**From:** OFFICE RECEPTIONIST, CLERK
**To:** Linford, Tera
**Subject:** FW: Comments regarding CrR 3.4 (e) Proposed Amendments
**Date:** Tuesday, September 7, 2021 4:50:59 PM

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**From:** Manzo, Yessenia (PAO) [mailto:ymanzo@kingcounty.gov]
**Sent:** Tuesday, September 7, 2021 4:48 PM
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
**Subject:** Comments regarding CrR 3.4 (e) Proposed Amendments



To Whom It May Concern,

The proposed amendments to this rule, permitting the defendant to appear remotely for arraignment, trial, pleas, and sentencing is incredibly problematic.

While I see many issues with the proposed amendments, I will stick to a few points that I find most concerning:

1) Permitting defendants to appear remotely presents an access issue to certain populations. Socioeconomic status and race are interconnected in this country. Racially marginalized populations have less access to resources. Being present remotely requires specific resources that a significant portion of our communities do not have. The rule is, on its face, simply inequitable across communities.

2) Remote participation during trial would magnify language barriers for any defendant whose first language is not English and requires an interpreter. Interpreting legal hearings in person is complex enough. By allowing defendants to appear remotely and be in a different room than the interpreter, the communication gaps and errors in translations are exponentially increased.
Even now, I have become aware of the way remote pretrial hearings have exacerbated language barriers. Because Spanish is my first language, I have consistently corrected court interpreters when needed during hearings. This is something I practiced when we were all in person in the same courtroom. Now that pretrial hearings are remote, these interpreter errors have increased, and those human errors are understandable given it can be difficult to hear each other correctly when over the phone or on video. A prosecutor who did not speak the same language as the interpreter would have no way of catching these errors, and the communication with the defendant would be greatly, and negatively, impacted.

3) These amendments diminish the right to counsel, especially for those of marginalized populations. Without the opportunity to simultaneously consult with defense counsel, a defendant may be reluctant to consult with their attorney as much as they need, or even unable to. This is even more impactful when considering the cultural and linguistic layers that are added for a defendant that is a person of color. Some individuals are already reluctant as it is to consult and ask the questions they need from their defense attorney, having a physical separation will guarantee to add another barrier to that communication and prevent effective assistance of counsel.

4) The defendant appearing remotely for trials also exacerbate the inequities experienced by victims of color in our community. This rule allows the defendant to have the privilege to appear remotely, meanwhile victims and witnesses do not have that opportunity. As an example, it would be difficult to explain to a Hate Crime victim why the defendant has the privilege to appear remotely, but they, the person that experienced violence based on racial animus, has to walk into a courthouse and appear in person, facing all of the trauma that it means to walk into a courtroom, to be physically present in a system that is already set up against them.

There are many more nuances to the cultural, language, and racial barriers created with remote presence during trials, pleas, and sentencings. The courts have claimed to be working towards improving racial equity in the system. Courts during trial now require jurors to watch videos about implicit bias. Judges are increasing their trainings on implicit bias and on other issues around diversity and inclusion. But these trainings are limited and are largely based on passive learning. No matter how many implicit bias videos jurors or judges watch, implicit biases play a role during the trial process, a role that affects defendants, witnesses, victims, and attorneys of color. If the courts are genuinely interested in working against implicit biases in the trial process, a rule that makes it so the defendant appears remotely is significant step in the wrong direction. Remote presence is a way to further dehumanize populations and individuals that are already dehumanized in this society.

Any amendments should be proposed with a critical race theory lens. The courts have a responsibility towards our Black and Brown communities to work on de-constructing racist practices. This proposed amendment would do the exact opposite.

Gracias,

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