



Order Promulgating Amendments to Administrative Order No. 49

Pursuant to its authority under the Vermont Constitution, Chapter II, § 30 and Administrative Order No. 48, the Vermont Supreme Court orders:

1. That ¶ 1 of Administrative Order No. 49 be amended to read as follows (new matter underlined; deleted matter struck through):
 1. Due to the outbreak of the novel coronavirus, COVID-19, on March 13, 2020, the Governor of Vermont declared a state of emergency and ~~has~~ 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. That ¶ 2 of Administrative Order No. 49 be amended to read as follows (new matter underlined; deleted matter struck through):
 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 ~~July 5, 2021~~ September 7, 2021, 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. That ¶ 3 be amended to read as follows (new matter underlined; deleted matter struck through):
 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 to the extent required to reasonably protect public health; 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.

c. 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. That ¶¶ 5(c) and (d) of Administrative Order No. 49 be amended to read as follows (new matter underlined; deleted matter struck through):

5. Remote participation in hearings:

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. ~~the matter will be delayed until the restriction on in-person hearings is lifted.~~

d. ~~Mandatory Remote Hearings.~~

~~i. Mandatory Remote Hearings. Except for jury trials, and absent good cause as noted below, all evidentiary and nonevidentiary hearings held in the Superior Court before June 14, 2021, must be scheduled for remote participation by parties, witnesses, and other participants, subject to the parties' opportunity to file an objection as set forth in ¶ 5 above. This requirement does not apply to evidentiary hearings in either the criminal division or juvenile delinquency proceedings, and does not apply to any criminal or juvenile delinquency hearings where the defendant's or the juvenile's presence is required by law. Notwithstanding the above, the court may on its own initiative set a hearing for partial or total in-person participation for good cause.~~

~~ii. Remote Hearings Encouraged. Effective June 14, 2021, eCourts 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.

5. That ¶ 5(e) of Administrative Order No. 49 be added as follows:

- 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. That ¶ 6(g) of Administrative Order No. 49 be added to read as follows:

6. Email filings and service:

- g. The Advisory Committee on the Rules of Civil Procedure shall propose a permanent rule change to authorize non-e-filers to file documents with the court by email, and shall consider whether a permanent rule amendment relating to electronic service on or by non-filers is advisable.

7. That, effective July 6, 2021, ¶ 7 of Administrative Order 49 be replaced to read as follows:

- 7. **Access to Court Buildings:** As reasonably necessary to mitigate risk to the health of court users or court personnel, the Court Administrator is authorized to issue directives regarding access to and conduct in Judiciary buildings including requirements relating to screening, social distancing, and masks. 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 addition, individual presiding judges may impose requirements relating to the use of courtrooms consistent with guidance from the Court Administrator and Chief Superior judge.

8. That ¶ 13 of Administrative Order 49 be amended as follows.

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. The Advisory Committee on the Rules of Civil Procedure shall consider whether a permanent change to the rules relating to remote participation in mediation is advisable. 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.

9. That, effective July 6, 2021, ¶ 14 of Administrative Order 49 be deleted.

10. That ¶ 15(h) be added as follows:

15. Committees, Boards, and Commissions Established or Governed by Supreme Court Rules:

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.

11. That ¶ 18 be deleted.

12. That ¶ 19 be deleted.

13. That ¶ 21(d) be added as follows:

21. Pleading Requirements in Eviction Proceedings:

d. 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.

14. That ¶ 22(d) be added as follows:

22. Pleading Requirements in Foreclosure Proceedings:

d. Permanent Rule Changes. The Advisory Committee on the 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.

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-e-filing 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.

15. Except as otherwise specified, that this order is effective June 25, 2021, and extends until September 7, 2021, unless extended by order of this Court.
16. 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 25th day of June 2021.



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Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice