STATE OF VERMONT
SUPREME COURT
NOVEMBER 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 ¶ 15(d) of Administrative Order No. 49 be amended to read as follows (new matter underlined; deleted matter struck through):

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

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. ~~Effective immediately, and notwithstanding any rule or timeline inconsistent with this guidance, all evidentiary hearings before the Judicial Conduct Board, Professional Responsibility Board, Board of Bar Examiners, and Character and Fitness Committee, or any panels of these committees, will be postponed while this order is in effect.~~ 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.

~~iii. In any pending matter, if necessary to protect the public, the Supreme Court, on its own motion or pursuant to a party's motion or the parties' joint request, may except a hearing from the restriction on evidentiary hearings. In doing so, the Court may order that the hearing be held remotely by telephone or video if all parties, their representatives, witnesses, and adjudicators can participate remotely, and may place~~

~~other restrictions on the conduct of the hearing as justice requires. Before exercising its discretion, the Court will confer with the Court Administrator or designee to ensure that sufficient staffing is reasonably available to support any proceedings authorized by the Court.~~

2. That the following Explanatory Note be added:

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.

3. That this order is effective immediately and extends until January 1, 2021, 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 2nd day of November 2020.

Signed by the Vermont Supreme Court

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