ADMINISTRATIVE ORDER NO. 49

DECLARATION OF JUDICIAL EMERGENCY AND

CHANGES TO COURT PROCEDURES

PROMULGATED ON 3-16-20; AS AMENDED ON 3-18-20, 3-20-20, 3-24-20, 3-25-20, 4-6-20, 4-9-20, 4-13-20, 4-21-30, 4-30-20, 5-13-20, 6-19-20, 7-17-20, 7-23-20, 8-20-20, 10-5-20, 11-2-20 AND 11-24-20

The Vermont Supreme Court issues this administrative order pursuant to its authority under the Vermont Constitution, Chapter II, § 30.

1. Due to the outbreak of the novel coronavirus, COVID-19, the Governor of Vermont has declared a state of emergency and has instituted evolving limitations on gatherings in Vermont to promote "social distancing," thereby mitigating the risk to the public and limiting the spread of the infection.

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, 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.

3. **Suspension of Jury Trials:** Jury trials in civil cases are suspended until at least January 1, 2021.

4. **DELETED**.

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.

6. **Email filings and service**:

a. In Superior Court divisions and units where either the 2010 Vermont Rules for Electronic Filing or the 2020 Vermont Rules for Electronic Filing apply and require

electronic filing through another mechanism (eCabinet or Odyssey File and Serve), or electronic service through a specified means, those rules must be followed.

b. In Superior Court divisions and units where there is no electronic filing or for litigants that are not required to electronically file, notwithstanding the provisions of 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 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.
   ii. Further details concerning the method of filing by email will be posted on the 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. In Superior Court divisions and units where there is no electronic filing rule that requires a specified means of service, 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)), until the conclusion of this judicial emergency or further amendment to this Administrative Order, service of pleadings and other papers (other than process) must be made by the following means:

   i. Where service is made by an attorney on an attorney, service must be made by email unless the attorneys mutually agree otherwise.
      1. In all pleadings or other papers served or filed, attorneys must provide up to three email addresses at which they agree to accept service. Any email addresses provided must match those that the attorney has registered pursuant to the requirements of Administrative Order 44,
      § 1. The sending attorney should make service on the receiving attorney by email to each of the listed addresses, attaching the document or documents to be served. (Attorneys who have not yet provided an email address or email addresses on any pleadings or filings should promptly notify one another of the email addresses to which service should be directed.)
      2. Attorneys may agree to make service by other means, such as paper or alternate electronic means. Any such agreement must be reduced to writing.

ii. Where service is made by or to a 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.

iii. 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 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 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.

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

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) will be permitted to enter. This includes parties, witnesses, lawyers and legal staff, guardians ad litem, interpreters, communications specialists, qualified mental-health professionals, 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. 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.

c. All individuals entering Judiciary facilities must wear masks at all times, 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. The masks may be made of cloth and should cover the individual's mouth and nose at all times.

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. However, for the duration of this Order, the Court suspends strict enforcement of these deadlines.

9. **Court Administration**: The Court Administrator will develop forward looking management strategies, and will continue to balance public-health considerations and the Court's constitutional responsibilities to serve the public, in responding to evolving conditions.

10. **Deadlines:** Nothing in this Order extends statutes of limitations or other filing deadlines.

11. **DELETED.**

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.

13. **Participation in Court-Ordered Mediation**: Pursuant to V.R.C.P. 16.3(b)(3), for as long as the judicial emergency exists under this order, the judicial emergency constitutes "good cause" authorizing remote participation in mediation, by video or telephone, without a stipulation or further court order. Notwithstanding V.R.F.P. 18(d)(4) and V.R.P.P. 16.1(d)(4), parties to matters in the family and probate divisions may attend court-ordered mediation remotely, by video or telephone.

14. **Work Locations**: To protect the health and safety of Judiciary employees and users of judicial services, and to protect public health, safety, and welfare, Judiciary employees may conduct Judiciary work only (1) in their assigned courthouses or administrative offices during business hours (or after business hours for authorized supervisors); or (2) remotely consistent with Judiciary teleworking guidelines during the COVID-19 pandemic.

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

a. **Scope:** This section applies to the committees, subcommittees, boards, commissions, and similar bodies (collectively, "committees") established or governed by the Supreme Court. This includes those established or governed by the following Supreme Court Administrative Orders: 9 (Professional Responsibility Program), 17 (Civil Rules Committee), 20 (Criminal Rules Committee), 23 (Evidence Rules Committee), 24 (Probate Rules Committee), 29 (Family Rules Committee), 35 (Judicial Ethics Committee), and 40 (Public Access to Court Records Committee). It also includes those established by the following Supreme Court Rules: Rules of the Supreme Court for Disciplinary Control of Judges (Judicial Conduct Board), the Rules of Admission to the Bar (Board of Bar Examiners and Character and Fitness Committee), and the Rules for Mandatory Continuing Legal Education (Board of Mandatory Continuing Legal Education).

b. **Continuing Operations**: Committees will continue to perform their core functions to the extent possible consistent with this section and their obligation to mitigate the risks associated with the COVID-19 pandemic.

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.

d. **Committee Hearings:**
   i. In the discretion of the Board or Committee, and subject to staffing limitations, probable cause hearings and nonevidentiary hearings may be conducted by the Judicial Conduct Board, Professional Responsibility Board, Board of Bar Examiners, and Character and Fitness Committee, or any panels of these committees, if all persons participate through remote means.
   ii. The Judicial Conduct Board, Professional Responsibility Board, Board of Bar Examiners, and Character and Fitness Committee, or any panels of these committees, may conduct evidentiary hearings, subject to staffing and resource availability. To the maximum extent possible, evidentiary hearings should be conducted using remote video or audio conferencing. Notwithstanding Vermont Rule of Civil Procedure 43.1 or any other rule inconsistent with this order, a Board or Panel may preside remotely and may on its own motion require parties, witnesses, counsel, or other necessary persons to participate or testify by remote means, subject to participants' access to adequate means for remote participation. Any objection to conducting the hearing by video or audio conference must be filed as soon as possible. In ruling on any objection, the Board or Committee should consider the factors in Vermont Rule of Civil Procedure 43.1(c)(6) (video) and Rule 43.1(d)(3) (audio), except the Board or Committee need not find that

any individual is physically unable to be present. If the Board or Committee allows some or all participants in a hearing to participate or attend physically, they must follow the protocols for entering judiciary buildings as set forth in ¶ 7.

e. **Board of Bar Examiners—Oaths of Admission:**

Pursuant to Rule 20(e) of the Vermont Rules for Admission to the Bar, the oath of admission may be administered by one of the authorized individuals remotely in real time using video.

f. **MCLE Rule Waivers:**

For the license renewal period ending June 30, 2020, under the Mandatory Continuing Legal Education Rules that were in effect through June 30, 2020:

i. The 10-hour limit on the number of self-study hours that can be claimed for a reporting period, as specified in Mandatory Continuing Legal Education Rules § 5(a)(2), is suspended for the 2018-2020 reporting period.

ii. The limits on the number of hours that can be claimed under § 5(b)(10) for a reporting period, including both the limits for specific types of activities and the 10-hour limit on the total number of hours for all such activities, are suspended for the 2018-2020 reporting period.

For the license renewal period ending June 30, 2021, under the Mandatory Continuing Legal Education Rules as amended effective July 1, 2020:

iii. The 6-hour limit on the number of hours for programs delivered as Non-Moderated Programming Without Interactivity that can be claimed for a reporting period, as specified in Rule 3(A)(3) of Rules of Mandatory Continuing Legal Education, is suspended for the 2019-2021 reporting period.

iv. The 12-hour minimum number of hours for programs delivered as either Moderated Programming or Non-Moderated Programming With Interactivity as a Key Component that must be taken in a reporting period, as specified in Rule 3(A)(2), is suspended for the 2019-2021 reporting period.

v. The limits on the number of hours that can be claimed under all sections of Rule 6 for a reporting period are suspended for the 2019-2021 reporting period.

g. **Email Filings**:

Notwithstanding any court rule or administrative order to the contrary, parties may file documents with any board or committee subject to this rule by email, subject to the following requirements. Filings must be sent as an attachment to the email address associated with the board or committee on the Vermont Judiciary web site. The subject line must indicate the case or subject matter of the filing. Further details concerning the method of filing by email will be posted on the vermontjudiciary.org website, and may change from time to time. Parties and lawyers should check the guidance on the website before filing by email.

16. **Venue**

Pursuant to 4 V.S.A. § 37(b), the court promulgates the following emergency rule. Notwithstanding any statute or court rule inconsistent with this rule,

a. The Chief Superior Judge, in consultation with the Court Administrator, may assign venue for status conferences, minor hearings, or other nonevidentiary proceedings to

any court in the state, as necessary in light of operational accommodations arising from the COVID-19 pandemic, provided that all participants are afforded the opportunity to participate remotely; and

b. The Chief Superior Judge, in consultation with the Court Administrator, may assign a change in venue in any matter during this judicial emergency as necessary to ensure access to justice for the parties or to promote the fair and efficient administration of justice.

17. **Notarization and Oaths**:

a. 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.

b. 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.

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 Uniform Bar Examination previously scheduled for July 2020 and rescheduled for September 2020 is cancelled. Notwithstanding Rules 9 and 10 of the Vermont Rules of Admission to the Bar, the Board of Bar Examiners is authorized to administer and grade an alternative bar examination in fall 2020 by remote means. This bar examination will provide the same basis for admission under the Vermont Rules of Admission to the Bar as the Uniform Bar Examination.

a. The Board must provide updates on the specifics of the exam as soon as possible to applicants who previously applied for and were found eligible to sit for the July 2020 examination (registered applicants).

b. The remote examination will be created by the NCBE and will consist of fewer questions but will cover the same subjects as the Uniform Bar Examination (UBE).

c. Registered applicants will be registered automatically for the remote examination.

d. Registered applicants may opt out of the remote examination and either:

   i. withdraw their application and receive a full refund of the application fee paid to Vermont; or

   ii. choose to be registered to sit for the February 2021 administration.

e. Registered applicants who decide not to sit for the remote examination and to be registered for the February 2021 examination will be considered to be "registered for the next administration of the bar examination," for the purposes of eligibility to practice as a legal intern under Part VI of the Vermont Rules of Admission to the Bar.

f. The Board is authorized to enter into Memoranda of Understanding with other states offering the NCBE's fall 2020 remote examination to provide for portability of scores earned on that examination, wherever possible.

19. **Attorney Licensing:** Notwithstanding the provisions of A.O. 41 § 2(b), for the relicensing period ending June 30, 2020, attorneys who face financial hardship on account of the impact of the COVID-19 pandemic may defer payment of the relicensing fee until September 1, 2020. Attorneys must still complete the relicensing and CLE reporting through the online portal by the June 30 deadline.

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

21. **Pleading Requirements in Eviction Proceedings:**

    a. Notwithstanding the provisions of Rules 8 and 9 of the Vermont Rules of Civil Procedure, in any action for eviction of a tenant of residential housing filed on or after March 27, 2020, the plaintiff must attach to the complaint the plaintiff's certification that the filing complies with the federal CARES Act. In particular, the plaintiff must certify either that the plaintiff has complied with the restrictions of the CARES Act, or that the CARES Act is inapplicable to the property from which plaintiff seeks to evict a tenant.
    b. If the complaint was filed without the certification required in ¶ 21(a), such certification must be filed with the court by August 14, 2020.
    c. The certification required in ¶ 21(a) must be in substantially the form reflected in Appendix A to this amendment.

22. **Pleading Requirements in Foreclosure Proceedings:**

    a. Notwithstanding the provisions of Rule 80.1 of the Vermont Rules of Civil Procedure, in any action for residential foreclosure filed between March 27, 2020, and December 31, 2020, the plaintiff must attach to the complaint the plaintiff's certification that the filing complies with the federal CARES Act and Regulation X, 12 C.F.R. § 1024.39, or that the CARES Act does not apply to the filing.
    b. If the complaint was filed without the certification required in ¶ 22(a), such certification must be filed with the court by August 14, 2020.
    c. The certification required in ¶ 22(a) must be in substantially the form reflected in Appendix B to this amendment.

23. **February 2021 Bar Examination:** The Board of Bar Examiners is authorized to administer the February 2021 Uniform Bar Examination by remote means.

Explanatory Note

The current COVID-19 pandemic forces the Judiciary to balance critical and to some extent competing objectives.

Importantly, the courts play a critical role in protecting individual rights and maintaining the rule of law that is the backbone of our constitutional democracy. The United States and Vermont Constitutions protect individual rights to life, liberty, and due process. "[T]he judiciary is clearly discernible as the primary means through which these rights may

be enforced." Davis v. Passman, 442 U.S. 228, 241 (1979). As James Madison said, independent courts "will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights." Id. at 241-42 (citing 1 Annals of Cong. 439 (1789)).

In addition, the work of Vermont's courts has a profound impact on the daily lives of Vermonters. Courts are charged with deciding critical questions related to the protection of children and the rights of their parents. The criminal justice system cannot fully function without the active engagement of courts. Rather than resorting to destructive self-help strategies, individuals and organizations rely on courts to resolve all manner of disputes by applying established legal principles. Families turn to courts to address vital issues, many involving urgent conflicts. And courts adjudicate civil petitions to protect individuals' safety.

Moreover, open trials are important to the administration of justice. As the U.S. Supreme Court has explained, "The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." Press-Enter. Co. v. Super. Ct. of Cal., Riverside Cty., 464 U.S. 501, 508 (1984). For these reasons, we have recognized that the public has a "constitutional and common law right of access to court records and proceedings," State v. Tallman, 148 Vt. 465, 472, 537 A.2d 422, 427 (1987), and public judicial proceedings are the rule, and closed ones the exception. Herald Ass'n, Inc. v. Ellison, 138 Vt. 529, 533, 419 A.2d 323, 326 (1980).

Nevertheless, the current public-health crisis arising from COVID-19, and the resulting declaration of a judicial emergency, reinforced by the Governor's declaration of a State of Emergency, calls for extreme measures to mitigate the impact of the pandemic. The Governor, based on evidence-based public-health concerns, has declared a State of Emergency in Executive Order 01-20, and has augmented the restrictions in that Executive Order with a series of addenda imposing increasingly restrictive limitations on public gatherings and activities. Through our own Administrative Order, as amended from time to time, the Vermont Supreme Court has declared a judicial emergency and has implemented increasingly more expansive changes with respect to matters within our authority in an effort to meet the Judiciary's most urgent constitutional obligations while respecting the recommendations of public-health officials, mitigating risks to the dedicated public servants who work in the judiciary, and responding to the staffing challenges arising from the pandemic.

This ongoing process of responding to the evolving public-health crisis, balancing competing concerns, and adjusting court rules and operations will continue until this crisis runs its course. Some changes in court operations will require rule changes or amendments to this Administrative Order. Some operational changes, such as implementation of remote work for many Judiciary staff, fall within existing authority of the Court Administrator and do not require amendments to this Administrative Order.

The Court's initial order, on March 16, 2020, postponed superior court hearings in all but the most urgent cases—those most profoundly impacting individuals' personal liberty, safety, and family attachments. In those cases, the impact of inaction by the courts would be particularly substantial and enduring. In addition, in those cases, the Court sought to maximize the use of remote audio and video to minimize the number of individuals congregating for a hearing. In addition, the Court suspended all judicial bureau hearings as well as rules regarding court filings to allow individuals to use email for most court filings. The Court also suspended strict enforcement of timelines related to public requests for court records, while requiring reasonable efforts under the circumstances in response to public records requests. Finally, the Court imposed restrictions on access to court buildings to exclude anyone at high risk of infection pursuant to Department of Health guidelines, as well as anyone seeking to enter the courthouse for any purpose other than participating in or attending a public proceeding.

The March 18 amendment assigned the Supreme Court discretion to waive oral argument in its own proceedings, or to conduct those arguments by remote audio or video means. The amendment carved out a narrow exception to the general suspension of nonemergency hearings for nonevidentiary, nonemergency hearings that could be conducted entirely remotely. This exception was limited by staff availability, and the amendment authorized the Court Administrator to make real time determinations as to whether and to what extent to schedule or conduct such hearings.

By amendment on March 20, the Court augmented its rule authorizing court filings by email to allow electronic signatures in lieu of "wet" signatures on such documents. It suspended the in-person participation requirement with respect to court-ordered mediation. And it limited the times and locations that Judiciary employees can conduct Judiciary business.

By amendment on March 24, the Court extended the duration of the restrictions on access to courthouses to be coterminous with the rest of the Administrative Order and made some technical corrections to that provision. In addition, the Court issued a host of general directives concerning committees, boards, and commissions established or governed by the Supreme Court. These measures included suspending in-person committee meetings; suspending most adjudicative hearings by boards except those necessary to protect the public; and authorizing email filings

with these committees. The Court also authorized remote administration of the oath of admission to the Bar, and waived certain continuing legal education requirements for the license renewal period ending June 30, 2020. Finally, in recognition of the likelihood that public-health demands and reduced staff availability may require the Judiciary to find creative ways to address the most urgent cases, the Court invoked its statutory authority to make rules concerning venue to authorize the Chief Superior Judge, in consultation with the Court Administrator, to depart from the ordinary rules of venue in certain circumstances.

By amendment on March 25, the Court has adopted this Explanatory Note. The Court has further restricted public access to those court proceedings that are continuing pursuant to this Administrative Order. With narrow exceptions, only participants in those proceedings will be admitted to Judiciary courthouses. The Court has taken this extreme step in recognition of the Governor's March 24 Addendum 6 to Executive Order No. 01-20, which called for Vermonters to stay at home or in their place of residence, leaving only for essential reasons. The Court seeks to mitigate the Constitutional concerns raised by an order temporarily excluding the general public from court proceedings by including an exception allowing registered members of the media to attend court proceedings that are not otherwise confidential by law. Because of the administrative challenges of operating courts under current circumstances, the March 25 amendment provides that no new applications for one-time media certification will be entertained while this order is in effect. The amendment further urges all individuals admitted to a courthouse to observe social distancing.

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.

Explanatory Note—April 9, 2020 Amendment

The April 9 amendment extends the sunset date of this Administrative Order from April 15, 2020 to May 31, 2020. Because of the significant lead time involved in scheduling court proceedings, the continuing uncertainty about when public-health social distancing measures will be relaxed, and the likely need to prioritize certain cases as social distancing requirements ease, unless otherwise specified within Administrative Order 49, the provisions of AO 49 will be extended until May 31, 2020. The April 9 amendment also strikes paragraph 3(b) which established a different period of suspension for jury trials than for other matters. Pursuant to this amendment, the period of suspension of jury draws and jury trials is coterminous with the period in which other hearings are suspended. The Court will revisit this timing as conditions on the ground, and public-health recommendations, evolve.

Explanatory Note—April 13, 2020 Amendment

By amendment to ¶ 6 dated April 13, the Court has suspended some court rules regarding service of pleadings and other documents in Superior Court proceedings to require that lawyers serve documents on one another by email, and to allow by voluntary agreement service on or by self-represented parties by electronic means. This amendment follows from the Governor's March 24 Addendum 6 to Executive Order No. 01-20, which called for Vermonters to stay at home or in their place of residence, leaving only for essential reasons. Because many lawyers and parties are properly remaining in their homes during this time, many do not have regular access to their incoming paper mail and thus may fail to satisfy deadlines for responding to documents served by mail. Many also lack access to copiers, postal meters, and administrative support necessary for sending pleadings and other papers by mail. The rule does not mandate service by email by or to self-represented parties, who may not have email addresses or ready access to one another's email addresses, but does allow service by email or other electronic means by mutual agreement. The amendment requires an agreement for service to or from a self-represented party to be in writing and filed with the court.

This amendment does not apply to service of process governed by V.R.C.P. 4, or analogous rules in other divisions, and does not apply where applicable electronic filing rules require other means of electronic service. Nor does it alter any rules or statutes concerning when and to whom service of such documents is required. It only addresses the means of serving documents where required by 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 other provisions of law regarding service other than initial service of process.

To facilitate mandatory email service, attorneys must provide an email address on all documents filed with the court or served on another party. Pursuant to Administrative Order 44, attorneys in active status are already required to register up to three email addresses in eCabinet for purposes of receiving notices of hearing and other documents. Attorneys may include staff email addresses among those addresses registered in eCabinet. Because attorneys may not have listed their eCabinet email addresses on documents filed or served as of the effective date of this amendment, the amendment requires attorneys to promptly notify one another of the email addresses at which they will receive service if they have not included this information in any pleadings or filings. Although this amendment establishes email as the default means of service between attorneys, they may agree in writing to alternative methods of service, including service by mail or other electronic means such as a shared digital storage system. This agreement must be made in writing. Any change to the means of service, whether indefinite or for the purpose of serving a specific document, must be documented in writing.

Where a party makes service to the email address provided by the other party pursuant to this rule, or as otherwise provided in the parties' agreement, service is complete upon transmission. However, if the sending party learns that the attempted service did not reach the party to be served, service is not complete.

The April 13 amendment provides that motions and filings in the Supreme Court must be served in the same manner as service of pleadings and other papers in the Superior Court, as outlined in paragraph 6(c). In particular, lawyers must serve one another by electronic means as set forth above, unless they mutually agree otherwise. Self-represented parties may agree to send and/or receive service by email, as described above, but are not required to. The April 13 amendment recognizes that under existing rules briefs are served on represented parties electronically. Self-represented parties may agree to service by electronic means, but the default remains paper service.

Explanatory Note—April 20, 2020 Amendment

The April 20 amendment adds motions to modify or enforce parent-child contact in juvenile and domestic cases to the list of emergency motions that are not suspended by this Administrative Order. As a practical matter, where parties cannot reach agreement with respect to parent-child contact in the context of the COVID-19 crisis, either parent should be able to bring the matter to the court for resolution—the parent seeking to enforce the existing order as to parent-child contact, or the parent seeking to suspend or modify the order. The amendment clarifies that hearings on

such motion are not suspended, whether the motions are to suspend, modify, or enforce that order.

The April 20 amendment also provides trial courts with greater flexibility in setting hearings that are not suspended by this Administrative Order for telephone or video hearings. In the civil, family, and probate divisions, with respect to video hearings and trials, the amendment suspends the timelines in Rule 43.1(c) so that the court may set matters for hearings, both evidentiary and nonevidentiary, on shorter notice. In responding to objections to video testimony, courts will still be guided by the factors in Rule 43.1(c)(6). The amendment allows courts to set hearings, both evidentiary and nonevidentiary, for audio conference. Experience during this crisis has shown that in many cases, telephone hearings can provide all parties a fair opportunity to be heard without compromising individuals' health or the health of others. The amendment makes it clear that courts need not make any specific findings in advance in scheduling hearings for audio, and that the factors set forth in Rule 43.1(d) will still guide courts' consideration of objections to audio testimony. To the extent they are not inconsistent with this amendment, the provisions of Rule 43.1 will continue to apply.

In the criminal division, the April 20 amendment makes it clear that courts may schedule nonevidentiary hearings by remote audio, or may preside remotely, in those cases in which the presence of the defendant is not required by V.R.Cr.P. 43. V.R.Cr.P. 43 and Administrative Order 38 otherwise remain in force with respect to evidentiary and video hearings except that, with the agreement of all parties, courts may take testimony through remote audio or video not otherwise authorized by Administrative Order 38.

As of April 20, the Vermont Department of Health has recommended that people wear cloth face masks, or coverings, if they leave their home for essential purposes. The Department advises that because people may have COVID-19 but no symptoms, wearing a face mask may help keep people from spreading the virus. Face coverings are not a substitute for physical distancing and other prevention measures. The Vermont Department of Health recommends that people wear face coverings when other people are nearby. The public-health guidance does not define "nearby" in terms of distance. By Addendum 10 to Executive Order 01-20, the Governor has called for all businesses, nonprofit and governmental entities to require employees to wear nonmedical cloth face coverings (bandanna, scarf, or nonmedical mask, etc.) over their nose and mouth when in the presence of others.

Consistent with this guidance, and to protect the health of members of the public required to attend court proceedings, as well as Judiciary and other personnel working in the courts, the April 20 amendment provides that individuals entering Judiciary buildings must wear cloth masks covering the mouth and nose. This rule applies to all who work in the Judiciary as well as participants, lawyers, members of the media, and members of the public. Individuals who are not wearing a mask, whether

their own or one provided by the court, will be denied entry at screening points. Individuals who remove their masks after entering the building will be required to immediately leave the building. Judiciary staff in nonpublic workspaces are not required to wear masks if no other people are nearby, but should wear them in nonpublic common spaces such as bathrooms or office breakrooms. The Judiciary recommends that people use their own cloth masks, but will provide masks for people who do not have their own. Like the Governor's Executive Order, this rule requires individuals to wear nonmedical cloth masks, in recognition of the need to conserve medical-grade masks for health-care providers. However, individuals who wear non-cloth medical-grade masks will not be deemed to be in violation of this rule.

Explanatory Note—April 30, 2020 Amendment

The April 30 amendment extends to cases in the Environmental Division the provisions of this Administrative Order regarding remote proceedings in most cases in the civil, family, and probate divisions.

The amendment also provides for remote proceedings in juvenile delinquency proceedings pursuant to V.R.F.P. 1 on the same general terms as in the criminal division, and in the criminal division expands on existing rule V.R.Cr.P. 43(a)(2) and the existing provisions of this Administrative Order. In particular, in the criminal division, the amendment authorizes the court to preside remotely, and to require any or all witnesses to participate remotely by video or audio in nonevidentiary proceedings where the defendant's presence is not required. In the juvenile delinquency docket, the amendment likewise authorizes the court to preside remotely and to require any or all witnesses to participate by remote audio or video in nonevidentiary proceedings where the presence of the juvenile is not required. In nonevidentiary proceedings where the presence of the defendant or juvenile is required, whether pursuant to V.R.Cr.P. 43 for criminal defendants, or provisions in Chapter 52 of Title 33 for juveniles, this amendment does not authorize the court to require defendants to participate remotely. However, pursuant to recent legislative action V.R.Cr.P. 43(d) has been amended, (see S.114, signed into law April 28, 2020), and the requirement that a criminal defendant be present for certain proceedings may be satisfied through remote means under specified circumstances. In addition, the April 30 amendment extends the remote audio and video participation in evidentiary proceedings to juvenile delinquency proceedings by agreement of all parties.

Finally, the April 30 amendment eliminates the special procedure in former ¶ 17(a) that allowed self-attestation to an oath where the oath and notarization are required by court rules. Pursuant to S.114, signed into law April 28, 2020, a party may file without notarization <u>any</u> document that would otherwise require approval or verification of a notary by filing the document with the following language inserted above the signature and

date: "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 will be subject to the penalty of perjury or other sanctions in the discretion of the court." This statute, in effect until 30 days after the Governor terminates the state of emergency by declaration, provides a broader and more effective solution to the problem targeted by prior subdivision (a), and renders that subdivision unnecessary.

Explanatory Note—May 13, 2020 Amendment

The May 13 amendment extends the judicial emergency until September 1, 2020. This does not signal that the existing provisions in the emergency order will necessarily remain in place until that time. The Court anticipates continued amendments to A.O. 49 to meet the evolving conditions. The extension until September 1 reflects a recognition that the public-health crisis that gave rise to this Order is not likely to fully resolve before September 1, and deviations from historical court practice, or modifications to at least some court rules, will be necessary through the upcoming summer.

The May 13 amendment lifts the blanket suspension of nonemergency court proceedings in superior courts and the judicial bureau, and amends ¶¶ 3, 4, 5, and 11 in recognition of that fact. Consistent with the expansion of operations plan, nonemergency hearings in all dockets may begin starting June 1, 2020, and courts may begin scheduling hearings on May 18, 2020. The amendment substitutes in ¶ 3 a continuing suspension of criminal jury trials until September 1, 2020, and civil jury trials until January 1, 2021, and provides that jury summonses shall not be sent prior to August 3, 2020. The lifting of the suspension of nonemergency hearings in ¶ 3 does not signal that hearings will immediately recommence in all dockets. The expansion of judicial operations accompanying the contemporaneous lifting of many of the restrictions in the Governor's Executive Order 01-20 will be gradual and deliberate. In light of the substantial backlog in urgent hearings, including those that were not formally suspended pursuant to former ¶ 3, courts will resume scheduling hearings taking into account staff availability; the impact of social distancing requirements on the availability of courtrooms; the suitability and availability of remote technologies for particular hearings; and the availability of parties, lawyers, and other participants.

Finally, the May 13 amendment provides that attorneys, who are due for relicensure by June 30 of this year and who have suffered hardship on account of the COVID-19 pandemic, may defer payment of their relicensing fee until September. The online portal for relicensure will be modified to reflect this option. Lawyers invoking the deferral option will be asked to certify that the pandemic has caused hardship, but will not be required to provide additional information about their finances.

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.

Explanatory Note—July 17, 2020 Amendment

The July 17 amendment to ¶ 6(d) eliminates any requirement that multiple paper briefs be filed at the conclusion of the judicial emergency and requires that one set of briefs and printed cases be filed within a week of the electronic filing. The court retains its discretion to, by order, require parties to file additional paper copies of briefs and printed cases. In this amendment, the Court hopes to account for both the challenges of copying and collating multiple briefs in the context of the ongoing pandemic and the necessity that a paper copy of each brief and printed case be filed for the permanent record in each case.

The July 17 amendment also amends ¶ 18 of the Administrative Order regarding the July 2020 bar examination. Due to the ongoing risks to public health from the pandemic, the in-person bar exam originally scheduled for July 2020 and rescheduled to September 2020 is cancelled. The Board of Bar Examiners is authorized to conduct and grade a remote bar examination in the fall of 2020. Applicants who were registered and authorized to sit for the July 2020 examination will be automatically registered for the remote examination. Registered applicants who choose not to take the remote exam may receive a refund or choose to register to sit for the February 2021 exam. To ease the inconvenience and hardship caused by the delayed exam, those registered applicants choosing to take the exam in February 2021 will be permitted to continue to practice as a legal intern. The Board is also authorized to enter agreements with other states so that scores will be portable.

Explanatory Note—July 23, 2020 Amendment

The July 23 amendments add ¶¶ 21 and 22 to establish special pleading requirements for eviction and foreclosure proceedings potentially affected by the federal CARES Act, Pub. L. No. 116-136. That Act provides specific requirements for evictions for nonpayment from, and foreclosures of, properties financed by federally backed loans or participating in certain federal housing programs.

Paragraph 21 requires that in any eviction action of a tenant in residential housing commenced on or after March 27, 2020, the effective date of the CARES Act, the plaintiff must attach to the complaint a

certificate that either the Act does not apply to the leased property or that the plaintiff has complied with the applicable provisions of the Act, specifically § 4024, codified at 15 U.S.C. § 9058. The Act imposes a moratorium on issuing a notice to vacate for property covered by the Act and filing such an action until July 25, 2020, and provides that thereafter plaintiff may not require the tenant to vacate such a property until 30 days after issuing the notice to vacate. 15 U.S.C. § 9058(b), (c). Paragraph 21(b) provides that if the certification was not filed with the complaint, it must be filed by August 14, 2020.

A form for the plaintiff's certification attached as Appendix A is incorporated by reference in ¶ 21(c). Certifications must be in substantially this form. The form requires the plaintiff to make specific statements concerning compliance with the CARES Act under penalty of perjury or other sanctions that the court may impose. If the action was commenced after July 25, 2020, the plaintiff must either certify that plaintiff complied with the 30-day notice period required by the CARES Act, or that the property is not covered by the CARES Act. To establish that the CARES Act requirements do not apply to the property, the plaintiff must attest to conducting a full investigation of the circumstances of the property. Specifically, the plaintiff must certify that no unsatisfied mortgage on the property is subject to a federally backed mortgage and must state that the property does not benefit from any federal housing program. Because mortgagees do not necessarily know whether unsatisfied mortgages are federally backed, in order to determine whether the property is subject to a federally backed mortgage, the plaintiff must search in two databases to see whether unsatisfied mortgages are federally backed: KnowYourOptions.com/loanlookup (Fannie Mae) and FreddieMac.com/mymortgage (Freddie Mac). Because only the plaintiff has ready access to the mortgage and the online tools used to determine whether the mortgages are federally backed, if the plaintiff certifies that the CARES Act does not apply, the plaintiff must attach a copy of the first page of any unsatisfied mortgages on the property at issue, as well as copies of the results of the searches in these two databases.

Similar provisions of ¶ 22 provide, for actions for residential foreclosure filed between March 27, 2020, and December 31, 2020, that the plaintiff must certify compliance with applicable provisions of the CARES Act that require the lender to grant up to 360 days of forbearance on request of the borrower and of federal regulations that require the lender to advise the borrower of this right. Accordingly, forbearance on a foreclosure proceeding commenced on December 31, 2020, could extend until December 31, 2121. Paragraph 22(c) requires the plaintiff's certification to be in substantially the form as that attached as Appendix B. The form requires that, subject to perjury or other sanctions, the lender either state that the CARES Act does not apply because the subject mortgage does not secure a federally backed loan, or that if it does, the lender has advised the borrower of the opportunity to request forbearance and that the borrower has either not responded to or declined the offer.

Both ¶ 21 and ¶ 22 have a similar justification. In both eviction and foreclosure proceedings, the court must be informed as to whether the CARES Act applies. The information necessary to make that determination is not readily accessible to the individual tenant or homeowner. Plaintiff landlords and lenders have both the need for this information in their operations and the capacity to acquire and present it with relatively little effort. The Judiciary will make both Appendix A and Appendix B available as freestanding forms.

The July 23 amendment also clarifies that victims of crimes and victim advocates are among the individuals allowed to enter courthouses for the purpose of attending hearings in the relevant cases. The Court intends that the term "victim" be understood to include persons who have sustained physical, emotional, or financial injury or death as a direct result of the commission or attempted commission of a crime and include the family members of a minor, a person who has been found to be incompetent, or a homicide victim. The Court anticipates that victim advocates will inform docket clerks of victims who may attend scheduled hearings to facilitate the screening process.

The July 23 amendment also modifies the MCLE requirements for continuing legal education for the 2019-2021 reporting cycle to account for the ongoing limitations on in-person gatherings as a result of the COVID pandemic.

Explanatory Note—August 18, 2020, Amendment

This amendment extends the effective date of this Administrative Order until January 1, 2021. Given the continuing dynamic course of this pandemic, the Court anticipates that it may add, eliminate, or amend individual provisions of this Administrative Order as evolving conditions require. Given the likelihood that the pandemic will continue to substantially impact the operations of the Judiciary through at least the balance of 2020, the Court is extending Administrative Order 49 through the rest of this year, rather than continuing to extend it in shorter increments.

Paragraph 7(a)(ii), regarding access to court buildings, is amended to clarify that individuals are permitted to enter Judiciary buildings for the purpose of participating in proceedings other than actual hearings including, for example, case manager conferences.

This amendment also amends Appendix A referred to in ¶ 21 of the Order concerning compliance with the Federal CARES Act in connection with evictions, to clarify that the required notice to vacate must give thirty days' notice.

Explanatory Note—October 5, 2020, Amendment

The October 5 amendment deletes language formally suspending jury trials in criminal cases until at least September 1, 2020. Criminal

jury trials are no longer suspended but resuming jury trials remains challenging under the circumstances. In preparation for resumption of criminal jury trials, the Judiciary is taking steps to make courthouses and courtrooms as safe as possible for the conduct of jury trials. Given the large number of people involved in jury trials, these steps include evaluations of and, if necessary, adjustments to ventilation systems, enhanced cleaning protocols, installation of plexiglass barriers in some locations, reconfiguration of some courtroom space where necessary to accommodate social distancing, and development of workable traffic flows of parties and trial participants within courthouse space. In addition, courts are revising their protocols for summoning and selecting jurors in an effort to reduce the number of prospective jurors in a courtroom at any given time, and to facilitate the early identification of jurors with conflicts or other grounds to excuse them from service. Courts are also developing staffing plans to safely and effectively meet the needs associated with pandemic-era jury trials. Finally, the Judiciary is undertaking a public-education campaign to communicate to prospective jurors, and the public more broadly, the steps the Judiciary is taking to prepare to safely resume jury trials consistent with CDC and Vermont Department of Health guidelines.

Resumption of criminal jury trials will not happen simultaneously in all units. Some courts are further along than others in the preparations described above, and some courthouses are more amenable to socially distanced jury trials than others. The first criminal jury trial is currently scheduled in Windham County. Other units are expected to begin conducting criminal jury trials on a staggered basis after that time.

The October 5 amendment retains the suspension of civil jury trials, and adds language reflecting that civil jury trials will be suspended until at least January 1, 2021.

Explanatory Note—November 2, 2020 Amendment

The November amendment lifts the ban on evidentiary hearings for Boards and Committees of the Supreme Court. Under the revised language, Boards and Panels can hold evidentiary hearings subject to the availability of adequate staffing and resources. The amendment directs that hearings should be conducted by remote video or audio technology to the maximum extent possible. The Boards or Panels may preside remotely and require participants to participate or testify remotely. Any objection to the use of remote audio or video technology will be evaluated by the Board or Panel using the standards in Vermont Rule of Civil Procedure 43.1. If the Board or Panel concludes that it is necessary to preside in person or have some or all participants in person, the protocols for entering judiciary buildings, including screening and social distancing, must be followed.

Explanatory Note—November 24, 2020 Amendment

The November 19 amendment expressly authorizes the Board of Bar Examiners to administer the February 2021 Uniform Bar Examination (UBE) by remote means. This standard UBE exam will be prepared by the NCBE and scored in the same manner as the UBE is usually scored for in-person administrations.

Paragraph 7(a) concerning access to court buildings is amended to clarify that judicial officers, judiciary employees, contractors, and authorized volunteers can enter courthouses.