

December 23, 2021

VIA E-MAIL

Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929,
supreme@courts.wa.gov

Re: Public Comment On Suggested Amendments to CR 39 and GR 9

Dear Chief Justice and Associate Justices:

Lee Smart, a firm of trial attorneys, objects to the proposed changes to CR 39 and GR 41, especially to the extent they purport to allow a trial judge to order a remote trial even when the parties do not consent.

We recognize that the pandemic required courts to implement alternatives to in-person trials. However, rules created for an emergency should not establish non-emergency procedure. Once the protections necessitated by the pandemic lift, the remote trial alternative should become just that: the alternative. In-person jury and bench trials should remain the norm, as there is no real substitute for the human interaction that a courtroom trial allows. The civil rules recognize that reality, see, e.g., CR 77(j), and the necessity to proceed remotely during the pandemic has done nothing but confirm it.

Remote participants face unique distractions that are not tolerated – or even available – in a courtroom. In a recent example, one potential juror watched voir dire from the front porch, smoking a cigarette and engaging with passers-by. In another example, our opponent's myriad technical difficulties caused enough annoyance that it probably affected his client. And it was clear that the jurors were having a lot of difficulty paying attention for a sustained period of time. Close attention to the testimony and evidence is paramount for trial, but it is much more challenging to achieve remotely.

In short, the remote trial has shown itself to be problematic in many ways, including presenting and sifting evidence for the purpose of arriving at the truth and achieving justice for the parties. While it may make sense for remote trials to remain available following the pandemic, they should be fully voluntary, rather than imposed on parties over their objection and without their consent.

Sincerely,



Steven G. Wraith
President

SGW/kxc

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Good morning,

Attached please find Steve Wraith's letter, on behalf of the entire Lee Smart, P.S., Inc. firm, objecting to the proposed/suggested amendments to CR 39 and GR 9.

Thank you,
Marie

Marie Vestal Sharpe | [Email](#)
Legal Assistant to: Carinne Bannan, Marc Rosenberg, and **Steven G. Wraith**
She/Her/Hers

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