

April 24, 2024

Justices of the Washington Supreme Court
P.O. Box 40929
Olympia, Washington 98504-0929

VIA E-MAIL: supreme@courts.wa.gov

RE: Amendment to Proposed General Rule 41

Dear Justice Yu,

The state and federal constitutions enshrine the right to a fair trial by an impartial jury in criminal cases. The proposed GR 41 does not protect the rights of a person charged with a crime. The proposed rule also does not provide guidance, constraints, or process regarding a trial court's determination of whether remote jury selection is appropriate in a particular case.

If the Court adopts this rule, it should add the following sentence to (b):

In a criminal case, jury selection shall be held in person unless specifically requested by the defendant.

Jury selection is a critical stage of the trial. A person charged with a crime may seek in-person jury selection for many reasons, including concerns that remote jury selection prevents attorneys from assessing group dynamics, creates difficulty with observing non-verbal cues, increases the likelihood of distractions while online or in remote locations, and limits participation when technical difficulties occur. Proposed GR 41 does not provide sufficient protections when the defense raises these issues.

Nor can this Court be assured that jurors who participate remotely will have the same access to technology. Some jurors will be able to participate on a computer screen with a webcam and home internet, while others will have to use their cell phone and cellular service. This

inequality will skew the jury pools towards specific demographics that will have implications for persons charged with crimes.

Further, while trial judges can control the environment when jury selection takes place in a courtroom, they cannot account for outside factors that could occur in a person's remote location, such as other family members, media reports, or other potential influences.

The right to a fair trial by an impartial jury belongs to the person charged with a crime. A defense objection to remote jury selection should be honored when determining how a jury should be picked. Adding this additional sentence to will help protect the rights of those charged with crimes.

Sincerely,

King County Department of Public Defense

Jason Schwarz, Director
Snohomish County Office of Public Defense

Kathleen Kyle, Executive Director
Snohomish County Public Defender Association

Magda Baker, Director of Legal Services
Washington Defender Association

Washington State Office of Public Defense

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From: Magda Baker <Magda@defensenet.org>
Sent: Wednesday, April 24, 2024 10:32 AM
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King County Department of Public Defense, Snohomish County Office of Public Defense, Snohomish County Public Defender Association, Washington Defender Association, and Washington State Office of Public Defense submit the attached comment regarding proposed GR 41.

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