



## 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 ¶ 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 ~~September 7~~ November 1, 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.
2. That ¶ 5 of Administrative Order No. 49 be amended to read as follows (new matter underlined; deleted matter struck through):

### 5. Remote participation in hearings:

#### d. Scheduling Remote Hearings

- i. Mandatory Remote Hearings in Limited-Entry Courthouses. The Court Administrator is authorized to identify as “limited-entry courthouses” those buildings that, due to limitations in the air flow systems, are not suitable for regular unrestricted conduct of in-person hearings. Except as set forth below, all evidentiary and nonevidentiary Superior Court hearings held in limited-entry courthouses 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(a) and 5(b) above. In limited-entry courthouses with courtrooms that can accommodate small in-person proceedings consistent with applicable standards, the Court Administrator shall identify the number of approved participants, and courts may schedule in-person proceedings consistent with those restrictions, prioritizing high priority in-person proceedings, such as evidentiary hearings for parties with limited internet access. The Court Administrator shall identify the limited-entry courthouses on the Vermont Judiciary website and shall state the applicable limits in any limited-entry courthouses that can accommodate some small in-person proceedings. This provision does not limit the discretion of superior courts to schedule proceedings or transfer venue pursuant to ¶ 16 of this Administrative Order.

- ii. Remote Hearings Encouraged. ~~In courthouses not subject to ¶ 5(d)(i), superior courts~~ 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.
3. That ¶ 6 of Administrative Order No. 49 be amended as follows (new matter underlined; deleted matter struck through):

**6. Email filings and service:**

- a. ~~In Superior Court divisions and units where~~ 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. ~~For litigants that are not required to electronically file~~ If the 2020 Vermont Rules for Electronic Filing do not apply, notwithstanding the provisions of V.R.A.P. 25 and V.R.C.P. 5(e) (incorporated by reference in V.R.Cr.P. 49, V.R.F.P. 4.0(a)(2)(A), V.R.E.C.P. 3, 4(a), 5(a)(2)) and V.R.P.P. 5(f)), or any other rule, parties may file documents with the court using email, subject to the following requirements if a party opts to file by email.
  - i. Filings to the superior courts must be sent as an attachment to the email account for the unit where the filing will be made. The subject line must indicate the division where it is being filed and the case docket number. Filings to the Supreme Court must be sent as an attachment to [jud.supremecourt@vermont.gov](mailto:jud.supremecourt@vermont.gov) and the subject line should contain the Supreme Court docket number.
  - ii. Further details concerning the method of filing by email will be posted on the [vermontjudiciary.org](http://vermontjudiciary.org) website, and may change from time to time. Parties and lawyers should check the guidance on the website before filing by email.
  - iii. A signature block containing the filer's typed-in name preceded by "/s/," or an electronic facsimile of the filer's signature, a scanned copy of it, or another form of electronic signature as defined in 9 V.S.A. § 271(9), will serve as a party's signature on pleadings, motions, and other documents that must be filed with a signature. This exception does not apply to affidavits, verified pleadings, or other signatures that must be notarized by statute.
- 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-filer self-represented party, 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. ~~In the Supreme Court, notwithstanding the provisions of V.R.A.P. 25, V.R.C.P. 5, and any other rules relating to the filing of motions, documents, and briefs with the Supreme Court:~~
  - i. ~~Parties may file motions and other documents other than briefs by email. Filings must be sent as an attachment to [jud.supremecourt@vermont.gov](mailto:jud.supremecourt@vermont.gov) and the subject line should contain the Supreme Court docket number.~~
  
  - ii. ~~The requirements to file paper copies of appellate briefs and printed cases in V.R.A.P. 31 and 32 are suspended. Appellate briefs and printed cases will be considered filed when transmitted as an attachment by email to [jud.supremecourtbriefs@vermont.gov](mailto:jud.supremecourtbriefs@vermont.gov) as required by V.R.A.P. 32. Parties must file one paper copy of all appellate briefs and printed cases within 7 days of submitting the electronic copy. The Court may by order require parties to file additional paper copies of briefs and printed cases.~~
  
- e. ~~In the Supreme Court, parties must serve motions and filings other than briefs and printed cases pursuant to the requirements of 6(c) above. Briefs or printed cases must be served on the other parties to the appeal as required by the appellate rules. In particular, pursuant to V.R.A.P. 31(b), an electronic version of the brief must be served on each party to the appeal, except that a paper copy must be served on any self-represented party unless the parties agree otherwise.~~

d f. Filings sent by email will be considered filed on that date if the email is received before 4:30 p.m.

e 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-e-filers is advisable.

4. That ¶ 7 of Administrative Order No. 49 be amended as follows (new matter underlined; deleted matter struck through):

**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 access entry 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.~~

b. Limited-Entry Courthouses: In those courthouses designated by the Court Administrator as limited-entry courthouses pursuant to ¶ 5(d)(i), no person, other than judicial officers, Judiciary employees, contractors, and volunteers on Judiciary business, will be permitted to enter a courthouse except as follows:

i. Whether and how individuals seeking to file documents with the court or make payment into court in person may enter the courthouse for purposes of their court business will be determined by the Court Administrator on a courthouse specific basis. The Court Administrator will post the applicable limitations on the Judiciary website. In the case of courthouses to which the Court Administrator does not allow any entry pursuant to this subsection, the Court Administrator will establish alternative methods for accepting filings or payments at the courthouse door and will post those methods on the Judiciary website.

ii. Individuals who seek to enter for the purpose of participating in a hearing or other proceeding that has been scheduled for in-person participation will be permitted to enter. This includes parties, witnesses, lawyers and

legal staff, guardians ad litem, interpreters, communications specialists, qualified mental-health professionals, pretrial service coordinators, and crime victims and victim advocates. 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.

iii. Individuals who are not participating in a hearing as described above will not be admitted for the purpose of observing a hearing except that those 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 if the media member's attendance will not cause the hearing to exceed the limit on the number of participants. While this order is in effect, no applications for new one-time registrations will be entertained. In cases in which media or members of the public are not authorized to enter the courthouse to observe proceedings that are otherwise open to the public, they may arrange to view or listen to the proceedings remotely by contacting the Court Administrator's designee, who shall be listed on the 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.

5. That ¶ 8 of Administrative Order No. 49 be amended as follows (new matter underlined):

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.

#### **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.

6. That this order is effective September 1, and extends until November 1, 2021, unless extended by order of this Court.

7. 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 1<sup>st</sup> day of September 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