



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

The Vermont Supreme Court issues this administrative order pursuant to its authority under the Vermont Constitution, Chapter II, § 30 and Administrative Order No. 48.

1. That ¶ 3 of Administrative Order No. 49 be amended to read as follows (new matter underlined):

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 the authorization of the Chief Superior Judge and the Court Administrator. Factors to be considered in authorizing a proposed jury trial include: the current course of the COVID-19 pandemic; the current recommendations of public-health experts; whether the unit has adopted a plan that addresses ventilation and air flow and allows for socially distanced seating and movement of all participants and jurors through the course of a jury draw and trial; the availability of staff and other resources to support court proceedings; and the rights and interests of the litigants.
- b. 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.

#### **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.

- 2. That this order is effective immediately, and extends until May 31, 2021, unless extended by order of this Court.
- 3. That the Chief Justice is authorized to report this order to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Done in Chambers at Montpelier, Vermont this 8<sup>th</sup> day of April 2021.



Signed by the Vermont Supreme Court

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice