



**Department of
PUBLIC DEFENSE**

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Dec. 21, 2021

VIA EMAIL: Supreme@Courts.wa.gov

Justice Charles Johnson
Justice Mary Yu
Co-Chairs, Supreme Court Rules Committee
Washington Supreme Court
415 12th Ave SW
Olympia, WA 98501-2314

Subject: Comments on Proposed New Rule GR 41

Dear Justices Johnson and Yu,

The King County Department of Public Defense joins the chorus of agencies and practitioners dedicated to protecting the rights of individuals accused of crimes in urging the Committee to require that in a criminal case the use of remote voir dire procedures must require the consent of the accused person.¹ Our criminal courts must ensure that a person is tried by an impartial jury. Comments from individual public defenders and public defense agencies all affirm that remote voir dire is frequently not a sufficient substitute for in-person jury selection and must require the consent of the accused.

The deficiencies identified by these career public defenders are broad and substantial and include:

- Less effective at rooting out bias.
- Diminished ability to observe non-verbal cues.
- Reduced ability for jurors to engage with each other and foster robust, frank discussion.
- Distracted jurors (jurors not paying attention, communicating with others off camera, etc.).
- Jurors' increased ability/temptation to research the facts of the case.
- Access to technology issues for prospective jurors.
- Loss of the "human connection."
- Varied ability to manage technology in trial by attorneys and court staff.

¹ See published comments to proposed GR 41 from public defenders from Cowlitz, King, and Skagit counties, as well as the WSBA Council on Public Defense. All available at https://www.courts.wa.gov/court_rules/?fa=court_rules.commentDisplay&ruleId=5838

While we recognize that remote voir dire can sometimes be implemented in a way that protects the right to impartial trial, substantial and intentional modifications to the venire process are necessary. First, there must be smaller venires – no more than twelve people – with ample opportunity for individual voir dire. Second, there must be additional time for each venire to make remote voir dire meaningful and adequate, given the difficulties with remote communication. Third, questionnaires must be permitted in all cases so that a juror’s biases can be adequately evaluated. Finally, as the rule proposes, jurors who don’t have access to technology must still be able to participate.

As with every commenter who has committed their career to the protection of individual rights within the criminal legal system, the King County Department of Public Defense asks the Committee to ensure that in a criminal case voir dire may be conducted remotely only upon the consent of the accused.

We appreciate your time and attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anita Khandelwal', with a long, sweeping underline.

Anita Khandelwal

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Hello,

Please find attached comments by the King County Department of Public Defense on proposed new rule GR 41. Thank you for your consideration.

Regards,
Anita Khandelwal

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