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STAFF

Bonnie Middleton Sterken
Equity and Justice Lead
bonnies@wsba.org

Diana Singleton
Chief Equity and Justice Officer
dianas@wsba.org



April 29, 2024

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

RE: Proposed Amendments to CR 30, CR 39 and CRLJ 38, and Proposed New GR 41

Dear Justices Johnson and Yu,

On behalf of the Access to Justice Board and the Board's Rules Committee I write to express support for a number of recently proposed court rule changes and additions and with suggestions for how the rules can be improved to further address access to justice for marginalized low-income members of our community who often struggle to secure civil legal aid. The Board appreciates that it was represented in the BJA Remote Proceedings Work Group as that group developed many of the proposals discussed below. All of the proposals were further considered by the Board's Rules Committee, chaired by Judge David Keenan, and the entire Board, whose views are set forth below.

Proposed changes to Civil Rule 30

The Board supports the proposed changes to CR 30 and suggests that the rule also address technology access. As with many of the proposed rule changes involving remote proceedings, the rule should address the concern that low-income participants in civil court proceedings in any capacity (e.g., party or witness) might lack the hardware, software, internet service, physical environment, training, and information technology support to fully access the benefits of remote court proceedings. Thus, the Board suggests that under proposed revised CR 30(b)(7), factor (c), the following underlined language be added: "(c) whether there will be prejudice to any party or the witness if testimony by remote means is permitted, including without limitation, whether a party or witness is unable to testify remotely on account of lack of access to sufficient hardware, software, internet service, physical environment, training, or technology support."

In addition, the Board suggests that revised CR 30 explicitly address accommodations for individuals living with disabilities. Remote proceedings have the potential to increase access to justice for individuals living with disabilities, and yet if not handled with sensitivity, remote technology can present many challenges for members of our community with disabilities and those with cognitive difficulties. Therefore, the Board also recommends that the following underlined language be added to CR 30(b)(7): "(f) whether the deponent can be accommodated consistent with GR 33."

Proposed changes to Civil Rule 39 and CRLJ 38

The Board supports the proposed changes to CR 39 and CRLJ 38 and suggests that the rules also address technology access. The proposed changes to these rules should address the concern that low-income participants in civil court proceedings in any capacity (e.g., party or witness) might lack the hardware, software, internet service, physical environment, training, and information technology support to fully access the benefits of remote court proceedings. This is particularly important given that proposed changes to these rules allow for an entire trial to be held remotely.

Given that many low-income members of our community facing pressing civil legal needs struggle merely to access attorney representation and thus proceed in court (if they reach court at all) without representation, lack of technology access could amount to yet another barrier in accessing justice. The Board appreciates that many low-income individuals are able to access smart phones and other technology to appear remotely, and that for some, remote access can actually increase access to justice. Still, technology access is a barrier for many, and the Board is concerned that the benefits of remote trials will be disproportionately secured to those with the wealth to obtain the technology infrastructure and support to conduct a remote trial.

Ultimately, the Board is not suggesting any further changes to CR 39 or CRLJ 38 to address technology access. The Board does suggest that the Supreme Court consider whether to convene stakeholders to consider how best to support civil legal aid clients and providers in accessing remote court proceedings.

Separately, the Board suggests that the following underlined language be added to CR 39(d)(1) and CRLJ 38(i): “The court shall ensure that all interpretation conducted in proceedings under this rule is done consistent with GR 11.3.”

Proposed New General Rule 41

The Board supports proposed new General Rule 41. Remote jury selection has the potential to increase jury diversity and access, including for example by reducing the financial burdens of time away from work, the need to travel to court, and the need to secure childcare. As with other remote proceedings, the proposed new rule should address the concern that low-income prospective jurors might lack the hardware, software, internet service, physical environment, training, and information technology support to fully access the benefits of remote jury selection.

The Board appreciates that the proposed rule provides that “The court shall not excuse potential jurors from jury service who cannot participate in jury selection using remote technology due to lack of resources or access and shall arrange for alternative methods, including but not limited to in person voir dire, for such potential jurors.” This language at least prevents courts from excluding such jurors from consideration. However, given that the only alternative method example listed is to appear in person, the result for those lacking technology access is that they must potentially endure all of the hardships that remote access might otherwise address, and all because they already lack the technology. In this way, prospective jurors from marginalized groups might be inadvertently further marginalized by a rule that could otherwise benefit those groups. As an initial matter, the Board suggest that the Supreme Court consider a budget request to assist courts in creating technology solutions for prospective jurors lacking access to participate in remote jury selection. In addition, the

Board suggests that the following underlined language be added to GR 41(c): "The court shall not excuse potential jurors from jury service who cannot participate in jury selection using remote technology due to lack of resources or access and shall arrange for alternative methods, including but not limited to in person voir dire, providing tablets or other devices and technology support, or providing remote jury selection spaces in the community such as libraries or community centers for such potential jurors."

In addition, the Board is concerned about GR 41(d)'s requirement that "Jurors shall not use filters or virtual backgrounds or other programs or applications to alter the appearance of the space in which they are physically located." Some prospective jurors might, for any number of reasons, not want other jurors, court staff, counsel, and the court to view the details of their physical environment. At a minimum, prospective jurors should be allowed to blur their backgrounds. The Board is not suggesting, for example, that prospective jurors be able to display other virtual backgrounds that might be distracting. Provided that jurors are advised not to multitask and to give the proceedings their full attention, there should be few if any concerns requiring the court to see the interior of a juror's home or space where they participate in jury selection. The Board suggests that the following underlined language be added to GR 41(d): "The juror's demeanor and appearance shall remain their own as if they were in person and shall not be manipulated or altered. Jurors may blur their background to protect their privacy but shall not otherwise use distracting filters or virtual backgrounds or other programs or applications to alter the appearance of the space in which they are physically located."

Sincerely,

A handwritten signature in blue ink that reads "Esperanza Borboa". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Esperanza Borboa, Chair
Access to Justice Board

Cc: Terra Nevitt, Executive Director, Washington State Bar Association

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
Subject: FW: Proposed Amendments to CR 30, CR 39 and CRLJ 38, and Proposed New GR 41
Date: Monday, April 29, 2024 1:46:53 PM
Attachments: [2024.4.29.ATJ Board Letter Re Rules Proposals.pdf](#)
[image002.png](#)

From: Bonnie Sterken <bonnies@wsba.org>
Sent: Monday, April 29, 2024 11:49 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Esperanza Borboa <esperanza@challengetherules.org>; Keenan, David <David.Keenan@kingcounty.gov>; Terra Nevitt <terran@wsba.org>
Subject: Proposed Amendments to CR 30, CR 39 and CRLJ 38, and Proposed New GR 41

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Good morning,

Attached, please find a letter from the Access to Justice Board regarding the proposed amendments to CR 30, CR 39 and CRLJ 28, and the proposed new GR 41.

Thank you,



Bonnie Middleton Sterken | Equity and Justice Lead
Washington State Bar Association | bonnies@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
Pronouns: She/Her

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