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## New England First Amendment Coalition

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Attn: Scott Griffith, Special Advisory Committee on Remote Hearings

*SENT VIA EMAIL TO SCOTT.GRIFFITH@VERMONT.GOV*

### **RE: Proposed Revisions to Vermont Rule of Civil Procedure 43.1**

February 13, 2023

Dear Scott,

Thank you for the opportunity to submit comments on proposed revisions to Vermont Rule of Civil Procedure 43.1. Providing remote access and participation to court hearings should be a critical part of the judicial system and we appreciate being a part of the rule making process.

The New England First Amendment Coalition is a non-profit non-partisan advocate for open government. Our primary concern with proposed Rule 43.1 is that it does not address remote and hybrid access for all members of the public, particularly the many journalists covering the court system.

We hope our comments here inform and underscore the need for additional revisions addressing access for non-litigants. Changes to the current court rules should make clear that any hearing that would otherwise be in-person and open to the public shall also be accessible to all members of the public remotely. There should be no difference between the access courts provide the public in-person and what they provide online.

At a minimum, rules providing for this public access should reflect the following:

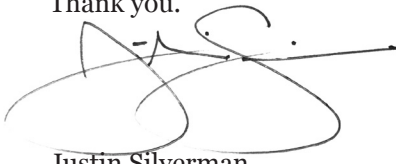
- Adequate notice must be provided to the public about an in-person hearing being changed to a remote or hybrid format, and vice versa. It must also be clear in the posted notice how all members of the public can access remote or hybrid hearings. Most courts already have a dedicated Zoom link for non-confidential hearings that can be easily posted to their website. Some courts, like Franklin County District Court, use separate dedicated Zoom links for each individual courtroom and can serve as models for other courts to follow.
- All remote and hybrid meetings should be recorded, posted publicly and archived. Similarly, all in-person meetings that are open to the public should be live-streamed with the recording accessible for future viewing. The state Legislature, it should be noted, is already live-streaming and archiving its committee meetings. The Judiciary should do the same.
- The court's online operation should mirror its in-person proceedings as closely as possible. Conversations that can be heard in the courtroom should also be audible online. Technology shouldn't be used to silence or restrict the speech of those who would otherwise be heard during in-person hearings.

- Clarification needs to be made in the rules to allow the broadcasting and reproduction of any remote or hybrid hearing. In at least one case, a court erroneously prohibited the recording of its livestream by the press. (See *State of Vermont v. Gurung*, Chittenden Superior Court Docket No. 3261-9-19 Cncr). While the transition to remote hearings undoubtedly will present initial logistical challenges, the First Amendment right of access to the courts and the freedom of the press should be protected at all times.

To that point, the First Amendment guarantees a right of access to judicial proceedings — a right that allows the public’s understanding and oversight of the court system. Remote access technology expands the opportunity for that understanding and oversight to all members of the public. We ask that your rule revisions take into account this right and recognize that remote and hybrid access to the courts is not a privilege reserved exclusively for litigants. It is a right that should be granted to all individuals.

NEFAC and its partners are available to discuss how to best incorporate public access into your proposed rules. Please let us know how we can best be of help as you move forward with revisions to Rule 43.1.

Thank you.



Justin Silverman  
*Executive Director*

