From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Proposed changes to CrR 3.4
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From: Vitalich, Andrea [mailto:Andrea.Vitalich@kingcounty.gov]
Sent: Monday, September 27, 2021 4:19 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed changes to CrR 3.4

To the Court:

I have been a deputy prosecutor for King County since 1995. As an experienced practitioner in both the trial court and the appellate courts, I have serious concerns regarding the proposed amendments to CrR 3.4.

These proposed amendments would permit a criminal case to proceed from arraignment to sentencing without the defendant ever setting foot inside a courtroom. This means that the defendant may not ever meet his or her attorney in person, that the defendant will not see trial witnesses testify in person, and that the trial court will not see the defendant in person. This is simply untenable.

The trial court's ability to conduct a colloquy to ensure a knowing, intelligent, and voluntary waiver of rights during entry of a guilty plea would be severely limited without the ability to evaluate the defendant's demeanor in person. During a trial, the jury's ability to evaluate the credibility of the defendant's testimony would be severely hampered without the ability to evaluate the defendant's demeanor in person. During sentencing, a victim's ability to meaningfully participate in the hearing without the defendant's presence would be severely limited as well. These are only a few ways in which video is a poor substitute for what the state and federal constitutions contemplate, i.e., face-to-face proceedings and confrontation rights. The proposed rule changes would apply only to the defendant, not witnesses. Therefore, a criminal trial could proceed from start to finish where the only person not present in the courtroom is the person whose presence is arguably most important.

There are numerous practical considerations as well. During the COVID pandemic, I have had many occasions to observe my spouse, a criminal defense attorney, attempting to attend hearings with his clients remotely using various video programs. The technical glitches and limitations generally make these proceedings awkward at best, and ineffective at worst. He and his clients have been disconnected, unable to join the Zoom "meeting," unable to hear each other or the court, and have experienced interruptions in both audio and video feeds. And we are in an urban area with ample internet connectivity. I can only imagine what these proceedings would be like in a rural area with limited connectivity. Losing connectivity at a crucial moment in a colloquy, or at an important point in a trial witness's testimony could be the difference between finality and reversal on appeal. Leaving such matters to the vagaries of the internet is not a good idea.

I will not repeat what other commenters have said about issues of cultural competency, privilege, and resources. Suffice to say I wholeheartedly concur. Moreover, court proceedings for defendants who are not fluent in English are already difficult; conducting a trial where the defendant is not even in the same place as his or her interpreter or attorney would compound these difficulties greatly.

Technology is a wonder, and in many ways it can make our lives easier. But technology is not a substitute for court proceedings where all parties are present. The Court should reject the proposed amendments.

Thank you for your consideration.

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