STATE OF VERMONT
SUPREME COURT
APRIL 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 ¶ 3(b) of Administrative Order No. 49 be amended to read as follows (new matter underlined; deleted matter struck through):

   3. Suspension of non-emergency Superior Court hearings:

   b. ~~Notwithstanding the above, courts may, in their discretion, complete jury trials that are already in progress.~~ In recognition of the advance planning required to arrange jury trials, notwithstanding the termination date of this Administrative Order, all jury draws and jury trials currently scheduled to take place on or before May 15 shall be postponed.

2. That ¶ 6(c) of Administrative Order No. 49 be amended to read as follows (new matter underlined; deleted matter struck through):

   6. Email filings:

   c. In the Supreme Court, notwithstanding the provisions of V.R.A.P. 25, ~~and~~ 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 and the subject line should contain the Supreme Court docket number.

      ii. ~~Paper copies of appellate briefs and printed cases are still required as directed by the Vermont Rules for Appellate Procedure.~~ 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 as required by V.R.A.P. 32. Notwithstanding this general suspension of the rules requiring paper filing, the Court may by order require parties to file paper copies of briefs and printed cases.

      iii. If paper copies have not been filed earlier, within 30 days of the termination of the judicial emergency, or within 30 days of an

amendment to this order terminating the suspension of rules requiring the filing of paper briefs and printed cases, a party must file paper briefs and printed cases to the extent and in the manner otherwise required by the Vermont Rules of Appellate Procedure. At such time, a party may request permission to file only a single paper copy of a brief and printed case. In reviewing such motions, the Court will consider the size of the brief and printed case and the progress of the appeal, including whether the Court has already heard or considered the case.

3. That ¶ 7(a) 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:

- 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.

- 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, ~~cognitive 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. These individuals should observe social distancing while in the courthouse, staying at least six feet away from other individuals to the extent reasonably possible.

- 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.

- 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.

- 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.

4. That ¶ 12 of Administrative Order No. 49 be amended to read as follows (new matter underlined; deleted matter struck through):

12. Discretion Concerning Oral Arguments in the Supreme Court: Notwithstanding V.R.A.P. 33.1, V.R.A.P. 34, or any other rule or timeline inconsistent with this order, the Supreme Court may hold oral arguments remotely by telephone, video or other electronic means for summary and full-Court proceedings. In addition, in its discretion, and with notice to the parties, the Court may decide appeals, for summary and full-Court cases, without argument and on the basis of the briefs. Public access to the remote hearings will be provided solely through electronic means and no individual, including registered members of the media, will be admitted to the Supreme Court building.

5. That ¶ 17 be added to Administrative Order No. 49 to read as follows:

17. **Notarization and Oaths**:

a. In circumstances in which court rules require that a filed document bear the approval or verification of a notary, a filer may include the following language in lieu of notarization: "I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I may be subject to sanctions by the Court for contempt."

b. In depositions upon oral examination, notwithstanding requirements of V.R.C.P. 30(c) (incorporated into other divisions by V.R.Cr.P. 15(d), V.R.P.P. 26, V.R.F.P. 4.0(g), and V.R.E.C.P. 2(c)) or any other rule, at any deposition taken pursuant to Vermont rules or court orders, an officer or other person authorized to administer an oath may administer the oath remotely, without being in the physical presence of the deponent as long as the administering person can both see and hear the deponent using audio-video communication for the purpose of positively identifying the deponent.

c. In court hearings in which a witness testifies by video or audio conference pursuant to V.R.C.P. 43.1, as incorporated in to the rules of other divisions, and as impacted by this Administrative Order, the court may

administer the oath remotely provided the court is satisfied as to the identity of any witness testifying remotely.

6. That ¶ 18 be added to Administrative Order No. 49 to read as follows:

18. July Bar Exam: Rule 9(a) of Vermont Rules of Admission to the Bar of the Vermont Supreme Court, which requires the Uniform Bar Examination to be administered in February and July on dates designated by the NCBE, is suspended. The bar examination, currently scheduled by the NCBE for July 2020, will not be administered in Vermont at that time and is postponed to a later date.

7. That the following Explanatory Note be added:

Explanatory Note—April 6, 2020 Amendment

By amendment to ¶ 3(b) dated April 6, the Court has deferred all jury draws and jury trials to at least May 15, notwithstanding the termination date of the Administrative Order declaring a judicial emergency. In light of the course of the public-health crisis, the fact that jury draws and jury trials require that many people operate in close physical proximity, and the strains on the Judiciary arising from the COVID-19 pandemic, it is virtually impossible that jury draws or jury trials would be consistent with public health, as well as the health and safety of parties, their lawyers, and Judiciary staff, by May 15. In light of the advance planning jury trials typically require, this amendment gives parties, witnesses, lawyers, and court staff ample notice of the continued suspension of jury trials until at least May 15. The suspension of jury trials implicates fundamental constitutional rights, most acutely in cases in which a criminal defendant is in custody pending trial. For that reason, the Court will revisit the question of jury trials on an ongoing basis through the continuing course of this judicial emergency with a goal of resuming such trials as soon as reasonably safe.

The April 6 amendment also suspends the requirement of filing paper briefs and printed cases in appeals to the Supreme Court. In light of the Governor's March 24 Addendum 6, this amendment removes the paper-filing requirement that would otherwise require most parties to travel to their office to assemble the paper briefs and printed case, and may lead them to call upon other staff for administrative support. The rule requires that within 30 days of the termination of the judicial emergency, or within 30 days of an amendment terminating the suspension of the paper-filing requirement, a party must file the paper briefs and printed cases otherwise required by the appellate rules. Recognizing that in some cases the Court may have already done much of its work on a case by the time the paper-filing requirement applies, the amendment allows parties to

request permission to file only a single paper copy of a brief and printed case at that time.

The April 6 amendment makes a minor change to the provision regarding access to courts, replacing an inaccurate description with the proper term "communications specialists."

The April 6 amendment allows the Supreme Court to hold arguments by video or other electronic means, in addition to telephone. Because the Supreme Court arguments will be by remote electronic means, the April 6 amendment clarifies that public access to court hearings will also be effected by remote means. No individuals, whether participants, media, or otherwise, will be admitted to the Supreme Court building for oral arguments because no arguments will be physically held in the Supreme Court.

With respect to notarization and oaths, the April 6 amendment seeks to address the challenges arising from requirements based in court rule that certain documents, such as affidavits and verified complaints, be notarized. The amendment authorizes individuals to essentially self-certify the truthfulness of their statements, subject to the penalty of contempt, where notarization is otherwise required by court rule. It does not purport to change notarization requirements where affidavits are required by statute. In that regard, the remedy provided by these rules is limited. The Legislature is currently considering legislation that would address these problems more broadly, and the Court will revisit this amendment upon passage of any legislation relating to oaths and affidavits filed in court.

To facilitate ongoing discovery in the context of the social-distancing measures currently in place, the April 6 amendment further allows for remote administration of the oath in the context of depositions. Finally, the amendment makes it clear that courts may administer oaths remotely for the purpose of conducting remote hearings where otherwise authorized, provided the court is satisfied as to the identity of the witness testifying remotely.

Finally, in light of the health concerns posed by the ongoing COVID-19 pandemic, the April 6 amendment suspends the administration of July Uniform Bar Exam. This position is consistent with that taken by some neighboring states and is appropriate in Vermont at this time. The Court intends to reschedule the exam for the fall if the NCBE offers the exam at that time and if administration of it is possible without placing those involved at risk.

8. That this order is effective immediately and extends until April 15, 2020, unless extended by order of this 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.

Done in chambers at Montpelier, Vermont this 6th day of April 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