

**STATE OF VERMONT
SUPREME COURT
DECEMBER TERM, 2020**

Order Promulgating Amendments to Administrative Order No. 49

Pursuant to the Vermont Constitution, Chapter II, § 30 and Administrative Order No. 48, it is hereby ordered:

1. That ¶ 2 of Administrative Order No. 49 be amended 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 ~~January 1, 2021~~ March 31, 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 ¶ 3 of Administrative Order No. 49 be amended as follows (new matter underlined; deleted matter struck through):

3. **~~Suspension of Jury Trials:~~**

a. Jury trials in civil cases are suspended until at least January 1, 2021.

b. 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.

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

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

- d. In scheduling and conducting hearings, courts should schedule hearings for remote participation to the maximum extent possible considering the nature of the hearing, the constraints of the above rules, the available technology, and participants' access to adequate means for remote participation.

4. That ¶ 7(a)(ii) of Administrative Order No. 49 be amended as follows (new matter underlined):

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

- a. While this order is in effect, 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. 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.
 - ii. Individuals who seek to enter for the purpose of participating in a hearing or other proceeding (that has not been suspended pursuant to this order or ordered to be held remotely) 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.

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5. That the following Explanatory Note be added:

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.

6. That this order is effective immediately and extends until March 31, 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 4th day of December, 2020.



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