

**Amendment to
Administrative Order No. 38**

**Supreme Court
December Term, 2008**

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

**~~EXPERIMENTAL~~ RULES FOR UTILIZATION OF
VIDEO CONFERENCING AND TELEPHONE CONFERENCING TECHNOLOGY IN THE
~~BENNINGTON COUNTY~~ DISTRICT AND FAMILY COURTS**

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SECTION I. AUTHORIZATIONS AND REQUIREMENTS ~~DURING THE EXPERIMENT~~

Notwithstanding any rule or provision to the contrary:

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

(1) shall, except as provided in (3), use video ~~tele~~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 conferencing 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 conferencing technology in that proceeding.

(b) the presiding judge in the Family Court in ~~Bennington~~ a County equipped with telephone conferencing technology may use telephone conferencing technology or video ~~teleconferencing~~ 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 ~~experiment~~ 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 ~~teleconferencing~~ equipment and the following safeguards are met:

- (a) The defendant, party or witness is in custody at a facility where a video ~~teleconferencing~~ station is located;
- (b) The video ~~teleconferencing~~ equipment affords clear, high quality coverage of the defendant, party or witness in custody, counsel, the judge and any witnesses;
- (c) The video ~~tape~~ 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 ~~by private telephone line~~ at any time during the proceeding;
- (e) ~~Facsimile~~ eEquipment 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) ~~Facsimile~~ eEquipment is available for immediate transmission of documents and papers.

These emergency amendments are prescribed and promulgated to become effective on January 1, 2009.

The Court finds that these emergency amendments must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11, because they reflect changes that will allow the Court to take appropriate steps to reduce the costs of transports of lodged defendants in the face of economic exigencies. 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, 2009, on any comments that may be received on these emergency amendments.

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

Done in Chambers at Montpelier, Vermont, this 17th day of December, 2008.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice