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 ¶ 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):

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:

* * * *

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 ~~V.R.Cr.P. 43~~ 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).

2. That ¶ 17 of Administrative Order No. 49 be amended to read as follows (new matter underlined; deleted matter struck through):

17. Notarization and Oaths:

~~a. In circumstances in which court rules require that a filed document bear the approval or verification of a notary, a filer may include the following language in lieu of notarization: "I declare that the above statement is true and accurate to the best of my knowledge and~~

~~belief. I understand that if the above statement is false, I may be subject to sanctions by the Court for contempt."~~

~~b.~~ 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.

~~c.~~ 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.

3. That the following Explanatory Note be added:

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 any 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.

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

5. 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 30th 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