



MultiCare Health System

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December 29, 2021

Honorable Charles W. Johnson, Co-Chair
Honorable Mary I. Yu, Co-Chair
Washington State Supreme Court Rules Committee
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: Civil Rule 39, Trial by Jury or by the Court – Proposed Change

Dear Honorable Justices Johnson and Yu:

MultiCare is a health system comprised of hospitals, specialty and urgent care clinics, and behavioral health resources throughout Washington State. MultiCare asks that the proposed CR 39 be modified to require the consent of both parties for a jury trial to be held by videoconference.

MultiCare is acutely aware of the hardships caused by the COVID-19 pandemic. We understand that the strain on the courts has been tremendous, but we strongly believe that curtailing access to justice is not the answer.

The formality of coming to a courthouse as a juror, being sworn in and sitting before the judge on his/her raised bench creates solemnity and engenders respect for the process. There are reasons we have built courthouses with some level of grandeur and regard them as sacred spaces. Remote proceedings trivialize the ceremony and cheapen justice.

An engaged and observant jury is essential to a fair trial. Yet, a juror at home is subject to a myriad of distractions regardless of the setting. Anyone who has worked from home knows how easy it is to play solitaire during meetings while others remain unaware. There are several more innocent distractions that many of us would think ourselves capable of doing without loss of attention: glancing at text messages or email; mindlessly surfing the internet; or simply noticing the movements of others in our household. We are all guilty of multi-tasking during online meetings.

All these things seem, and sometimes are, harmless, but even a momentary distraction during one witness's testimony could make a difference in the outcome of a trial. While these types of transgressions may be the exception rather than the rule, when there are twelve people deciding the parties' fates, it could change the outcome.

A fair trial also hinges on the ability of the jurors to hear and understand the witnesses. We have observed Zoom trials and it does not take long to realize that the technical issues create significant communication problems that often favor one party over another. Any witness or party with an accent, is made even more difficult to understand via Zoom. Witnesses or parties who require an interpreter are at an extreme disadvantage. Any juror who does not have excellent internet service is bound to miss a portion of the trial. (Which begs the question of whether litigants are able to secure a jury of their peers when potential jurors may not have internet access at all.) Videos freeze and sound cuts in and out. Some jurors have diminished hearing capabilities, and most jurors will not have the temerity to speak up and say that they didn't hear parts of a witness's testimony.

It is difficult to judge witness and party credibility over video. A large portion of communication is nonverbal and much of that is lost over video. People who we see weekly over video conferences do not appear or speak the same when we meet them in person. Video presentations make some witnesses appear stiff and unnatural. Others appear more relaxed and natural. But one's comfort with a camera should not be the determining factor for credibility.

A juror in a King County case this past year confirmed our concerns. Even though he was used to participating in videoconferences at work, he found it difficult as a juror to focus on the details, and the videoconferencing technical issues were challenging. He tends to write things down as a way of retaining important details during video meetings. However, the jurors were told they must keep their eyes on the screen so they would not multitask. As a result, he was not able to retain information that he otherwise would have. In addition, he felt that the gravity of the situation was lacking because of the lack of "pomp and circumstance" that would otherwise have existed if jurors were sitting in the courtroom. It wasn't until the jurors were finally brought to the courtroom to listen to testimony in person that he felt invested in the process.

In conclusion, allowing parties the right to choose a trial by videoconference allows those litigants who are less comfortable with the camera to be fairly judged. It also allows their witnesses, who must often explain complex topics, to be better understood by the jurors, and it results in jurors who are focused and can hear and understand the testimony far better than by

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videoconference. It is impossible to determine how trial by video rather than in person would change the outcome for any given proceeding, which is exactly why we believe all parties have a right to decline a trial via videoconference.

Very truly yours,

MultiCare Health System

A handwritten signature in blue ink, appearing to read 'MG', with a long horizontal flourish extending to the right.

Mark Gary
Sr. Vice President & General Counsel

cc: Marilyn W. Schultheis
Martha Raymond

From: [OFFICE RECEPTIONIST, CLERK](#)
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Date: Wednesday, December 29, 2021 10:48:37 AM
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From: Martha Raymond [mailto:Martha.Raymond@multicare.org]
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Attached please find comments from MultiCare Health System Legal and Risk Departments regarding the proposed amendments to CR 39.

Martha Raymond, JD | Director Insurance & Claims

System Risk & Compliance Services | **MultiCare Health System**

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