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Subject: FW: Opposition to proposed CrR 3.4 (final)
Date: Thursday, September 30, 2021 4:55:04 PM
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From: Behroozian, Kayvon [mailto:kbehroozian@kingcounty.gov]
Sent: Thursday, September 30, 2021 4:55 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Opposition to proposed CrR 3.4 (final)

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Hello,

I am writing to oppose the proposed changes to CrR 3.4 permitting the defendant to appear via Zoom for *all* hearings and stages in the criminal process. There are three main umbrellas of reasons for why this should not happen: (1) preserving the defendant's right to due process, (2) protecting the identities of jurors and witnesses, (3) basic logistical issues ranging from how to remand someone on a computer screen to connectivity issues.

(1) Preserving the defendant's right to due process:

There are two concerns, among many others, I wish to highlight here: (1) Assessing the knowing, intelligent, and voluntary decisions of the defendant, (2) risks to ESL minorities

- i. Judges often need to assess the defendant's decision to proceed on certain actions, particularly on guilty pleas. Their ability to do this is diminished by virtual appearances. Body language is harder to observe and assess, responses to questions may be unclear or chopped up through poor connectivity, and eye contact and tone of voice may be difficult to decipher. Moreover, when defendants need to speak with counsel in the moment about how they wish to answer a question, that is made more difficult by needing to then facilitate a breakout room, have counsel step out of the room if they are physically present, talk, and then return. This not only takes time, but may disincentivize a defendant (perhaps one who is more shy or does not wish to inconvenience others) from requesting to speak with their attorney about a matter that is quite serious to them.
- ii. Minorities for whom English is a second language are particularly affected.

The process of providing in-court translation is best facilitated in-person, and necessary for due process. When it is done virtually, connectivity and time issues strain the proceeding and risk the defendant not fully hearing or understanding what is happening. Virtual translation cannot happen in real time like it can in person. Instead, it requires the speaker to pause nearly every sentence for the translator to translate through zoom. Statistically, this increases the probability that connectivity issues will cause the defendant to mishear, not hear, or not fully grasp the proceeding. [Indeed, there is a t-mobile commercial that harkens to this very issue](#) that happens also in court.

(2) Protecting the identities of jurors and witnesses: While open court rooms always expose jurors and witnesses to the public, the relative ease with which screenshots can not only be taken on a computer screen but disseminated across the internet at lightning speed increases the exposure, and therefore the risk to jurors and witnesses who come to criminal matters. Jurors and witnesses will be disincentivized to perform their duties and come to court when this becomes a reality. This would negatively impact the justice system as a whole. It also could put the safety of those who perform their civic duties at risk.

(3) Basic logistical issues: A defendant found in violation of court orders cannot be remanded through zoom. This is just one of the many logistical problems remote appearances presents.

Time is another logistical issue that must be considered. The court's docket has ballooned during COVID, already straining the system. Adding to that strained system the time it takes to resolve technical difficulties ("you're on mute!"), setting over matters to a later date where such difficulties can't be resolved relatively quickly, and taking additional time to repeat what was clearly said in court but not transmitted properly due to poor internet connectivity all [truly adds up](#). I know this from experience handling zoom hearings currently, where prior authorization is required to appear remotely. So, in a world where everybody appears remotely because there is no prior authorization required, I expect it to add up even further – slowing down the system even more, and slowing access to justice for all.

The time issue is compounded by the translation issue discussed in my first point. The amount of time used to pause so frequently for virtual translation takes contributes to a slower court docket and increased sense of urgency placed on the judge to speed matters along, which otherwise would benefit from more time. Therefore, this proposed rule change has the potential to negatively impact nearly every case on the docket at least marginally, and negatively impact cases involving minorities who require translators to a significant degree.

Conclusion: The reality is that the ability to appear remotely is absolutely a benefit, when used in narrow circumstances — such as during a public health crisis, or when the defendant has a legitimate reason for needing to appear remotely other than personal preference or convenience. Allowing unfettered remote appearances creates more problems and harms the system more than it benefits the individual defendant.

Other considerations close to my heart: Another side concern (which may be just my preference for formality) is that the significance of the criminal proceeding is likely to be lost on the defendant because there is no longer any formality involved with the criminal process. The weight of being in a court room with a judge and jury physically present is not felt. Instead, the defendant is being arraigned and possibly tried on the same screen they use to online shop and watch Netflix. This inevitably leads to less significance being credited to the process and takes away the impact that being held accountable (or found innocent) by one’s own community is meant to have on the defendant. This harms society because the judicial system’s role is reduced to just another tab on someone’s web browser.

By the same token, there are likely unintended risks to the defendant as well – particularly when their innocence or guilt is being judged by a jury through a TV screen rather than in the flesh. We run the risk of criminal proceedings feeling more like reality TV, or worse — like virtual reality or a video game where the consequences don’t matter, rather than formal processes designed to protect the rights of the accused and encourage thoughtfulness by the jury through real world, in person, interaction and observation.

We must be careful before we acquiesce to transitioning our entire lives and systems of government to the laptop screen, or the “[metaverse](#)” as Mark Zuckerberg would refer to it.

Thank you for your consideration,
Kayvon



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