

The Supreme Court
State of Washington

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Sent via email

To: Justice Charles Johnson
Justice Mary Yu
Co-Chairs, Supreme Court Rules Committee

Re: Suggested amendments to the proposed GR 41

Dear Associate Chief Justice Johnson and Justice Yu:

I am writing to you on behalf of the General Civil Litigation Committee of the Court Recovery Task Force, which supports a new rule relating to the selection of a jury by videoconferencing. Our suggested amendments to the proposed GR 41 and our reasons for them follow.

The committee believes this type of rule is necessary to improve access to justice for all people who are involved in the justice system. We also believe that the adoption of this rule will be a further step towards eradicating racism.

Initially, we want to emphasize that we are only making recommendations as they relate to civil trials. We are not making any recommendations as to how this proposed rule affects criminal cases. It is our understanding from discussing this proposed rule with other committees within and without the Task Force, that the criminal defense bar will be submitting comments and may propose a separate rule that exclusively addresses criminal cases. The prosecutors may join in those comments or propose their own rule(s). If those proposals result in the court considering limitations or modifications with respect to remote jury selection in criminal cases, we would recommend that this rule be adopted, with changes, in the Civil Rules for Superior Court (CR) and for Limited Jurisdiction Courts (CRLJ).

We have included specific language suggestions to the proposed rule in the attached redline draft version of GR 41. Many of our suggestions are made so this rule is in accord with other court rules and statutes. As an example, the term "juror" in RCW 2.36.010(4) is defined as a "person summoned for service on a petit jury, grand jury, or jury of inquest as defined in this chapter." Therefore, we have removed the word "potential" throughout this draft rule. We also propose that the term "videoconference" and its derivatives be used to avoid confusion and to provide uniformity.

As a general observation, the committee believes the trial court should have discretion in how it conducts the jury trial. Although we are not opposed to uniform pattern instructions, none have been approved as of the date of this letter. Therefore, the court should have discretion to instruct the jury at an appropriate point on the procedures it will use throughout the trial.

Our research and the research of the Remote Jury Trials Workgroup confirms that exact procedures for jury selection may vary from court to court. In addition, courts have different preferences as to the substance of jury instructions. Some of these differences are driven by the videoconference platform the court is using, court staffing, access to technology and other related factors. Other differences are the result of how various judges exercise discretion in light of differing judicial philosophies.

Lastly, we believe that in finalizing a general rule, the court should avoid including other subject matters not directly related to remote jury selection – for example, requirements for open courts. By analogy, we are recommending that a “single-subject rule” be employed so that any language not on the topic of selecting a jury by videoconferencing be stricken. Our proposals reflect this belief.

Thank you in advance for the Supreme Court’s consideration of the General Civil Litigation Committee’s comments to this proposed rule.

Sincerely,



Debra L. Stephens, Justice
Washington State Supreme Court

On behalf of General Civil Litigation Committee:

Judge Timothy Ashcraft
Judge Lisa Mansfield
Judge Richard Melnick (ret.)
Judge Bruce Weiss
Vivienne Alpaugh
Alice Brown
Michael Cherry
P.J. Grabicki
Noah Jaffee
Ray Kahler
Christopher Love
Colleen Peterson
Luke Phifer

cc: Chief Justice Steven González
Jennifer Benway, AOC
Jeanne Englert, AOC

Proposed General Rule 41
[NEW]

Jury Selection by Videoconference

(a) Scope of rule. This rule addresses the procedures for conducting jury selection by videoconference in civil cases.

(b) Jury selection by videoconference. Jury selection may be conducted by videoconference in which all participants can simultaneously see, hear, and speak with each other.

(c) Procedures prior to jury selection. The court may divide the venire into smaller groups and determine the number of video participants per voir dire session, in accord with RCW 2.36.065. The court shall confirm with prospective jurors that they can participate in jury selection by videoconference. The court shall not excuse jurors from jury service who cannot participate in jury selection by videoconference due to lack of resources or access and shall have a duty to arrange for alternative methods for such jurors.

(d) Procedures during jury selection. When conducting jury selection using videoconferencing, the court shall:

1. Confirm that all jurors can see and hear the participants; ;
2. Inform jurors that their cameras must remain on and that they must remain in camera view throughout jury selection;
3. Instruct jurors on procedures to be employed during jury selection, including that jurors give their full care and attention to jury selection;
4. Inform the parties and jurors that any screen shots, visual, video, or audio recording of the hearing, other than the official record, is prohibited absent court permission; and
5. A judge may, within his or her discretion, allow the use of virtual backgrounds. Prohibit jurors from using filters or virtual backgrounds or other programs or applications to alter their appearance in any way or the appearance of the space in which they are physically located while participating in jury selection. A juror may use a virtual background with prior approval of the court. Any approved background must be plain, blurred, or otherwise nondistracting.

(e) Public access. The court shall ensure that all hearings conducted pursuant to this rule are open to the public and that the public shall be able to simultaneously see and hear all participants.

Commented [SJDL1]: The committee recommends striking the highlighted language and using only this proposed sentence recognizing the trial judge's discretion.

Commented [SJDL2]: The committee recommends striking this section, which largely restates the general openness requirement for all court hearings, though it adds a requirement that public be able to simultaneously see and hear all participants.