

**SUMMARY OF RECENT COURT AMENDMENTS TO ADMINISTRATIVE  
ORDER 49, WHICH DECLARED JUDICIAL EMERGENCY ON 3/16/20**

**April 8, 2021.**

The April 8 amendment gives courts flexibility during the judicial emergency to move criminal and civil jury trials to venues that can accommodate jury trials consistent with public-health recommendations. The Chief Superior Judge and Court Administrator have authorized several court buildings in the State for jury trials and the Judiciary anticipates that the number of locations approved for jury trials will continue to grow. However, some court buildings will likely not be cleared for jury trials under existing public-health guidelines due to physical space restrictions that prevent compliance with current social-distancing guidelines, considerations relating to their ventilation systems, or both. As a result, under current pandemic conditions, some counties have no courthouses suitable for jury trials. In other counties, although a courthouse may be approved for jury trials, the demand for criminal and civil jury trials is far greater than can be accommodated in that courthouse. This amendment enables the Chief Superior Judge to ensure that parties in criminal and civil proceedings have access to jury trials in courthouses that can accommodate those proceedings in as timely a way as possible. The Judiciary continues to prioritize jury trials in criminal cases in which the defendant has been detained pretrial, but courts may set civil cases as back-up to scheduled criminal cases where appropriate. Civil litigants are encouraged to agree to six-person civil jury trials in those court buildings that are authorized by the Chief Superior Judge and the Court Administrator for six-person jury trials.

**March 8, 2021**

Paragraph 2 is amended to extend the effective date of the Administrative Order until May 31, 2021, based on the projections of public-health experts concerning the course of the pandemic.

Paragraph 3(a), which previously suspended jury trials in civil cases until at least January 1, 2021, is deleted. The resumption of civil and criminal jury trials is governed by former ¶ 3(b), requiring court-by-court authorization of the Chief Superior Judge and the Court Administrator based on various specified factors.

Paragraph 6, regarding filing and service by email, is amended to reflect that the provisions of the 2020 Vermont Rules for Electronic Filing govern service by and to attorneys in all Superior Courts as of March 15, 2021.

Paragraph 23 is amended to authorize the Board of Bar Examiners to administer the July 2021 UBE by remote means.

New paragraph 24 amends Vermont Rule of Civil Procedure 68 to allow plaintiffs to make offers of judgment as previously provided in the rule only for defendants. The Advisory Committee on the Rules of Civil Procedure proposed the emergency amendment.

### **December 22, 2020**

Paragraph 5(d) of Administrative Order 49, concerning remote hearings, is amended to establish a presumption that, with some exceptions including jury trials and evidentiary hearings in juvenile and criminal matters, hearings in the Superior Court will be scheduled for remote participation by parties, witnesses, and other participants. The order previously dictated that hearings should be scheduled for remote participation “to the maximum extent possible.” Due to the rising incidence of COVID-19 throughout Vermont, the amendment minimizes gatherings of people within courtrooms by providing for remote participation consistent with constitutional and rule limitations. If there is good cause, the court on its own initiative may schedule the hearing for partial or full in-person participation. In addition, the parties may object to participating remotely, or to other parties or witnesses participating remotely based on the factors outlined in V.R.C.P. 43.1, including the available technology in the court, the participants’ access to adequate means for remote participation, and the nature of the hearing.

### **December 4, 2020**

Paragraph 3 is amended to clarify the process for deciding when courts can hold jury trials. As previously indicated in the order, criminal jury trials are not formally suspended, and civil jury trials will not be suspended after January 1. Under the revised language superior courts seeking to hold a jury trial must secure the approval of the Chief Superior Judge and the Court Administrator before summoning jurors and holding a jury trial. The amendment identifies a host of factors to be considered by the Court Administrator and Chief Superior Judge to ensure that the necessary steps are taken to protect trial participants and public health, and that the Judiciary has adequate staffing to support a proposed jury trial.

Paragraph 5, concerning remote participation in hearings is amended to address hearings in the judicial bureau. New ¶ 5(c) gives the judicial bureau express authority to preside remotely and requires all participants to appear by remote means, either by video or audio conference. In recognition of the ongoing public health and safety concerns caused by the pandemic, in-person hearings are postponed, and all hearings will be conducted by remote means (audio or video, in the discretion of the judicial officer). Prior ¶ 5(c) is renumbered as ¶ 5(d).

Paragraph 7(a)(ii) is amended to clarify that pretrial service coordinators are among the participants authorized to enter the courthouse to participate in a hearing that has not been suspended or ordered to be heard remotely.