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 of Administrative Order No. 49 be amended to read as follows (new matter underlined):

> **3. Suspension of non-emergency Superior Court hearings:** Effective March 17, and notwithstanding any rule or timeline inconsistent with this guidance, all nonemergency Superior Court hearings, whether evidentiary or nonevidentiary, will be postponed. This includes jury draws, jury trials, and hearings that have already been schedule, except as provided below.
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> - ~~Emergency m~~Motions to suspend, modify, or enforce parent-child contact in juvenile cases when the court, in its discretion, determines an emergency exists.
> - ~~Emergency m~~Motions to suspend, modify, or enforce parent-child contact in domestic cases when the court, in its discretion, determines an emergency exists.
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2. That ¶ 5 of Administrative Order No. 49 be amended to read as follows (new matter underlined; deleted matter struck through):

> **5. Remote participation in hearings (in matters that are not suspended)**:
> ~~Notwithstanding the provisions of V.R.C.P. 43.1 and V.R.P.P. 43.1, or any other rule inconsistent with this order, parties and counsel may participate in all nonevidentiary proceedings remotely by telephone without seeking permission by motion. The party participating by telephone is responsible for calling the court at the time of hearing. Where feasible, parties may participate by video appearance as approved by the judge. Parties or counsel must make advance arrangements to appear by video. Appearance by telephone or video for evidentiary hearings will continue to be governed by the provisions of V.R.C.P. 43.1 and V.R.P.P. 43.1.~~
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> a. Civil, Family, and Probate Divisions.
> The following provisions apply in proceedings in the civil, 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:
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> 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.

i. In nonevidentiary proceedings such as status conferences, and other proceedings where the presence of the defendant is not required by V.R.Cr.P. 43, on its own motion, the court may preside remotely and may require parties, witnesses, counsel, or other necessary persons to participate by audio 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).

3. That ¶ 7(c) be added to Administrative Order No. 49 to read as follows:

c. All individuals entering Judiciary buildings must wear masks in public areas, including the courtroom, 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.

4. That the following Explanatory Note be added:

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.

5. That this order is effective immediately and extends until May 31, 2020, unless extended by order of this Court.

6. 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 21st 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