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**Subject:** FW: Comment on Proposed Amendments to CrR 3.4  
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**From:** Boeshans, Evan [mailto:[eboeshans@kingcounty.gov](mailto:eboeshans@kingcounty.gov)]  
**Sent:** Thursday, September 30, 2021 11:29 AM  
**To:** OFFICE RECEPTIONIST, CLERK <[SUPREME@COURTS.WA.GOV](mailto:SUPREME@COURTS.WA.GOV)>  
**Subject:** Comment on Proposed Amendments to CrR 3.4

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I am writing in opposition to the proposed amendments of CrR 3.4. These amendments are not a mere codification of emergency procedures implemented during the pandemic. They unnecessarily permit a dramatic expansion of remote appearances. Remote appearances work well for the occasional edge-cases involving some exigent circumstances. They should be allowed only in those edge cases, only for hearings allowed under the current version of the rule, only with proper waivers, and only with careful consideration by the Court. When implemented across the board for daily court proceedings, remote appearances have proven to be fantastically inefficient. In my personal experience as a deputy prosecutor handling countless virtual hearings, courts can accommodate—at most—approximately 50% of the hearings per calendar once switching to virtual hearings. In the face of a historic criminal case backlog, this is the last thing our court system needs. For those reasons and the ones outlined below. The Court should decline to amend CrR 3.4 as requested.

#### **Remote Appearances Disadvantage Lower Income Citizens**

Remote appearances necessarily favor individuals who can afford high-end technology. Those who can afford high-end technology can call into to Court from their homes or workplaces with less interruption to their lives. However, it must be considered that individuals without those means are now subject to entirely different proceedings, likely on different dockets, in front of different judges. While individuals with lesser means may be able to appear on remote dockets, it will likely be with lesser quality video and audio which creates potential for bias from judges or juries and potential issues for the individual struggling to fully understand the proceedings. Courthouse video appearance kiosks or appearances from attorney offices do little to solve these issues, still readily identify the appearing individual to most as someone with lesser means.

The problem does not end there. We must consider the potential that video backdrops may now play in court proceedings. With the rise of video meetings, the content of individuals' backdrops has

become an area of public fascination. There are virally popular social media accounts that catalog and rate the video backgrounds of public figures. While we rightfully give some deference to judicial officers, believing that they can set aside some bias stemming from aspects of the proceedings, these proposed amendments include the possibility of remote appearances for criminal jury trials. An individual appearing over a spotty phone connection from a street or a public area will unquestionably be at risk of biased findings and rulings when compared to the individual appearing over a high-definition computer connection from a visibly opulent home. Increased and widespread use of remote appearances will create just one more way in which bias can tip the scales of justice in Washington.

### **Remote Appearances Eliminate the Safeguards Inherent to Courtrooms**

The courtroom is a controlled environment. Judges and juries can see the entire room. They can observe body language and any interaction between the parties. They can observe the entire gallery and those sitting in it. None of this is true of even the best video proceedings. It becomes even less true when courts attempt to control for issues raised above by requiring plain, nondescript, or virtual backgrounds. Criminal defendants make life changing choices and give important testimony in court proceedings. Countless parts of the criminal justice require certain procedures to ensure that those defendants are acting freely, fairly, and without improper influence. This is not possible with virtual hearings. People have tried to influence cases with the very threat of their presence in a courtroom gallery before, it's only a matter of time before they attempt to do it from the other side of a camera. The expansions proposed by these amendments will permanently undermine confidence in Washington's court proceedings.

These are just a few of the many concerns I have with the proposed amendments. Many others have pointed out other valid issues. Modernizing our justice system and its procedures is an admirable goal, I don't believe this is the way to accomplish it.

Very Respectfully,  
Evan Boeshans

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