

**Chambers Of
Judge Matthew Williams**

Maleng Regional Justice Center

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December 29, 2021

Sent via email and U.S. Mail

RE: COMMENTS in support of Proposed Amendments to CR 39 and Proposed New GR 41

Justice Charles W. Johnson, Co-Chair
Justice Mary I. Yu, Co-Chair
Washington State Supreme Court Rules Committee
Supreme@courts.wa.gov

Dear Justices Johnson and Yu:

The State of Washington is a national leader in adopting innovative rules. Our Courts have recognized that our justice system cannot function as if we live in the 1800's. As just two examples, we adopted ER 413 and GR 37. We continue to serve as a beacon of open and accessible justice.

The National Center for State Courts made this prophetic observation:

**“Pandemic perspective” has changed perceived limitations....
When the pandemic is over, newly gained capabilities and expectations
will have changed the world. It will not be possible or even desirable to
return to pre-pandemic norms.**

Strategic Issues to Consider when Starting Virtual Hearings, Joint Technology Quick Response Bulletin, National Center for State Courts, p. 4-5 (April 7, 2020).

I had the experience of conducting the first fully remote civil jury trial in the Washington State Courts. Like many of my colleagues, I have conducted multiple fully remote civil jury trials and even more remote voir dire panels. After each jury trial, I generally interview counsel and the jurors about their experiences.

I write to report on my personal experience and the reports provided to me.

Remote voir dire allows more jurors to exercise their right to serve.

Jurors are not forced to take multiple days off from work to wait on the convenience of the lawyers and judge. The prevalence of wireless and cellular phone technology means that adding the option of the jurors participating remotely, jurors who would have been previously unable to participate, now can.

As a result, I have personally observed a significant increase in the diversity of jurors who appear in my venues, and a corresponding increase in the diversity of the jurors who have been able to serve as jurors in trials before me.

Jurors are able to better focus on the proceedings.

Jurors who have done both remote and in person trials report that they are able to better focus on the proceedings when they are remote. Attorneys forget how alien and distracting the courtroom is for jurors. When jurors are remote, the distractions of the courtroom are removed and replaced by a better/closer view of the attorneys, witnesses and the exhibits.

The fear that jurors will be distracted by their daily lives has not proven to be correct. Best practices developed by our court require jurors to be alone, and requires that the judge and counsel to monitor them. In my last fully remote trial counsel were fearful of the jurors not paying attention. Their fears were not only NOT justified, the focus of the jurors was astounding. On just one witness, the jurors proposed 67 questions. Such attention/focus simply does not occur during in person trials.

Jurors who have participated in both in person and remote trials report that they are better able to see the witnesses. In some of the comments on the proposed rules it appeared that some counsel may want the jurors to see things that are not part of the record as part of their credibility determination. Many jurors reported to me they feel they are better able to judge the credibility of witnesses when they can see the witnesses' faces close up through the remote process. Three jurors specifically commented on their ability to see and evaluate the "micro-expressions" of the witnesses (and counsel). In bench trials, I have observed the same thing.

Counsel conduct better and more in-depth voir dire.

The lawyers who have adapted to the remote trials tend to have greater focus on learning about the jurors. There are more questions, and fewer speeches. Jurors feel safer and offer more personal details. Counsel who pay attention find that they acquire significantly more personal information and more feedback from jurors (including body language) during remote trials, than during in-person trials.

Remote trials are less about charisma and more about the substance.

Many attorneys are used to projecting their personalities into the courtroom. The virtual space is much more intimate than the physical courtroom. Aggression and theatrics do not play as well. However, substance and civility play very well. Attorneys find that they are better able to "control the visual" of the remote trial, and they are better able to focus jurors on substantive issues rather than on the personalities of the lawyers. Additionally, several female attorneys report that they felt that the remote platform leveled the gender playing field with respect to implicit physical dominance in the courtroom. They felt more respected.

Remote trials are more efficient.

Many counsel report that witness scheduling is more efficient in remote trials, resulting in less wasted time and expense for the witnesses, lawyers, court personnel, and jurors. I have observed that when the lawyers are properly prepared, exhibit handling is much smoother and efficient.

Sidebars/recesses are much faster without having to physically remove the jurors. This allows for more frequent/less intrusive sidebars and more opportunities for lawyers to present legal issues to the court.

Remote voir dire also allows the courts to more efficiently manage potential jurors. Instead of being limited to 300 jurors in a physical jury room, the court can have several thousand on standby, resulting in fewer delays in trial commencement due to lack of jurors.

Jury Deliberations are more thorough.

Several jurors reported that they were better able to have complete discussions in the remote environment. Several jurors who had participated in both in person and remote jury service reported that in person deliberations were frequently dominated by a juror who usually self-identified as male. They report that the remote environment, provided a more gender-neutral space for deliberations.

Additionally, several jurors reported that they were better able to see and examine the exhibits.

When asked about potential misconduct, jurors reported that there was no more opportunity for juror misconduct in remote deliberations than during in person deliberations. Jurors reported that they felt very comfortable calling out jurors who did not abide by court instructions.

The Court Should Adopt the Proposed Rules

Washington State leads the nation in remote jury practices. In 2020, when we began dealing with the challenges of Pandemic, we had no idea how these remote processes would play out. They were forced on us. They required that we surrender our preconceptions and find a way to make it work. Along the way, because of the sheer volume of our collective/collaborative experience in finding out what works (and what does not), our legal communities worked together to develop Best Practices that resolve most if not all of the concerns raised in the other comments.

We learned that many of the issues that we feared turned out to be incorrect. We found that in many cases the reverse was true. We found that some aspects of remote trials worked better than in person trials. That is not to say that remote jury trials (like in person trials) do not present challenges for counsel and the court to overcome. They do. However, many of the fears voiced in other comments appear to be based on lack of experience with the reality of remote jury trials.

Our 200+ year tradition of in-person oral advocacy was driven by the limits of the resources of the times. Generations of attorneys know no other form of advocacy. It is understandable that counsel who grew successful in honing their skill sets for that form of charismatic in-person presentation would resist learning the skill sets that remote advocacy presents and attempt to keep our courts in a paradigm that is within their comfort zone.

However, it is important that our courts adapt to changing times and technologies. We must use the tools at hand to serve our community.

The proposed rules allow (but do not require) the continued use of these remote technologies; They allow courts (when appropriate) to overcome the attitudinal barriers created by the customs and traditions of our past.

The proposed rules allow Washington State to continue to be a national leader in the improving access to justice, and to allowing the efficient and just administration of justice.

The proposed rules allow Washington State to continue to be a national leader in improving access to justice. The proposed rules give discretion where it is needed, and allow the Washington State Courts the ability to provide open, efficient, and just administration of justice.

For these reasons, I urge the adoption of the proposed rule and amendment.

Cordially,

A handwritten signature in black ink, appearing to read "Matthew W. Williams".

Matthew W. Williams

Judge, King County Superior Court

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