

## UPDATED STANDING ORDER BENNINGTON CRIMINAL DIVISION

Paragraph 5 of Administrative Order 49 concerning remote hearings was deleted effective September 6, 2022. The Reporter's Notes regarding the change provided that remote participation in criminal proceedings will now be governed Rule 43 of the Vermont Rules of Criminal Procedure (V.R.Cr.P.) and by Administrative Order No. 38. Pursuant to the most recent amendments to A.O. 38:

**Non-evidentiary hearings:** In non-evidentiary hearings such as status conferences and other proceedings where the presence of the defendant is not required by law under Rule 43 of the Vermont Rules of Criminal Procedure (V.R.Cr.P.), on its own motion, the court may: (1) preside remotely; (2) require parties, witnesses, counsel or other necessary persons to participate remotely by audio or video conference upon reasonable notice.

**Evidentiary hearings:** In evidentiary hearings, including jury or court trials, including jury draw proceedings, contested violation of probation hearings on the merits, sentencing hearings and contested hearings involving witnesses whom the defendant has the right to cross examine, the court may: (1) preside remotely; (2) use audio or video technology to effect the appearance of parties upon agreement of the parties. In determining whether to allow a witness to provide testimony by remote audio or video by agreement of the parties, the court will consider the factors in Rule 43.1(c) and (d) of the Vermont Rules for Civil Procedure (V.R.C.P.). V.R.Cr.P. 43 still requires a defendant's waiver of the right to be physically present after opportunity to consult with counsel.

Following our criminal bench bar meeting in September and October 2023, we have agreed that moving towards the standard of having defendants and attorneys all present in the courtroom is best practice and maximizes the opportunity for settlement. The expectation in the Bennington Unit, Criminal Division going forward is that all criminal proceedings will require in person participation of the State, Defendant and Defendant's counsel unless a stipulation or motion is filed and approved. **As such, the expectation of in person participation for defendants and all attorneys includes the following hearings:**

- arraignments, VOP Rule 5; extradition
- jury draws;
- jury and court trials;
- contested evidentiary VOP merits hearings;
- contested evidentiary motion hearings (final civil suspension hearings will be in person

subject to V.R.C.P. 43.1(c) and (d));

- change of plea and sentencing;
- competency hearings;
- pre-trial hearing (pre-trial calendar);
- calendar calls;

**The following criminal proceedings that do not require in person participation by the parties, such that they may participate remotely without the need for a motion are:**

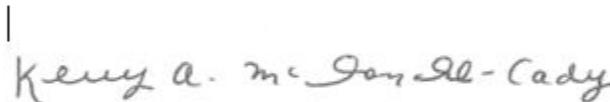
- status conferences for attorneys only;
- lodged Rule 5 emergency arraignments;
- attorney or appear;

The hearing notices will not indicate whether the defendant's presence is required or not. Those specialized notes would need to be personalized by a judicial assistance for each case and for each hearing notice. Currently, our county does not have enough staff to personalize each hearing notice. I have issued this Revised Standing Order to provide guidance about when to provide notice to clients for upcoming hearings.

This standing order shall take effect November 3, 2023.

Dated November 1, 2023.

Electronically signed pursuant to V.R.E.F. 9(d).

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Kerry A. McDonald-Cady, Superior Court Judge

