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**Subject:** FW: Comment regarding proposed changes to CR 39 and GR 41  
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**From:** Tyler Goldberg-Hoss [mailto:tyler@cmglaw.com]  
**Sent:** Wednesday, November 17, 2021 3:40 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Carl-Erich Kruse <kruse@cmglaw.com>  
**Subject:** Comment regarding proposed changes to CR 39 and GR 41

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Good afternoon,

We write in support of proposed changes to CR 39 and GR 41.

We tried a 5+ week all-Zoom jury trial before Judge Johanna Bender in King County Superior Court in May and June, 2021. Although there were technological hiccups during the trial, they were relatively minor in nature, no worse than those experienced during in person jury trials, and were dealt with grace and professionalism by Judge Bender and court staff.

The benefits we saw far outweighed these minor issues. We would like to highlight three: a better jury pool, less logistical headaches, and better access to justice for our clients.

### **Better jury pool**

We enjoyed a more diverse jury pool, including more professionals and other employed persons, than we typically see in a King County venire (by way of example, almost everyone on our jury was college educated and employed at the time, including a librarian with a masters in education, an accountant, an architectural designer, and an attorney).

Because prospective jurors did not have to take an entire day to show up in downtown Seattle, it seemed to us that more jurors actually “showed up” as required and participated from their own homes. This allowed Judge Bender (presumably) to ask for a larger number of jurors for our 5-6 week trial, which in turn allowed her to be more free excusing jurors for hardship or cause.

Although the entire process was somewhat slow for the attorneys (who had to repeat themselves in part for each panel of jurors), for the jurors themselves it appeared relatively painless: no travel time, and allowed for distinct times during which they were required to log on and participate, with each panel lasting 40 minutes. Several jurors, for example, were able

to incorporate the voir dire into their workday – they stepped away to a quiet office for the necessary amount of time. This flexibility would be impossible if they were expected to appear in person for voir dire.

### **Less logistical headaches**

Although there were some technological hiccups, those were far outweighed by the headaches that we were able to avoid. For the attorneys, we did not need to “move in” to a courtroom downtown, nor factor into each court day the time spent traveling to and from the courthouse. For the lay and fact witnesses, they could testify from their own homes, and avoid coming into downtown Seattle, dealing with traffic, paying for parking, and so on.

Perhaps most beneficial in our medical malpractice trial, we had experts from all over, including Washington State but also Portland, San Francisco, L.A., Houston, Chicago and Baltimore. Allowing them all to testify from their offices or homes was much, much easier (and less costly) than flying them all in, having them spend a night (or two) in a hotel, and flying them back home. It also allowed these folks, who were practicing medical providers, to limit the amount of time they were taking away from their active practices.

### **Access to justice**

Certainly, the pandemic was a unique and (hopefully) unusual circumstance, and one in which necessity was the mother of invention – all Zoom trials. But necessity is the mother of invention, and King County (in particular) has invented a system of remote trials that should be available in the future, even when in person jury trials resume.

Certainly, allowing for a jury selection process over the Zoom platform even when in-person trials resume has far more pluses than minuses, in our view. It is our hope that this becomes not only available, but the norm, in all counties in Washington State.

And, if the parties both agree to full Zoom trials in the future, and the technology is available, why not allow them?

Regards,

Tyler Goldberg-Hoss and Carl-Erich Kruse

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**Medical Malpractice. It's All We Do.**

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