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From: Qerimi, Maggi [mailto:Maggi.Qerimi@kingcounty.gov]
Sent: Thursday, September 30, 2021 11:05 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment regarding CrR 3.4

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Good morning:

I write to express my concern about the proposed amendments to CrR 3.4.

- As a trial attorney, I have been in trial nearly every month this year. I also took cases to trial in 2020 when trials were not suspended. I am offering the following comments based on my direct experience in this role:
 - o **The proposed amendments to CrR 3.4 do not simply codify what has been in practice as a result of COVID-19, as the proposal suggests.**
 - While Voir Dire has been - in general - conducted via video conferencing (and not telephonically), jurors are not permitted to appear remotely for trial. A defendant has not appeared remotely (for proceedings such as a plea, a trial, a sentencing, etc.) in any of my cases, nor has the notion been contemplated/discussed by the parties or the court. Victims and witnesses are typically not allowed to appear remotely, except in very rare circumstances (or by agreement of the parties). For instance, a witness was allowed to testify at a trial this year via video conferencing because they were fighting terminal illness and could not take on the risk of exposure to COVID-19. Even that issue was briefed and argued before the trial court. In all other instances, my experience has been that those involved in a trial appear in person for trial, even during the pandemic.

- **Remote appearance creates inevitable technical and practical difficulties that will hinder one's right to fully participate in every critical step of trial.**
 - As an attorney, I have commonly experienced difficulty with hearing or fully understanding the proceedings in a courtroom when I have appeared remotely during this pandemic. I have often had to rely on a colleague in the courtroom to relay through written text some aspect of the proceeding. This is generally due to a poor connection and/or the unavoidable ambient noise in the courtroom that gets disproportionately transmitted.
 - It is foreseeable that defendants, especially those with limited means, will likely receive (direct and indirect) pressure from their employer to not take the time to travel to and from the courthouse for a proceeding where they have the option of appearing remotely. This would deprive them of the unhindered ability to be present in the courtroom and focus on the proceedings. Currently, defendants can explain they are required to be present in person, taking the burden off of them.
 - During in person proceedings, defendants have the opportunity to (and often do) examine exhibits with their attorneys. That will be near impossible to do over remote testimony. While some exhibits can be shared ahead of time, some are presented in real time in the courtroom (drawings, maps etc.), details of which cannot be expected to be fully visible over video conferencing.

- **Remote appearance for defendants further reinforces the fear that many victims share about unjust treatment in the criminal justice system:**
 - Our criminal justice system already places a great (and for some, an insurmountable) burden on victims of crime. I have watched children tremble as I tried to explain what would happen when they walked through the doors of a courtroom, approached the judge with their small hand raised to tell the truth to a courtroom of strangers. I have watched them take the stand knowing that their physical demeanor, their every word, their display of emotion (or lack thereof), their gaze, their shaking in fear, will be judged, pulled apart, scrutinized - from just a couple of feet away - to see if their telling of what they endured and survived passes muster. It would be unconscionable to most victims that we would think we are treating them fairly when we subject them to this harsh reality, while the defendant enjoys the privilege of appearing from the comfort of their own home.

Respectfully,

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