



8 October 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: Proposed Amendment to CR 39: Trials by Videoconference

Dear Justices Johnson and Yu:

I am the Washington Defender Association's Incarcerated Parents Project Resource Attorney, and I work to end family separation caused by parental incarceration in Washington State. I am most interested in the proposed rule change regarding Trials by the Court and the criteria or standard employed by judges when ordering *sua sponte* and without agreement of the parties, or when ordering trial by video conference over the objection of a party litigant.

Parents incarcerated in Washington State jails, prison, detention centers, and other correctional facilities would be particularly impacted by the change in rule. While the rule itself may provide an opportunity to some incarcerated litigants in certain instances, it would as proposed create barriers for others. The rule itself must safeguard against the use of judicial efficiency or convenience over that person's meaningful access to the courts, particularly in the cases where a person's fundamental interests are at stake. I propose that the rule's plain language provide structured guidance about how to treat the party-litigants, who have fundamental nonfinancial interests at stake in these trial proceedings. The trial court procedure must in every instance provide a meaningful opportunity for parents to not only participate but to meaningfully defend against the state's infringement. *See e.g., In the Matter of M.B.*, 195 Wn.2d 859, 871-74, 467 P.3d 969, 975-77 (2020).

I have grave concerns about the ability of each and every litigant, be they incarcerated or indigent, to have access to devices and internet connection that allows them to fully participate for each and every part of the trial hearing and for the length of trial necessary. I also have concerns that incarcerated parent-litigants, who are often responding to civil litigation that they did not initiate, do not have regular, consistent, and reliable access to videoconferencing in the ordinary course of residing in local and county jails and may not be accommodated in each and every case upon request at Washington state correctional facilities and out of state correctional facilities. Finally, some litigants for reasons of ability may want or need to appear in person for the entire course of the trial proceedings.

I therefore propose CR 39 (d)(2)(A) be amended to add a subsection (ii) and (iii) that reads as follows:

ii. Where a party has a fundamental nonfinancial interest at stake and where access to video conferencing equipment cannot be assured for the entirety of the trial proceedings, or where the party has a fundamental nonfinancial interest at stake objects to themselves appearing by video conference at trial by the court, the court shall take all necessary steps to ensure the objecting party or parties to be present or able to participate in person.

iii. In instances where any party objects to being on videoconference due to lack of access to video conference equipment and/or internet service or due to other access concerns governed by GR 33, the Court shall make in person attendance at trial available to said litigant(s) upon request.

Thank you for your consideration.

Sincerely,

*D'Adre Cunningham*

Ms. D'Adre Cunningham  
Washington Defender Association  
Incarcerated Parents Project Resource Attorney

