

Erwin B. "Sam" Pace, Jr.
29839 - 154th Ave. SE
Kent, WA 98042
sam@sampace.com ❖ (253) 569-2663

December 12, 2021

Hon. Charles Johnson, Co-Chair & Hon. Mary Yu, Co-Chair
Washington Supreme Court Rules Committee
P.O. Box 40929
Olympia, WA 98504-0929

Delivery: supreme@courts.wa.gov and USPS

**RE: Proposals to: 1. Amend CR 39 - Civil trials by videoconference
2. Amend CrR 3.4 - Remote appearances by criminal defendants, and
3. Adopt a new GR 41 - Jury selection via videoconference**

Dear Justice Johnson and Justice Yu,

I don't believe we've ever met. I'm a real estate broker in Kent, and my spouse is a "Pre K-12" public schools educator.

I am writing to you (both as an "individual" and as a member of "the public") to express my deep concern that the Court's current proposals as written to amend CR 39 and CrR 3.4 - and to adopt a new GR 41 - are fundamentally inconsistent with the Washington State Constitution, specifically:

- Article 1, Section 10, which requires that "*Justice in all cases shall be administered openly...*" and
- Article 1, Section 1, which provides that governments "*...are established to protect and maintain individual rights.*"

Administering justice "openly" in every case (including virtual proceedings) requires that any amendments and new rules must ensure and protect the public's collective right (and my individual right) to attend, review and record court proceedings to the same extent traditionally allowed for in-person proceedings

As currently written, all three proposals fail to protect and maintain the public, and my, Constitutional rights under Article 1:

- **Public Access:** The proposed amendments to CR 39 fail to ensure the right of the public to see and hear all trials and preliminary matters. Absent a guarantee that the public can access, see and hear every video trial and preliminary matter, the proposal is constitutionally insufficient under both Article 1, Section 10, and the 1982 *Ishikawa* case.

Protection of the constitutional rights in Article 1 must be a condition precedent in every case. No court should be allowed to even consider any alternative to in-person processes or procedures absent a finding that such processes or procedures (and the manner in which they will be used) in the individual case will be sufficient to fully satisfy the public access

mandates in Article 1, Section 10, to the same extent as ensured by in-person trials and proceedings.

The language of Article 1, Section 1, is unequivocal: "... all cases..."

I respectfully submit the Article 1 constitutional mandate does not include any carve-out for video/virtual trials and preliminary proceedings, and neither should the Court's proposed rule.

- **Effective Press Access**: Proposed CR 39(d), CrR 3.4 and GR 41 each and all fail to ensure the ability of the news media to record judicial proceedings. The press plays an important role in helping me to have the opportunity and ability to observe and understand what is happening in the courts, even if I am not able to attend the proceeding in-person, or if I'm otherwise unable to witness a live broadcast of a legal proceeding.

Currently, and for many years, open access to courtroom cameras has been "presumed" - and recording is presumptively allowed upon request. Because there is no risk of recording-related physical disruption in virtual proceedings, the case for allowing the press and other third-parties to record virtual trials and proceedings is even stronger than the current presumption for recording in-person trials and proceedings.

Third-party recordings - as well as public dissemination of both third-party and court recordings - should be presumptively allowed.

Thank you for the opportunity to submit these comments regarding the constitutional deficiencies with the proposed amendments and new rule.

Sincerely,

Sam Pace

From: [OFFICE RECEPTIONIST, CLERK](#)
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Subject: FW: Comments on Proposed Rule Changes for CR 39, CrR 3.4 & GR 41
Date: Monday, December 13, 2021 8:11:17 AM
Attachments: [WA Supreme Court Rule Committee - Sam Pace comments 12 Dec 2021.pdf](#)

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Dear Justice Johnson and Justice Yu,

Attached please find comments I'm submitting to the Washington Supreme Court's Rules Committee regarding constitutional and public-interest policy deficiencies in proposed amendments to CR 39 and CrR3.4 - and proposed new rule GR 41.

Thank you for the opportunity to offer these comments.

Sincerely,

Sam Pace

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