

STATE OF VERMONT
VERMONT SUPREME COURT
MAY TERM, 2022

Order Promulgating Amendment 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 ~~May 31, 2022~~ August 31, 2022, 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(d) of Administrative Order No. 49 be amended as follows (new matter underlined; deleted matter struck through):

5. Remote participation in hearings:

d. Scheduling Remote Hearings

i. Limited-Entry Courthouses. ~~The Court Administrator in consultation with the Chief Superior Judge may limit in-person hearings in courthouses without adequate air-flow systems. The Court Administrator will identify the locations and any restrictions on in-person hearings to these buildings on the Vermont Judiciary website. 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 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 ¶ 7(b) of Administrative Order No. 49 be amended as follows (new matter underlined; deleted matter struck through):

7. Access to Court Buildings:

- b. Limited-Entry Courthouses: In those courthouses designated by the Court Administrator as limited-entry courthouses pursuant to ¶ 5(d)(i), the Court Administrator in consultation with the Chief Superior Judge may implement policies to limit access by non-persons, other than judicial officers, Judiciary employees, contractors, and volunteers on Judiciary business. The Court Administrator will identify the locations and any restrictions on in-person access to these buildings on the Vermont Judiciary website. ~~, 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 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.~~

4. That ¶ 15(c) of Administrative Order No. 49 be amended as follows (deleted matter struck through):

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

- 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.

5. That ¶ 16 of Administrative Order No. 49 be deleted.

6. That ¶ 24 of Administrative Order No. 49 be deleted, effective June 20, 2022.

7. That the following Explanatory Note be added:

Explanatory Note—May 9, 2022 Amendment

Paragraph 2 is amended to extend the effective date of the Administrative Order until August 31, 2022. The Court will continue to respond to the changing situation by amending provisions of the order as necessary but anticipates that some portions will continue to be necessary due to the ongoing impacts of the pandemic.

The order amends ¶¶ 5(d) and 7(b), concerning limited-entry courthouses. Some courthouses continue to operate with limited air-flow systems and consequently are not able to accommodate unrestricted in-person access. The feasibility of having in-person hearings or in-person access will depend on many factors, including the availability of other mitigation measures. Under the amended provisions, the Court Administrator, in consultation with the Chief Superior Judge, may limit in-person hearings and access to buildings without sufficient air flow. The affected locations and any associated restrictions on in-person hearings and in-person access must be provided on the Vermont Judiciary website.

Paragraph ¶ 16 is deleted. This paragraph concerned venue and recognized the authority of the Chief Superior Judge under 4 V.S.A. § 37(b) to transfer venue when necessary. The Chief Superior Judge

and superior judges in general have sufficient authority under existing statutes and the procedural rules to transfer venue when necessary to respond to public health while providing access to justice.

Paragraph 24 is deleted effective June 20, 2022. This paragraph amended Vermont Rule of Civil Procedure 68 to extend use of the offer of judgment rule to plaintiffs. The Court has since promulgated a permanent amendment to Rule 68, which will become effective June 20, 2022.

8. That this order is effective immediately, unless otherwise indicated, and extends until August 31, 2022, unless extended further by the Court.

9. 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.

Dated in Chambers at Montpelier, Vermont, this 9th day of May, 2022.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice