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Subject: FW: comment to proposed amendment to CR 39
Date: Tuesday, November 2, 2021 1:22:49 PM
Attachments: [Bannon & Keith 2021. Remote Court - Principles for Virtual Proceedings During the Covid-19 Pandemic and Beyond.pdf](#)
[Poulin 2004. Criminal Justice and Video Conferencing Technology - The Remote Defendant.pdf](#)
[Eagly 2015. Remote Adjudication in Immigration.pdf](#)
[Diamond et al 2010. Efficiency and Cost- The Impact of Videoconferenced Hearings on Bail Decisions.pdf](#)
[Turner 2021. Remote Criminal Justice.pdf](#)
[Davis et al 2015. Research on Videoconferencing at Post-Arraignment Release Hearings-Phase 1 Final Report.pdf](#)
[ABA Resolution 117.pdf](#)
[Walsh & Walsh 2008. Effective Processing or Assembly-line Justice The Use of Teleconferencing in Asylum Removal Hearings.pdf](#)

From: Andrew Morrison [mailto:andrew@morrisonlegalservices.com]
Sent: Tuesday, November 2, 2021 12:10 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: comment to proposed amendment to CR 39

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Hello,

I am a defense attorney in the RCW 71.09 sexually violent predator system. The proposed amendment to CR 39 would allow remote jury trials over the objection of a party. While there are many efficiencies to be gained by this it would come at the expense of fundamental fairness in cases involving liberty. Please restrict the “over the objection” clause to cases that do not involve fundamental rights, perhaps exempting cases where there is a statutory or constitutional right to counsel.

The American Bar Association urges that remote proceedings only occur by consent (see attached resolution 117). My primary substantive concern is that there is a higher risk of negative outcomes for defendants in remote proceedings. A study of bail hearings in Cook County, Illinois, found that bail amounts were 54-90% higher when done by video, depending on the offense (see attached Diamond 2010). A study of the use of video teleconferencing in asylum proceedings found that an applicant’s chances of being denied were twice as high when proceedings were conducted remotely (see attached Walsh & Walsh 2008). A third study found that an immigration detainee is more likely to be deported if his or her hearing is conducted by video—but mainly because the perception of unfairness decreased engagement by the detainee (see attached Eagly 2015).

Given the stakes involved (potential lifetime commitment), a SVP respondent should never be subject to a jury trial held remotely over their objection.

Thank you,
Andrew Morrison
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