

Administrative Order No. 38 is amended to read as follows (new matter underlined):

**RULES FOR UTILIZATION OF  
VIDEO CONFERENCING AND TELEPHONE CONFERENCING  
TECHNOLOGY IN THE  
DISTRICT AND FAMILY COURTS**

**Section I. Authorization and Requirements**

Notwithstanding any rule or provision to the contrary:

(a) the presiding judge in the District Court located in a county equipped with video conferencing technology:

(1) shall, except as provided in (3), use video conferencing technology to effect the appearance of incarcerated parties and certain witnesses. This requirement does not apply to the following proceedings in criminal cases: jury or court trials, including the jury draw proceeding, contested violation of probation hearings on the merits, sentencing hearings, bail hearings when the state is requesting that the defendant be held without bail, and contested bail or motion hearings involving witnesses whom the defendant has the right to cross-examine.

(2) may use telephone teleconferencing technology to effect the appearance of parties and certain witnesses incarcerated in facilities without video conferencing equipment, and video conferencing equipment for sentencing hearings, upon agreement of the parties.

(3) may conduct a proceeding governed by subsection (a)(1) involving the in-court appearance of the incarcerated individual if the presiding judge finds, and places the finding and the reasons for it, on the record, that good cause exists for not using video teleconferencing technology in that proceeding.

(b) the presiding judge in the Family Court in a county equipped with telephone conferencing technology may use telephone conferencing technology or video conferencing technology, if so equipped, to effect the appearance of incarcerated parties and certain witnesses upon agreement of the parties or upon a determination by the Court that no party's right to full and fair adjudication will be denied by the process.

## **Section II. Video Conferencing Equipment**

Except as provided above, for purposes of this Order any requirement that a defendant "be present" or that the proceeding take place "in open court," or that a defendant appear "personally" in a criminal proceeding, any right a party may have to the presence of a witness, and any right a party may have to be present at a family proceeding may be deemed to have been met if that party or witness appears in Court via approved video conferencing equipment and the following safeguards are met:

- (a) The defendant, party or witness is in custody at a facility where a video conferencing station is located;
- (b) The video conferencing equipment affords clear, high quality coverage of the defendant, party or witness in custody, counsel, the judge and any witnesses;
- (c) The video media is kept as part of the record;
- (d) The defendant, party or witness has access to and may consult fully and confidentially with counsel at any time during the proceeding;
- (e) Equipment is available for immediate transmission of documents and papers.

## **Section III. Telephone Conferencing Equipment**

Section II of this Administrative Order shall also apply to proceedings using telephone conferencing equipment with the following safeguards:

- (a) All parties, counsel, witnesses and the judge can clearly hear the voice that reaches the court over the telephone; and the person on the telephone can clearly hear all participants at the courthouse;
- (b) Any statements made over the telephone are recorded as part of the record of the court proceeding;
- (c) The person who is present only over the telephone may consult fully and confidentially with counsel by private telephone line at any time during the proceeding;
- (d) Equipment is available for immediate transmission of documents and papers.

## **Section IV. Utilization of Video Testimony Pursuant to V.R.E. 807(e) in the Bennington District and Family Courts**

- (a) In the Bennington District and Family courts, the presiding judge is authorized to permit testimony of a child offered pursuant to V.R.E. 807(e) to be

televised by (1) two-way closed circuit equipment as described in V.R.E. 807(e), or (2) one-way communication with the witness and lawyers in a room outside the courtroom and the questions and testimony transmitted to the courtroom.

(b) Prior to permitting a proceeding where one-way or two-way communication is utilized pursuant to V.R.E. 807(e), the judge shall make findings on the record regarding the necessity of the closed circuit television procedure.

(c) One-way or two-way televised proceedings may only be used if the following safeguards are in place:

(1) the video equipment affords the defendant and the jury a clear, high quality audio and visual representation of the testimony;

(2) the video media is kept as part of the record;

(3) the defendant has access to and may consult fully and confidentially with counsel at any time during the proceeding.

This emergency amendment is prescribed and promulgated to become effective immediately.

The Court finds that this emergency amendment must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11 because Bennington has received a grant from the ABA to purchase the equipment for one-way transmission and this latter method has been determined by experts to be a more effective and less traumatic way to obtain testimony from child victims. The Court's Advisory Committee on Rules for Criminal and Family Procedure are directed to consider and report to the Court pursuant to Administrative Order No. 11 by September 30, 2010, on any comments that may be received on this emergency amendment.

The Chief Justice is authorized to report this emergency amendment to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Done in Chambers at Montpelier, Vermont, this 14<sup>th</sup> day of January, 2010.

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice