STATE OF VERMONT
SUPREME COURT
MARCH 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 ¶¶ 14-15 added by the March 24, 2020 amendment be renumbered as ¶¶15-16.

2. 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 ~~or attending~~ 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, 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.
>
> - 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.

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.

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

4. 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 25th day of March 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