



**Department of  
PUBLIC DEFENSE**

**Anita Khandelwal, Director**

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April 30, 2024

Chief Justice Steven González  
P.O. Box 40929  
Olympia, WA 98504-0929

Dear Chief Justice González,

The King County Department of Public Defense respectfully requests the Court reject proposed Juvenile Court Rule 11.23 (“Proceedings Using Remote Technology Authorized”). The proposed court rule is excessively broad in its scope, authorizing remote appearance at all dependency and termination hearings and trials for professional and non-professional parties alike. The proposed rule threatens to shift the nature of these proceedings in fundamental ways that will harm both access to justice for our clients and undermine their faith in these proceedings.

As Courts have long recognized, dependency cases implicate both fundamental rights and cherished human relationships. *M.L.B. v. S.L.J.*, 519 U.S. 102, 119, 117 S. Ct. 555, 565, 136 L. Ed. 2d 473 (1996) (noting that “[f]ew consequences of judicial action are so grave as the severance of natural family ties.”)

Prior to the pandemic, all dependency hearings and trials took place in person, with accommodations made as necessary to allow access to justice. Accommodations for parents were frequently necessary as they are nearly always people living in poverty, which makes appearing in person challenging. Clients sometimes live in rural areas without access to public transportation, in other states, in inpatient drug treatment, and sometimes in other countries. Therefore, at least in King County, clients were routinely permitted to appear using remote technology (then, typically by telephone). On the other hand, professional parties were required to appear in person unless they had received advance written permission from the Court to appear remotely. (See attached Ex. A, 2019 King County Superior Court telephonic appearance protocol).

Yet, since the pandemic, the dynamic has changed – professional parties (*e.g.*, the Attorney General’s office, DCYF social workers, the court appointed special advocates and their lawyers, as well as some defense lawyers) have expressed a preference for appearing remotely for many hearings for their own convenience. Courts have accommodated remote appearance for professional parties while, simultaneously, exhibiting some frustration when parents who wish to appear remotely are not able to secure a good Wi-Fi connection or a clear video presentation. An unhoused client attempting to use public Wi-Fi on an older, poorly charged device, will have far

more technological challenges than a lawyer from the Attorney General's office appearing from their home office. Creating an equal expectation for both people ignores the reality of our clients' lives. In addition, our clients often believe that the people prosecuting their case are, quite literally, just "phoning it in."<sup>1</sup>

We urge you to reject proposed Juvenile Court Rule 11.23 because it fails to distinguish between the kinds of reasons a court may authorize remote technology, fails to offer protections for parents and families who have the most at stake in these cases and the fewest resources, and threatens to cement a practice in which many professional parties appear remotely for mere convenience.

Instead, when determining who can appear remotely and for what reason, special consideration should be given to the needs and preferences of the families involved in these cases, facilitating their ability to participate, as was routine before the pandemic. Our clients are the ones who have constitutional rights at stake. The proposed rule should be rejected because it does not distinguish between a parent's need to participate remotely to defend their constitutional rights and the mere convenience of professionals.

Although the proposed rule makes off-hand reference to due process, that reference is insufficient to protect families for at least two reasons: *first*, the Court should be concerned with creating a culture of remote participation that undermines families' faith in these proceedings even if it does not rise to the level of a constitutional violation, and *second*, because there is no right to appeal most dependency court decisions (e.g., shelter care hearing orders, permanency planning orders, review hearing orders, orders granting or denying motions to return a child home) enforcing any due process protections will be very challenging.

Furthermore, merely mentioning CR 43 in the rule provides insufficient protection to our clients when the culture of remote participation has shifted so dramatically. In the very early stages of the pandemic Your Honor wrote:

Courts have long recognized the significance of in-person testimony. William Blackstone observed centuries ago that "[by] examination of witnesses *viva voce*, in the presence of all mankind, ... and this [method] only, the persons who are to decide upon the evidence have an opportunity of observing the quality, age, education, understanding, behaviour, and inclinations of the witness." *Whitesides v. State*, 20 P.3d 1130, 1136 (Alaska 2001) (alterations in original) (quoting 3 William Blackstone, *Commentaries*). Because we recognize that a fact finder who observes a witness in person is better able to judge their credibility, we give

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<sup>1</sup> In the criminal context, an August 2021 Stanford Law School report entitled "Virtual Justice? A National Study Analyzing the Transition to Remote Criminal Court" found that most people surveyed had substantial concern that something was lacking in virtual communications; some people "associated virtual interactions with decreased empathy, othering, and dehumanization of defendants." We share those concerns, including the insight from the report that it is hard to name precisely what is lost in a virtual court setting, making it hard to articulate the importance of being in person. Available at: <https://law.stanford.edu/publications/virtual-justice-a-national-study-analyzing-the-transition-to-remote-criminal-court/>

deference to many trial court determinations, including parental termination decisions. *See id.*; *In re Parental Rights to K.M.M.*, 186 Wash.2d 466, 477, 379 P.3d 75 (2016).

*Matter of Welfare of M.B.*, 195 Wn.2d 859, 871, 467 P.3d 969, 976 (2020). Yet, recently, we have found that trial courts are far more willing to permit remote witness testimony, particularly from witnesses who they deem “professional” and therefore, apparently, less important to scrutinize. As the culture continues to move to widespread remote participation it becomes harder and harder to articulate a reason to “inconvenience” a particular witness who would rather not have to attend court in person.

The proposed rule is even more problematic because it states that, as sanction for being disconnected, a court may determine the person voluntarily absented themselves from the proceeding. It is easy to imagine that this rule will be applied most often against parents in dependency cases who are both more likely to have ill-functioning technology and less likely to receive the benefit of the doubt. Yet, in many cases a brief recess to allow the parent’s attorney to contact their client will better serve the ends of justice than simply assuming they chose not to participate in the hearing. The situation is also troubling when the person not present remotely is the Attorney General, DCYF social worker, or the defense counsel – what should a court do if those people are absent? The rule appears to suggest the hearing would continue without them, which raises other due process considerations.

Finally, the rule is potentially inconsistent with provisions of the Washington State Indian Child Welfare Act that require certain voluntary placement agreements be executed “before a judge.” RCW 13.38.150(1) (“If an Indian child’s parent or Indian custodian voluntarily consents to a foster care placement of the child or to termination of parental rights, the consent is not valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the judge’s certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian.”).

We were not consulted about this proposed rule before it was submitted, and so we have not had an opportunity to give direct feedback or to propose an alternate rule. Therefore, we respectfully request that you reject this proposed juvenile court rule to allow for more robust conversations about the appropriate use of remote technology in these cases.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anita', followed by a long, horizontal, wavy line.

Anita Khandelwal  
Director

# PROTOCOL

## REQUEST TO APPEAR BY PHONE

**EFFECTIVE 4/22/19**

### NEED FOR PROTOCOL CHANGE

There has been a significant uptick in the amount of parties appearing by phone. The expectation is all professional parties (attorneys, social workers, interpreters, etc.) appear in person for scheduled hearings. There are two exceptions: Kent attorneys and social workers appearing on the lead judge's calendar and tribal representatives (notice of appearance by phone is still required for calendar planning purposes).

### CHANGE IN PROTOCOL

Previously, parties only needed to provide notice of the intent to appear by phone. To alleviate calendar congestion, parties will need to request and receive court permission to appear by phone.

### REVISED PROTOCOL

At least 24 hours prior to the scheduled hearing (excluding weekends, holidays or other court closures), the requestor needs to email the below information to the dependency email box at the appropriate location ([calendar.dependencykent@kingcounty.gov](mailto:calendar.dependencykent@kingcounty.gov) or [calendar.dependencyseattle@kingcounty.gov](mailto:calendar.dependencyseattle@kingcounty.gov)) or [berns.court@kingcounty.gov](mailto:berns.court@kingcounty.gov):

- Requestor's Name
- Date and Time of Hearing
- Case Name
- Cause Number
- Role/Appearing for:
- Contact Phone Number
- Reason for Telephonic Appearance
- Why Obtaining Coverage for your Case Not Possible

The bailiff or coordinator will present your request to the judicial officer and will respond to your email advising of the approval or denial. If your request was sent in the morning, a response will be provided that afternoon. If your response was provided in the afternoon, the response will be sent the following morning. The more notice you give, the better.

If your request is approved, it is assumed that you will be available at the phone number provided for the duration of the calendar. The court will make two phone attempts. If the requester does not answer the hearing will proceed and it will be noted on the record that the court did attempt to make telephonic contact.

If a telephonic request was not made in advance, the court will inquire as to the lack of notice, but there will be no need for formal argument at hearing.

The court will not grant continuances for any shelter care hearings. Attorneys must appear in person to meet with parent/guardian/client.

**Ex. A**

## EMERGENCY REQUEST

It is understandable that unforeseen circumstances happen (illnesses, traffic jams, snow events, etc.) and meeting the 24 hour requirement is not possible. In those **emergent** situations, please:

- Email the above information to the appropriate dependency email box. The bailiff or coordinator will respond that your request was received
- Contact the other parties on your case and let them know you need to appear by phone

The court will do its best to accommodate the requestor, but cannot guarantee the request will be seen in time. The more notice given the better. If you do not receive a response to your request, please call:

- Kent: 206-477-2758   Seattle: 206-477-2310 SEA   Lead Bailiff: 206-477-1477

## NON-PROFESSIONAL PARTY TELEPHONIC NOTICE

If an attorney knows that his/her client will not be able to appear in person for a hearing, please email the dependency email box (or lead bailiff) with as much notice as possible and provide:

- Case Name
- Case Number
- Date and Time of Hearing
- Attorney Name
- Client Name
- Client Telephone Number

Having this information in advance of the hearing will help with calendar management.

## BE PREPARED!

Court staff will page parties for hearing and will also announce the next case on deck. Attorneys on the next case should call their client in the interim and advise the client to be ready as the court will call shortly. It would be helpful if the attorney could let the client know that once introductions are done, the client should mute the phone so background noise does not disrupt court proceedings. The Attorney General should work with any tribal representative in advance of any hearing.

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Martinez, Jacquelynn](#)  
**Subject:** FW: Comment re: Juvenile Court Rule 11.23  
**Date:** Tuesday, April 30, 2024 1:31:26 PM  
**Attachments:** [JuCR Comments.FINAL.pdf](#)

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**From:** Khandelwal, Anita <Anita.Khandelwal@kingcounty.gov>  
**Sent:** Tuesday, April 30, 2024 12:20 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment re: Juvenile Court Rule 11.23

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Dear WSSC Clerk:

Attached is a comment concerning Juvenile Court Rule 11.23 ("Proceedings Using Remote Technology Authorized").

Thank you.

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Pronouns: she/her