) concerning access to court buildings is amended to clarify that judicial officers, judiciary employees, contractors, and authorized volunteers can enter courthouses.

Explanatory Note—December 4, 2020 Amendment

The December 4th amendment further extends the judicial emergency and effective date of this Administrative Order until March 31, 2021. The extension is necessary based on the need to alter court operations to respond to the ongoing dynamic nature of the pandemic and to provide enough notice to court staff and court users regarding scheduling and operations.

The amendment clarifies the process for holding jury trials. Criminal jury trials are not formally suspended, and civil jury trials will not be suspended after January 1, but superior courts seeking to hold a jury trial must secure the approval of the Chief Superior Judge and the Court Administrator before summoning jurors and holding a jury trial. The amendment identifies a host of factors to be considered by the Court Administrator and Chief Superior Judge. The purpose of this requirement

is to ensure that any court seeking to hold a jury trial has completed the necessary steps to protect trial participants and public health, and that the Judiciary has adequate staffing to support a proposed jury trial. Even if the Court Administrator and Chief Superior Judge authorize a jury trial, given the dynamic nature of the pandemic, they may rescind that authorization as evolving circumstances may require.

The amendment also gives the judicial bureau express authority to preside remotely and requires all participants to appear by remote means, either by video or audio conference. The judicial bureau has authority under the existing rules to allow participation by telephone. See V.R.S.C.P. 6(a) (allowing participation of party or witness by telephone in judge's discretion); V.R.C.P. 80.6(d)(4) (making V.R.S.C.P. 6(a) applicable to trial procedure in judicial bureau). In recognition of the ongoing public health and safety concerns caused by the pandemic, in-person hearings are postponed, and all hearings will be conducted by remote means (audio or video, in the discretion of the judicial officer). Any objection to remote participation must be made as soon as possible. In assessing the motion for an in-person hearing, the hearing officer must consider the factors in V.R.C.P. 43.1. Where the hearing officer finds that there is good cause for in-person participation, the hearing will be postponed.

Finally, the amendment clarifies that pretrial service coordinators are among the participants authorized to enter the courthouse.

Explanatory Note—December 22, 2020 Amendment

The December 22nd amendment establishes a presumption that, other than jury trials, evidentiary proceedings in the criminal division or in juvenile delinquency matters, criminal division proceedings where the defendant's presence is required by law, and juvenile delinquency proceedings where the juvenile's presence is required by law, hearings in the Superior Court will be scheduled for remote participation by parties, witnesses, and other participants. Previously, this Administrative Order urged that hearings be scheduled for remote participation "to the maximum extent possible." In light of the rising incidence of COVID-19 throughout Vermont, this Order seeks to minimize gatherings of people within courtrooms by providing that, within constitutional limitations and the limitations of the applicable rules, courts must set hearings for remote participation unless they conclude good cause exists to schedule the hearing for partial or full in-person participation. Good cause may include factors such as limited available staffing or technology to support a remote hearing or the specific nature of the hearing. Once a remote hearing is noticed, parties may object to participating remotely, or to other parties or witnesses participating remotely. In ruling on such objections, the court must consider the factors outlined in V.R.C.P. 43.1, including the

available technology in the court, the participants' access to adequate means for remote participation, and the nature of the hearing.

Explanatory Note—March 15, 2021 Amendment

The March 15 amendment extends the effective date of the Administrative Order until May 31, 2021, updates provisions regarding service and filing in the superior courts, provides for remote administration of the July 2021 Uniform Bar Exam, and temporarily amends Vermont Rule of Civil Procedure 68 regarding offers of judgment.

Paragraph 2 is amended to extend the effective date of the Administrative Order until May 31, 2021, based on the projections of public-health experts concerning the course of the pandemic. The Court will amend individual provisions of the Administrative Order as necessary but anticipates that at least some of the provisions of this Administrative Order will continue to be necessary due to the ongoing impacts of the COVID-19 pandemic.

Paragraph 3(a), suspending jury trials in civil cases until at least January 1, 2021, is deleted. The resumption of civil and criminal jury trials is governed by former paragraph 3(b), requiring court-by-court authorization of the Chief Superior Judge and the Court Administrator on the basis of various specified factors.

Paragraph 6, regarding filing and service by email, is amended to reflect that the provisions of the 2020 Vermont Rules for Electronic Filing govern service by and to attorneys in all Superior Courts as of March 15, 2021.

Paragraph 23 is amended to authorize the Board of Bar Examiners to administer the July 2021 UBE by remote means. Given the ongoing course of the pandemic, it is not clear whether in-person administration of the July bar examination will be consistent with public-health guidance. The remote administration of the February 2021 UBE was successful, and the Board of Bar Examiners has opted to plan for remote administration in July as well to eliminate ongoing uncertainty for potential examinees.

New ¶ 24 amends Vermont Rule of Civil Procedure to allow plaintiffs to make offers of judgment as previously provided in the rule only for defendants. The emergency amendment is made at a time when in-person civil jury trials are largely on hold pursuant to Administrative Order No. 49, ¶¶ 3 and 5(d). The Advisory Committee on the Rules of Civil Procedure proposed the emergency amendment. Though the present amendment is triggered by the current situation, Vermont will not be alone in making the formal offer of judgment process available to plaintiffs. Among the 46 states and the federal system that provide an offer of judgment procedure, 21 states make it available to plaintiffs and two provide a partial role for them.

The present amendment continues to award to a successful offering party only costs accruing since the offer was made, thus following Federal Rule 68 and the similar rules of Vermont and the 21 other states that provide the procedure only for defendants, as well as the rules of eight of the states allowing plaintiffs to invoke the procedure. The rules of other states provide additional recoveries not adopted in the present amendment, such as interest, attorney's fees, and expert witness fees that may be available as an exercise of judicial discretion under Vermont law. See D'Arc Turcotte v. Estate of LaRose, 153 Vt.196, 569 A.2d 1086 (1989) (holding that readily ascertainable damages result in prejudgment interest as of right); Estate of Fleming v. Nicholson, 168 Vt. 495, 724 A.2d 1026 (1998) (affirming monetary award to compensate for delay); see also Marek v. Chesny, 473 U.S. 1 (1975) (under F.R.C.P. 68, attorneys' fees defined as "costs" in underlying statute).

Explanatory Note—April 8, 2021 Amendment

The April 8 amendment gives courts flexibility during the judicial emergency to move criminal and civil jury trials to venues that can accommodate jury trials consistent with public-health recommendations. As of the date of this amendment, a number of court buildings throughout the State have been authorized for jury trials by the Chief Superior Judge and Court Administrator based on the considerations listed in ¶ 3(a). The Judiciary anticipates that the number of locations approved for jury trials will continue to grow in the coming days and weeks. However, some court buildings will not likely be cleared for jury trials under existing public-health guidelines due to physical space restrictions that prevent compliance with current

social distancing guidelines, considerations relating to their ventilation systems, or both. As a result, under current pandemic conditions, some counties have no courthouses suitable for jury trials. In other counties, although a courthouse may be approved for jury trials, the demand for criminal and civil jury trials is far greater than can be accommodated in that courthouse. This amendment, adopted as an emergency court rule pursuant to the authority granted to the court in 4 V.S.A. § 37(b)(1)(C), will enable the Chief Superior Judge, in consultation with judges presiding in individual dockets, to ensure that parties in criminal and civil proceedings have access to jury trials in courthouses that can accommodate those proceedings in as timely a way as possible. This authority is in addition to the authority already recognized in V.R.Cr.P. 21. The Judiciary's top priority remains jury trials in criminal cases in which the defendant has been detained pretrial, but courts are encouraged to set civil cases as back-up to scheduled criminal cases where appropriate. Civil litigants are encouraged to agree to six-person civil jury trials in those court buildings that are authorized by the Chief Superior Judge and the Court Administrator for six-person jury trials.

Explanatory Note—May 12, 2021 Amendment

The May 12 amendment extends the effective date of the Administrative Order until July 5, 2021 and authorizes in-person hearings effective June 14, 2021.

Paragraph 2 is amended to extend the effective date of the Administrative Order until July 5, 2021, based on the projections of public-health experts concerning the course of the pandemic. The Court will amend individual provisions of the Administrative Order as necessary but anticipates that at least some of the provisions of this Administrative Order will continue to be necessary due to the ongoing impacts of the COVID-19 pandemic.

The amendment to ¶ 5(d) lifts the requirement that hearings be held remotely, subject to a number of specific exceptions, effective June 14, 2021. By this date, individuals will have had an opportunity to become fully vaccinated. The Court anticipates that substantial numbers of hearings will continue to be held remotely following the elimination of mandatory remote hearings, and even after the conclusion of the judicial emergency. Amending the order now gives judges, court staff, parties, and their lawyers adequate time to plan for the possibility of in-person court proceedings.

Explanatory Note—June 25, 2021 Amendment

This amendment to Administrative Order 49 responds to the high vaccination rate in Vermont, and the corollary low COVID-19 infection rates. It reflects a significant step in the direction of a return to "normal." At the same time, the Court is aware that significant numbers of Vermonters remain unvaccinated, and vulnerable individuals remain at risk. Because many individuals do not choose to be engaged in judicial proceedings, because court proceedings often require people to remain in close proximity to others for extended periods of time, and because some Judiciary buildings do not have the air-handling capacity to accommodate large groups of people consistent with public health guidance, some continued changes in Judiciary operations are in order. In addition, some of the changes the Judiciary has adopted during this Judicial Emergency are worth sustaining beyond the course of the COVID-19 pandemic. Extending this Administrative Order will enable the Judiciary to transition in an orderly way to a "new normal," making permanent, with or without alterations, some of the rules and practices adopted during this Judicial Emergency. The amendment extends this Administrative Order until September 7, 2021, but the extension does not imply that every provision in this iteration of Administrative Order 49 will remain in place until that time. The Court will continue to amend the Order as necessary to adapt to ever-changing conditions.

Paragraph 3(a) is amended to reflect that the extent to which a plan for jury trials must account for social distancing may evolve as infection rates continue to drop. New ¶ 3(c) is added to allow prospective and seated jurors to use devices when authorized by the court during a remote jury trial.

The amendment deletes expired portions of ¶ 5(d) of the Administrative Order relating to mandatory hearings, which are now obsolete.

New ¶ 5(e) directs the Special Advisory Committee for Remote Hearings to make recommendations to the respective divisional rules committees for permanent rule changes to the rules governing remote participation in court proceedings. This amendment reflects a recognition that the role of remote proceedings in Judiciary operations has changed dramatically over the last 15 months, as the Judiciary has acquired equipment to accommodate remote proceedings, and court personnel and court users have become more accustomed to using these tools. In many cases, the availability of remote proceedings has significantly enhanced access to justice by allowing individuals to participate in court proceedings without the need to take time away from other responsibilities

to travel to the courthouse, and by reducing the cost of legal representation. The Judiciary is committed to ensuring that these new practices do not create undue barriers for individuals who are not able to take advantage of the opportunities to proceed remotely, but also to sustaining the benefits of remote proceedings. Remote proceedings will continue to be a critical part of court operations beyond this Judicial Emergency, and our rules and processes must evolve to reflect that fact.

New ¶ 6(g) directs the Advisory Committee on the Rules of Civil Procedure to propose a permanent rule change to authorize non-efilers to file documents with the courts by email, and to consider whether a permanent rule amendment relating to electronic service on or by non-filers is advisable. The rules for filing and service by lawyers and other efilers are covered by applicable permanent rules, in the superior court, and will be covered by permanent rules in the Supreme Court once the Supreme Court implements the new case management system and e-filing. The ability to file documents with courts by email has enhanced the access to justice for many non-efiling court users, and has created efficiencies for court staff. A rule change to enable continued filing by e-mail, with appropriate safeguards, may benefit all stakeholders. Existing rules already authorize non-efilers to agree to service by email, and establish the parameters for doing so. See V.R.C.P. 5(b)(4). The Civil Rules committee should consider whether this rule is well tailored to the circumstances of self-represented litigants, who are not required to e-file using Odyssey File and Serve and should recommend any changes the Committee deems warranted.

The language of former ¶ 7, governing access to court buildings, is replaced effective July 5, 2021. However, given the considerations set forth above, including the ongoing limitations in air handling in some Judiciary spaces, the Court Administrator retains the authority to adopt reasonable restrictions and requirements regarding public access to Judiciary buildings, including requirements relating to screening, masks and social distancing.

The amendment to ¶ 13 of Administrative Order 49 relating to court-ordered mediation directs the relevant rules committees to consider whether changes to their rules relating to remote participation are warranted in light of the dramatically increased reliance on remote technologies in the Judiciary, but also in the public at large, over the past year.

Paragraph 14 of Administrative Order 49, which related to work locations is deleted. During the height of the COVID-19 pandemic, the Judiciary sought to limit employees' work-related activities to locations

that were controllable in terms of risk: their assigned office and their home while working remotely. With the easing of the pandemic, public health authorities have advised that these restrictions are no longer required.

Paragraph 15(h) is amended to direct court committees, boards, and commissions to review their respective rules to determine whether any changes are warranted in light of the experiences of the last 15 months. In particular, they should consider the optimal role for remote technologies and digital communications in their own operations, and whether any rules should be adjusted in light of that assessment.

Paragraph 18 of the Administrative Order, which related to the July 2020 bar exam, and paragraph 19 of the Administrative Order, which deferred the deadline for payment of the lawyer relicensing fee in 2020, are deleted. Both provisions are now obsolete.

Paragraphs 21 and 22 of the Administrative Order are amended to direct the Advisory Committee on the Rules of Civil Procedure to consider whether any changes to the civil rules beyond the duration of ¶¶ 21 and 22 of Administrative Order 49 are warranted in light of federal statutes and regulations relating to evictions and foreclosures.

Explanatory Note—September 1, 2021 Amendment

This amendment makes several changes to reflect the current course of the COVID-19 pandemic.

Paragraph 2 is amended to extend the effective date of Administrative Order 49 until November 1, 2021, based on the climbing COVID-19 infection rate and projections of public-health experts concerning the course of the pandemic. The Court will amend individual provisions of this Administrative Order as necessary but anticipates that at least some of the provisions of this order will continue to be necessary due to the ongoing impacts of the COVID-19 pandemic on judicial operations.

Paragraphs 5 and 7 are amended to address the limited number of courthouses that cannot accommodate a regular schedule of in-person hearings due to limitations in the ventilation systems. The court system remains open for judicial operations statewide, but several courthouses have not been approved for a regular schedule of in-person proceedings based on applicable public-health driven ventilation standards. Because the Judiciary has specific mitigation measures in place for staff work spaces, including portable air filtration units, distancing of work spaces, tracking of employee vaccination status, and/or mask requirements where appropriate, none of these spaces are deemed unsafe for court staff to work in person. Because the process of adapting court spaces to accommodate a regular schedule of in-person proceedings is ongoing, and

the applicable ventilation standards may evolve, the Court Administrator is empowered to identify which courthouses fail to meet the applicable standards such that they are subject to the provisions applicable to "limited-entry courthouses," and which may be adequate to accommodate small in-person hearings. In scheduling proceedings in limited-entry courthouses and in those courtrooms that can accommodate small in-person hearings, courts should prioritize high-priority proceedings, including proceedings involving litigants who do not have access to adequate remote technologies to participate remotely. Nothing in this amendment prevents courts from transferring venue to other counties, or conducting some proceedings in other counties, pursuant to ¶ 16 of Administrative Order 49. This amendment does not impact the Court Administrator's existing authority to impose restrictions on court operations based on challenges relating to staffing and security.

Paragraph 6 regarding email filing and service is amended in light of the implementation of electronic filing at the Supreme Court on August 17, 2021. Under revised ¶ 6(a), if the 2020 Vermont Rules for Electronic Filing require a method of filing or service, those rules must be followed. When the Efiling rules do not apply, the existing provisions regarding email filing and service are amended to also include the Supreme Court. Former ¶ 6(d) and (e), which previously described the email filing and service requirements for the Supreme Court, are deleted. Because of this deletion, ¶ 6(f) and (g) are relettered (d) and (e).

Paragraph 7 is amended to establish the restrictions on public entry to those court buildings deemed to be "limited-entry courthouses," as well as numerous exceptions to those restrictions.

Paragraph 8, that suspends strict enforcement of the timelines for responding to requests for court records is amended to explicitly include administrative as well as case records. The ongoing COVID-19 pandemic impacts the Judiciary's ability to respond to requests for both case and administrative records.

Explanatory Note—October 14, 2021 Amendment

The effective date of the Administrative Order in ¶ 2 is extended until January 1, 2022, to allow for continued flexibility in court operations to respond to the course of the COVID-19 pandemic.

Paragraph 22 is amended to add pleading provisions regarding foreclosure proceedings affecting one-to-four-unit residential properties filed between August 31, and December 31, 2021. These provisions are required to satisfy amendments of Regulation X promulgated by the Federal Consumer Financial Protection Bureau (CFPB) requiring such foreclosure plaintiffs to attest to compliance with CFPB requirements prior to filing for foreclosure. The CFPB amendments were designed to assist mortgage borrowers affected by the COVID-19 emergency. See 86

Fed. Reg. 34899 (June 30, 2021). The final regulation establishes temporary procedural safeguards to help ensure that borrowers have a meaningful opportunity to be reviewed for loss mitigation before the servicer can make the first notice or filing required for foreclosure on certain mortgages. 12 C.F.R. § 1024.41 (eff. Aug. 31, 2021).

Paragraph 22(d) requires the plaintiff in such a foreclosure proceeding filed after the effective date of this rule to certify compliance with or exemption from 12 C.F.R. § 1024.41 by filing attached Appendix C with the complaint. New paragraph (e) requires a foreclosure plaintiff in such a proceeding filed on or after August 31, 2021, but filed before the effective date of this rule, to make a similar certification by filing Appendix C within 21 days from the effective date of this rule.

New paragraph (f) is intended to give the trial court discretion to dismiss the foreclosure proceeding without prejudice in the event of noncompliance with paragraph (d) or (e) that the parties are unable to resolve.

Paragraph (g) carries forward former paragraph (d).

The language of Appendix C tracks paragraphs (d) and (e) of the amended rule and has boxes to check specifically indicating compliance with, or exemption from, the requirements of paragraphs (d) and (e). Because of the need for uniformity, the required certification must be in the form reflected in Appendix C.

Explanatory Note—November 4, 2021 Amendment

To facilitate planning, allow for continued flexibility in operations, and maintain public health during the ongoing COVID-19 pandemic, the effective date of the Administrative Order in ¶ 2 is extended to March 1, 2022. The Court will continue to amend provisions of the order as necessary to respond to changing public-health conditions.

The amendment to ¶ 23 adds subdivision (b) to provide the Board of Bar Examiners with authority to establish health and safety protocols for an in-person bar examination. In recognition of the ongoing COVID-19 pandemic, the Board may implement requirements for applicants, including but not limited to masking and social distancing, and requiring proof of vaccination and a negative COVID-19 test result. Applicants will be provided with these protocols in advance and will be asked to leave or denied entry if they refuse to comply.

Explanatory Note—November 15, 2021 Amendment

Administrative Order No.49, ¶ 21(b) is amended to make the provision appropriate in current circumstances.

Administrative Order No.49, ¶ 21(d) is added, and former paragraph (d) is redesignated as paragraph (e), in response to a proposal prepared at the request of the Supreme Court by a group of judges sitting in the Superior Court Civil Division or serving on the Civil Division Oversight Committee. The purpose is to follow up on a request from Vermont Legal Aid to address delays in state provision of federal funds to pay back rent and forestall evictions from residential housing (Vermont Emergency Rental Assistance—VERAP—funds).

Paragraph (d)(1) provides that in such an action based solely or in part on nonpayment of rent, a notice in the form provided in Appendix D adopted simultaneously with this amendment), concerning the availability of VERAP funds, must be served as the cover page of the documents being served, and the return of service must state whether it has been served. If failure to serve the notice is not corrected within 30 days, the court has discretion to dismiss the case, or, at the tenant's request, reschedule the rent escrow hearing or final hearing for up to thirty days to allow the tenant to file a VERAP application.

Under paragraph (d)(2), on sufficient evidence presented by either party of the tenant's having filed a VERAP application, the court has discretion to take appropriate action, including determination of the timing and amount of payment, or the timing of issuance of a rent escrow order or a writ of possession.

Paragraph (d) applies only to actions filed after December 1, 2021, to allow landlords time to become aware of the requirement.

Explanatory Note—January 5, 2022 Amendment

The Court Administrator retains the authority under ¶ 7 to direct what conduct is required for judiciary employees, court users, and other court visitors based on the most-recent public-health guidance. Given the emergence of more contagious strains of the COVID-19 virus, this amendment indicates that where the Court Administrator has required use of a mask, there is a preference for N95, KN95, or KF94 masks, which may provide greater protection from infection. The Court Administrator's directive regarding health screening and safety protocols is available on the Judiciary website.
https://www.vermontjudiciary.org/sites/default/files/documents/Administrative%20Directive%20PG-13%20Amended%20Sept%201%202021.pdf

Explanatory Note—January 10, 2022 Amendment

The amendment to ¶ 15(f) extends the modification of MCLE requirements for continuing legal education to the 2020-2022 reporting cycle to account for the ongoing limitations on in-person gatherings as a result of the COVID pandemic.

Explanatory Note—January 14, 2022 Amendment

Paragraph 3(a) is amended to clarify that the trial courts retain discretion to hold jury trials as long as safety measures are in place. This decision is consistent with current guidance received from the Vermont Judiciary's infectious disease expert that in-person jury draws and trials are safe so long as the particular courthouse has been approved for in-person jury trials and all participants observe social distancing and wear masks. Entry and conduct in judiciary buildings remain subject to the Court Administrator's directive regarding health screening and safety protocols. https://www.vermontjudiciary.org/sites/default/files/documents/Administrative%20Directive%20PG-13%20Amended%20Sept%201%202021.pdf.

Paragraph 3(b) is added to allow the trial court to impanel as many alternate jurors as reasonably required notwithstanding V.R.Cr.P. 24(d)(1), which directs that no more than four jurors be impaneled to sit as alternate jurors. This ensures there are sufficient alternate jurors in case there is any disruption caused by the excusal of seated jurors due to COVID-19 infection, illness, or isolation.

Prior paragraphs 3(b) and (c) are now (c) and (d).

Explanatory Note—February 7, 2022 Amendment

Paragraph 2 is amended to extend the effective date of the Administrative Order until May 31, 2022. The Court will continue to respond to the changing situation by amending provisions of the order as necessary but anticipates that some portions will continue to be necessary due to the ongoing impacts of the pandemic.

Administrative Order 49 ¶ 22(g) is added to provide a procedure and standards in one-to-four-unit residential property foreclosure and replevin actions involving the now-available federal funds under the Vermont Homeowner Assistance Program (VHAP) to assist borrowers with overdue mortgages in hopes of reducing foreclosures. The provision expires on September 30, 2025, or on the earlier exhaustion of VHAP funds.

In essence, ¶ 22(g) requires plaintiff in a covered action to serve notice on defendant borrower of the availability of VHAP funds. If a

defendant who has applied for VHAP funds so requests, any entry of judgment, notice of sale, sale of the property, or issuance of an order of replevin is automatically stayed for 60 days. The stay does not apply to foreclosure mediation unless ordered by the court. The court may terminate the stay if the plaintiff requests on a showing of one or more specific objections. The stay is terminated automatically after 60 days if no VHAP action has been reported and an extension is not sought. If plaintiff learns that defendant has applied to VHAP, plaintiff must report that fact to the court, which may take appropriate action. The court will terminate a stay upon notification by either party that the VHAP application was denied.

Appendix E provides a form for plaintiffs to certify compliance with the notice requirement. Plaintiff must certify that plaintiff served defendant with notice of the availability of VHAP funds and the opportunity to request a stay using the form provided in Appendix F or that ¶ 22(g) does not apply. Plaintiff can also certify that an Order Confirming Sale or a Writ of Replevin was previously issued and therefore no notice is required because a stay of the orders would not be available.

The purpose of new ¶ 22(g) is to avoid placing the burden on overwhelmed court staff either to issue notices in each case as to the availability of funds, or for the court to issue stay orders in each case on notice that a VHAP application is filed, and then subsequent orders ending the stays. Therefore, ¶ 22(g) places the burden on plaintiffs to send notices about the program and makes the stay of certain steps in a case automatic once the court and plaintiff have notice. Because a handful of lawyers handle almost all foreclosure cases, they will not need notice from the court to know the stay is triggered.

Further, ¶ 22(g) is clear about the remedy when the plaintiff fails to file a certification: The court may stay a case until certification is filed.

Third, rather than staying the entire case, which could lead the banks to refrain from taking any steps forward (such as preparing a motion to file when the stay ends, or preparing to schedule a sale if the case does not resolve), ¶ 22(g) is specific about what acts are stayed.

Fourth, ¶ 22(g) does not require denial of a request to stay based on a VHAP application merely because the court receives a letter rather than the exact form that is being provided. Thus, Appendix F

provides that the homeowner "should," rather than "must" use the form provided.

Fifth, ¶ 22(g) avoids the built-in delays that would be necessitated by requiring a motion that includes a response from the plaintiff (and of course the reply time for the movant—for a total of 34 days) before the stay goes into effect, as it is likely that in most cases there will not be any objection. Thus, ¶ 22(g) places the burden on the plaintiff to file a motion to terminate the stay if plaintiff objects.

Finally, Appendix F does not list the entities that can assist defendants (other than Legal Aid) because that list is subject to change. The form contains the VHFA website address which lists currently available supporting agencies.

Former ¶ 22(g), requiring the Civil Rules Committee to consider appropriate permanent rules changes to be made after A.O. 49 expires, has been redesignated as ¶ 22(h).

Explanatory Note—March 7, 2022 Amendment

Paragraph 13 relates to remote participation in court-ordered mediation. The first two sentences of ¶ 13 contained provisions authorizing remote participation for proceedings conducted under V.R.C.P. 16.3(b)(3) and directing the Advisory Committee on the Rules of Civil Procedure to consider a permanent change to the rule. A permanent rule amendment to V.R.C.P. 16.3(b)(3) was promulgated December 13, 2021, and effective February 14, 2022. Therefore, these sentences are deleted.

Explanatory Note—May 9, 2022 Amendment

Paragraph 2 is amended to extend the effective date of the Administrative Order until August 31, 2022. The Court will continue to respond to the changing situation by amending provisions of the order as necessary but anticipates that some portions will continue to be necessary due to the ongoing impacts of the pandemic.

The order amends ¶¶ 5(d) and 7(b), concerning limited-entry courthouses. Some courthouses continue to operate with limited air-flow systems and consequently are not able to accommodate unrestricted in-person access. The feasibility of having in-person hearings or in-person access will depend on many factors, including the availability of other mitigation measures. Under the amended provisions, the Court Administrator, in consultation with the Chief

Superior Judge, may limit in-person hearings and access to buildings without sufficient air flow. The affected locations and any associated restrictions on in-person hearings and in-person access must be provided on the Vermont Judiciary website.

Paragraph 16 is deleted. This paragraph concerned venue and recognized the authority of the Chief Superior Judge under 4 V.S.A. § 37(b) to transfer venue when necessary. The Chief Superior Judge and superior judges in general have sufficient authority under the statute and the procedural rules to transfer venue when necessary to respond to public health while providing access to justice.

Paragraph 24 is deleted effective June 20, 2022. This paragraph amended Vermont Rule of Civil Procedure 68 to extend use of the offer of judgment rule to plaintiffs. The Court has since promulgated a permanent amendment to Rule 68, which will become effective June 20, 2022.

PROMULGATED ON 3-16-20; AMENDED ON 3-18-20, 3-20-20, 3-24-20, 3-25-20, 4-06-20, 4-09-20, 4-13-20, 4-21-30, 4-30-20, 5-13-20, 6-19-20, 7-17-20, 7-23-20, 8-20-20, 10-5-10, 11-02-20, 11-24-20, 12-04-20, 12-22-20, 3-8-21, 4-8-21, 5-12-21, 6-25-21, 9-01-21 10-14-21, 11-4-21, 11-15-21, 1-05-22, 1-10-22, 1-14-22, 2-07-22, 3-07-22 and 5-09-22.