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Sent: Wednesday, June 10, 2020 5:08 PM
To: benningtoncountybar-ml@mail-list.com
Subject: [BenningtonCountyBar] UPDATE FROM THE STATE'S ATTORNEYS OFFICE

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Greetings

I wanted to reach out to the Bennington County Bar and give a quick update on our status. Pursuant to the Governor's Directive, we are not able to have more than a skeleton crew in the office. This means there is 1 attorney and 1 administrative assistant physically in the office. Everyone else has been working their regular schedule, appearing in court, negotiating cases and otherwise doing business remotely. As of now, we are not allowing visitors in our office and would kindly request that everyone submit paperwork and questions via email or fax. Given that there is only 1 person answering the phone on the main line, please use email as your preferred method of contact. If you email the person you need to speak with we will gladly call you back.

Consistent with my initial response to the pandemic, my concerns are first and foremost related to EVERYONE'S health and safety, regardless of the role they play in the legal system. Although the minutiae that follows is primarily for the criminal attorneys, feel free to read on for a glimpse into how the newly re-opened criminal docket is adapting for the long haul.

I want the WHOLE bar to know we are still available and are doing our part to keep the wheels turning in these strange times. Please feel free to reach out with any questions.

Arraignments/Preliminary Hearings:

In the interest of lessening the number of folks going through the courthouse and in the interest of efficiency, the State's Attorneys' Office (SAO) is reviewing all arraignments and Juvenile preliminary hearings cited to court over the next few months to determine if this is a matter that needs to come in on the original cite date or if there are other alternatives. This includes Diversion screening over the phone ahead of time, arraign the next time the defendant is in court on pending matters or negotiating plea deals in advance of arraignment.

The procedure is as follows:

I review the list for every arraignment day to determine if:

1. The person is being referred to an alternative justice program like Diversion, Treatment Diversion, DLS license reinstatement program or pre-charge;
2. The person currently has a pending matter with a court date set AND the matter does not need to be arraigned sooner (ie DUI or needs CORs); or
3. The person is charged with a matter that could be negotiated pre-arraignment.

If there is another case pending, I reach out to the DSA and the defense attorney of record to inquire if the defendant can be arraigned at their next hearing. The DSA in court handling arraignments keeps track of the list.

We send all of the paperwork for Diversion referrals to CRJ ahead of time so CRJ can reach out to the defendant in advance of arraignment. CRJ does a telephone screening and explains the program. If the defendant accepts the referral, CRJ lets the court and SAO know so that person is NOT expected at arraignment.

If you represent someone in a low level case please call the SAO ahead of time and request the paperwork so resolution can be discussed before arraignment. The SAO is happy to provide paperwork to defense attorneys once

probable cause has been found. We are filing our charges on a rolling basis so frequently PC is found well before the arraignment.

Failure to appear at arraignment has become more of an issue, but there are limited options. It is not preferable for defendants to be brought to the facility for failure to appear at a low level arraignment, but a judicial summons requires law enforcement to personally serve which is also not preferable. A simple reminder phone call seems to be the best option, but many of us are already struggling with work load. To that end, the SAO will provide an arraignment list with contact numbers to the DSA and PDO in court. If any of the folks that are expected in court do not show up someone can make a phone call to remind the person they are expected at court. I am looking into an automated text service that will send an automatic text message to defendants that have been cited for a new offense and do NOT have an attorney. We will NOT be reminding folks that are represented for obvious reasons.

Calendar Calls/Jury Draws

Since the court will not be holding jury trials until October, I would encourage all attorneys to continue plea negotiations and keep the counter-offers coming. Anyone that really wants a trial, please consider a Bench Trial. I understand some cases are more conducive than others to this format, but there will likely be a lengthy delay before the misdemeanors on the list make it to a jury trial. There's something to be said for closure.

Hearings/Motions

It is the practice of the SAO until further notice to appear for ALL hearings by telephone. Further, all SAO witnesses will also be appearing by telephone. If the defense objects, please let us know immediately and we will file a motion for the witness to appear by telephone. The defendant can provide the court with the reasons for the objection. There are multiple moving factors involved in this decision, including the fact that police officers are essential personnel. They are frequently in contact with people who have an unknown risk. If we can avoid having them in the building, that lessens everyone's potential exposure. Obviously, I am sensitive to the difficulties this creates for some cases and expect the court will ferret out which ones require in person attendance.

Depositions/Discovery

The SAO is conducting ALL depositions and discovery remotely, by telephone or teleconference, and will request the same for any State's witnesses that are subpoenaed. This has been happening for the past 3 months with no issues. We are happy to provide audio and video electronically as well provided you have the ability to accept secure files. If you have any questions about the technology piece, ask one of the DSAs, I barely get by myself.

This is a new way of practice for those of us that are so used to being in the court, seeing each other and having clients in the courtroom. That said we are a resilient, collaborative bar and will take this new reality and make it our own.

Stay healthy and safe

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Post your message to the list by sending it to BenningtonCountyBar@mail-list.com.

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