



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 AND 3-25-20

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, the Governor of Vermont has declared a state of emergency and has prohibited non-essential gatherings of more than fifty (50) people or 50% of a location's capacity. Public health officials recommend taking additional mitigation steps to minimize the risk to the public and limit the spread of the infection by practicing "social distancing."
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 April 15, 2020, 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. **Suspension of non-emergency Superior Court hearings:** Effective March 17, and notwithstanding any rule or timeline inconsistent with this guidance, all nonemergency Superior Court hearings, whether evidentiary or nonevidentiary, will be postponed. This includes jury trials and hearings that have already been scheduled, except as provided below.
 - a. The courts will schedule and hear only the following matters:
 - Vermont Rule of Criminal Procedure 5 hearings and arraignments of defendants in custody to be held by video where available
 - Arraignments for individuals cited for charges of domestic assault
 - Change-of-plea hearings in the discretion of the judge
 - Motions for review of bail for defendants in custody
 - Requests for search warrants when electronic means are not available
 - Criminal competency when the initial evaluation supports a finding of incompetence and related hospitalization hearings
 - Juvenile temporary care hearings

- Emergency motions to suspend parent-child contact in juvenile cases
 - Emergency motions to suspend parent-child contact in domestic cases
 - Mental-health hearings considering involuntary hospitalization and/or involuntary medication
 - Probate hearings concerning emergency guardianship or Do Not Resuscitate petitions
 - Habeas Corpus petitions
 - Final hearings in stalking and relief from abuse proceedings, and hearings seeking a final order after denial of an ex parte request
 - Temporary emergency hearings on injunctive relief at the discretion of the judge
 - Emergency landlord-tenant hearings in the discretion of the judge
 - Proceedings directly related to the COVID-19 public health emergency
 - Any other matter where the Chief Superior Judge concludes that the interests of justice require that the matter be heard during the course of this suspension. A party seeking an exception must file a motion in the court in which the case is pending, and any party who objects must file its written opposition within three days after the motion is filed. The court will refer the motion to the Chief Superior Judge for resolution.
- b. Notwithstanding the above, courts may, in their discretion, complete jury trials that are already in progress.
4. **Suspension of Judicial Bureau hearings:** Notwithstanding any rules or deadline inconsistent with this guidance, Judicial Bureau hearings will be postponed.
5. **Remote participation in hearings (in matters that are not suspended):**
 Notwithstanding the provisions of V.R.C.P. 43.1 and V.R.P.P. 43.1, or any other rule inconsistent with this order, parties and counsel may participate in all nonevidentiary proceedings remotely by telephone without seeking permission by motion. The party participating by telephone is responsible for calling the court at the time of hearing. Where feasible, parties may participate by video appearance as approved by the judge. Parties or counsel must make advance arrangements to appear by video. Appearance by telephone or video for evidentiary hearings will continue to be governed by the provisions of V.R.C.P. 43.1 and V.R.P.P. 43.1.
6. **Email filings:**
- a. In Superior Court divisions and units where either the 2010 Vermont Rules for Electronic Filing or the 2020 Vermont Rules for Electronic Filing apply and require electronic filing through another mechanism (eCabinet or Odyssey File and Serve), those rules must be followed.
 - b. In Superior Court divisions and units where there is no electronic filing or for litigants that are not required to electronically file, notwithstanding the

provisions of V.R.C.P. 5 (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, or any other rule, parties may file documents with the court using email, subject to the following requirements.

- i. Filings 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.
- 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. In the Supreme Court, notwithstanding the provisions of V.R.A.P. 25 and V.R.C.P. 5, parties may file motions and other documents other than briefs by email. Filings must be sent as an attachment to jud.supremecourt@vermont.gov and the subject line should contain the Supreme Court docket number. Paper copies of appellate briefs and printed cases are still required as directed by the Vermont Rules for Appellate Procedure.
- d. The rules regarding service of filed documents in the Superior Court and the Supreme Court remain in effect and are unaffected by this Order.
- e. Filings sent by email will be considered filed on that date if the email is received before 4:30 p.m.

7. Access to Court Buildings: Access to Judiciary buildings will be managed as follows:

- a. While this order is in effect, no person will be permitted to enter a courthouse except as follows:
 - Individuals seeking to file documents with the court in person may file them in the receptacles provided at the entryway to each courthouse. Individuals will not be permitted to enter the courthouse to file documents, and filings will not be accepted at the counter. These individuals will be provided with the appropriate court forms as necessary if requested.

- Individuals who seek to enter for the purpose of participating in a hearing (that has not been suspended pursuant to this order) will be permitted to enter. This includes parties, witnesses, lawyers and legal staff, guardians ad litem, interpreters, cognitive interpreters, and qualified mental-health professionals. In relief-from-abuse and civil-stalking proceedings, each party may be accompanied by one support person, whether a domestic-violence advocate, family member or friend.
 - Individuals who are not participating in a hearing as described above will not be admitted for the purpose of observing a hearing except that members of the media with a permanent or one-time registration certificate pursuant to Administrative Order No. 46 may enter a courthouse for the purpose of covering a hearing. While this order is in effect, no applications for new one-time registrations will be entertained.
 - All individuals admitted to a courthouse should observe social distancing while in the courthouse, staying at least six feet away from other individuals to the extent reasonably possible.
 - 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.
- b. Any individual for whom the answer to any question below is yes shall not enter a Vermont Judiciary courthouse. Individuals will be questioned by the screener at the courthouse door. In some cases, they may be asked to call the court docket clerk at the phone number posted on the court door.
- In the past few days, have you felt unwell, especially with respiratory symptoms (cough, high temperature, shortness of breath, difficulty breathing, and initial flu-like symptoms, such as fever, coughing, breathing difficulties, fatigue, and myalgia)?
 - In the past 14 days have you:
 - Been in contact with a person infected with novel coronavirus (COVID-19)?
 - Been to one of the affected countries or regions (listed at <https://www.healthvermont.gov/covid19>):
 - Been to a healthcare facility (hospital, walk-in clinic, emergency room) where people infected with COVID-19 are treated?

The Judiciary will modify these screening question as necessary to conform to evolving public health guidance.

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. 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. **Remote Hearings in the Superior Court:** Notwithstanding the suspension of nonemergency hearings in ¶ 3, in their discretion, Superior Judges may conduct nonevidentiary hearings in nonemergency matters if all participants participate remotely and are not present in the courthouse. This discretion may be limited by staff availability in the discretion of the Court Administrator; the Court Administrator is authorized to make real time (that is, day-to-day or even hour-to-hour) determinations as to whether and to what extent such hearings may be scheduled and/or conducted in a particular unit.
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 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.
13. **Participation in Court-Ordered Mediation:** Pursuant to V.R.C.P. 16.3(b)(3), for as long as the judicial emergency exists under this order, the judicial emergency constitutes “good cause” authorizing remote participation in mediation, by video or telephone, without a stipulation or further court order. 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.
14. **Work Locations:** To protect the health and safety of Judiciary employees and users of judicial services, and to protect public health, safety, and welfare, Judiciary employees may conduct Judiciary work only (1) in their assigned courthouses or administrative offices during business hours (or after business hours for authorized supervisors); or (2) remotely consistent with Judiciary teleworking guidelines during the COVID-19 pandemic.
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:** All in-person committee meetings are suspended. 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 the 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. Effective immediately, and notwithstanding any rule or timeline inconsistent with this guidance, all evidentiary hearings before the Judicial Conduct Board, Professional Responsibility Board, Board of Bar Examiners, and Character and Fitness Committee, or any panels of these committees, will be postponed while this order is in effect.
 - iii. In any pending matter, if necessary to protect the public, the Supreme Court, on its own motion or pursuant to a party’s motion or the parties’ joint request, may except a hearing from the restriction on evidentiary hearings. In doing so, the Court may order that the hearing be held remotely by telephone or video if all parties, their representatives, witnesses, and adjudicators can participate remotely, and may place other restrictions on the conduct of the hearing as justice requires. Before exercising its discretion, the Court will confer with the Court

Administrator or designee to ensure that sufficient staffing is reasonably available to support any proceedings authorized by the Court.

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:

- 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.

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.

16. Venue

Pursuant to 4 V.S.A. § 37(b), the court promulgates the following emergency rule. Notwithstanding any statute or court rule inconsistent with this rule,

- a. The Chief Superior Judge, in consultation with the Court Administrator, may assign venue for status conferences, minor hearings, or other nonevidentiary proceedings to any court in the state, as necessary in light of operational accommodations arising from the COVID-19 pandemic, provided that all participants are afforded the opportunity to participate remotely; and
- b. The Chief Superior Judge, in consultation with the Court Administrator, may assign a change in venue in any matter during this judicial emergency as necessary to ensure access to justice for the parties or to promote the fair and efficient administration of justice.

Explanatory Note

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.