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 ¶ 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, the Governor of Vermont has declared a state of emergency and has ~~prohibited non-essential gatherings of more than fifty (50) people or 50% of a location's capacity.~~ instituted evolving limitations on gatherings in Vermont to promote "social distancing," thereby mitigating the ~~Public health officials recommend taking additional mitigation steps to minimize the~~ risk to the public and limiting the spread of the infection. ~~by practicing "social distancing."~~

2. That ¶ 5(c) of Administrative Order No. 49 be added to read as follows (new matter underlined):

    5. **Remote participation in hearings**:

        a. Civil, Environmental, Family, and Probate Divisions.
        The following provisions apply in proceedings in the civil, environmental, family, and probate divisions that would otherwise be governed by V.R.C.P. 43.1, V.R.F.P. 17 (incorporating Rule 43.1 of the Vermont Rules of Civil Procedure for certain proceedings in the family division), and V.R.P.P. 43.1 (collectively "Rule 43.1"). Notwithstanding Rule 43.1 or any other rule inconsistent with this order:

            i. Video conference: The Judicial Emergency recognized by this Administrative Order constitutes good cause pursuant to Rule 43.1(c)(5) to waive time requirements of paragraphs 43.1(c)(1)-(4). Accordingly, pursuant to V.R.C.P. 43.1(c)(3), the court may preside remotely and may on its own motion require parties, witnesses, counsel, or other necessary persons to participate or testify in a trial or other proceeding by video conference upon reasonable notice. Any objections to a hearing notice or order requiring video participation or testimony, or response to objections filed, should be filed as soon as possible. In ruling on any objections to the order requiring video participation or testimony, the court will consider the factors set forth in Rule 43.1(c)(6).

            ii. Audio conference: Notwithstanding the requirements of V.R.C.P. 43.1(d), on its own motion, by agreement of the parties, or pursuant to motion of a party, the court may preside remotely and may set hearings, whether evidentiary or nonevidentiary, for audio conference such that parties, counsel, witnesses,

counsel, and other necessary people participate or testify by audio conference from a remote location. Any objections to a hearing notice or order requiring video participation or testimony, or response to objections filed, should be filed as soon as possible. In ruling on any objections to the court's taking evidence by audio means, the court will be guided by the factors in V.R.C.P. 43.1(d)(3) and (4), except that the court need not find that any individual is physically unable to be present.

b. Criminal Division and Juvenile Delinquency Proceedings.

i. In nonevidentiary proceedings such as status conferences, and any other proceedings where the presence of the defendant is not required by law, on its own motion, the court may preside remotely and may require parties, witnesses, counsel, or other necessary persons to participate by audio or video conference upon reasonable notice.

ii. In evidentiary proceedings, the court may preside remotely and may require parties, witnesses, or other necessary persons to participate by audio or video conference in matters where not otherwise authorized by Administrative Order 38, § 1(a), upon agreement of all parties. In deciding whether to take remote testimony by agreement of the parties in a manner not otherwise authorized by Administrative Order 38, the court will consider the factors in V.R.C.P. 43.1(c)(6) (video) and V.R.C.P. 43.1(d)(3) and (4) (audio).

c. 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.

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

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

a. While this order is in effect, no person 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 (that has not been suspended pursuant to this order) will be permitted to enter. This includes parties, witnesses, lawyers and legal staff, guardians ad litem, interpreters, communications specialists, and qualified mental-

health professionals. 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. While this order is in effect, no applications for new one-time registrations will be entertained.

iv. All individuals admitted to a courthouse should observe social distancing while in the courthouse, staying at least six feet away from other individuals to the extent reasonably possible.

v. 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.

b. Individuals entering a courthouse will be screened pursuant to protocols reflected in an Administrative Directive of the State Court Administrator, developed to conform to public-health guidance. The screeners are authorized to deny admission to any person who, in the screeners' discretion, does not meet the established criteria for entry pursuant to the State Court Administrator's directive or who refuses to participate in the screening process. They are further authorized to require members of the public who do not comply with this Administrative Order and the State Court Administrator's Administrative Directive to leave Judiciary facilities. ~~Any individual for whom the answer to any question below is yes shall not enter a Vermont Judiciary courthouse. Individuals will be questioned by the screener at the courthouse door. In some cases, they may be asked to call the court docket clerk at the phone number posted on the court door.~~

~~i. In the past few days, have you felt unwell, especially with respiratory symptoms (cough, high temperature, shortness of breath, difficulty breathing, and initial flu-like symptoms, such as fever, coughing, breathing difficulties, fatigue, and myalgia)?~~

~~ii. In the past 14 days have you:~~

~~• Been in contact with a person infected with novel coronavirus (COVID-19)?~~

~~• Been to one of the affected countries or regions (listed at https://www.healthvermont.gov/covid19):~~

~~• Been to a healthcare facility (hospital, walk-in clinic, emergency room) where people infected with COVID-19 are treated?~~

~~The Judiciary will modify these screening question as necessary to conform to evolving public health guidance.~~

c. All individuals entering Judiciary facilities ~~buildings~~ must wear masks at all times ~~in public areas~~, including in the courtroom, except to the extent the State Court Administrator adopts evidence-based policies or protocols, which may be amended from time to time, setting forth exceptions to this general rule. ~~in nonpublic areas shared in common by others, and in all workspaces in which other people are nearby.~~ The masks may be made of cloth and should cover the individual's mouth and nose at all times.

4. That the paragraph 20 be added to read as follows:

20. Scheduling Priorities: In scheduling, priority shall be given to juvenile cases and those involving defendants detained pretrial.

5. That the following Explanatory Note be added:

Explanatory Note—June 19, 2020 Amendment

The June 19 amendment amends the introductory language to the Administrative Order in recognition of the fact that the specific restrictions on assemblies and interactions incorporated in the Governor's Executive Order 01-20 have evolved considerably since the Governor's initial promulgation of that Order on March 13, 2020.

In addition, the June 19 amendment adds ¶ 5(c) to establish a strong preference for remote proceedings whenever reasonably possible in light of the available technology in the court, the access of the hearing participants to means for remote participation, the nature of the hearing, and the restrictions of the applicable rules. Although the Court has lifted an across-the-board suspension of all but emergency hearings, the goal of minimizing the number of people in Judiciary buildings remains paramount. This is the best way to protect court users, court personnel, and the general public. In some cases, courts may conduct hearings in which some participants are in the courtroom, and others participate remotely; in such cases, courts should take steps to ensure that neither party is disadvantaged by the mode of participation.

The June 19 amendment maintains the requirements in ¶ 7 that individuals entering Judiciary buildings undergo screening and wear masks, but assigns the State Court Administrator responsibility for developing specific protocols for screening and any exceptions to the general policy concerning masks. The State Court Administrator is directed to keep abreast of evolving public-health guidance and to amend her directives or policies concerning screening and masks consistent with that guidance. Effective contemporaneous with the promulgation of this amendment, the State Court Administrator has issued Administrative Directive No. PG-13, which establishes the current screening and other requirements applicable to individuals entering court buildings.

Finally, the June 19 amendment requires that judges and court staff prioritize juvenile cases and those involving defendants detained prior to trial in scheduling hearings. This amendment implements a recommendation of the May 13, 2020 Blueprint for Expansion of Court Operations, adopted by the Court. That document establishes procedures for the gradual expansion of court operations, balancing the needs of staff, judges, attorneys, and litigants to the extent possible. It recognizes that the Judiciary will continue to face resource limitations as well as constraints arising from social-distancing requirements. It calls for the presiding Judge and Clerk of each unit to convene judges and court operations managers within the unit to develop a coordinated plan for expanding operations, ensuring that the highest priority cases receive the necessary resources. The plan may require some judges and staff to work on dockets outside of their current rotation or usual work assignments and may affect the scheduling of certain types of cases altogether. The Court has incorporated the case prioritization provision into this Administrative Order for emphasis and to set appropriate expectations among litigants, lawyers, court staff, judges, and the general public. As long as resources for conducting court proceedings—including court staff, courtroom space, and technological resources for video remote proceedings—remain in short supply, whenever reasonably possible, they should be allocated to the backlog in the juvenile docket and criminal cases where defendants are being detained pretrial. These are the cases in which the liberty interests protected by the court system are at their highest.

6. That this order is effective immediately and extends until September 1, 2020, 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 Montpelier, Vermont this 19th day of June 2020.

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