



April 30, 2024

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

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

RE: Proposed JuCR 11.23

Dear Justice Yu,

The Washington Defender Association is concerned about proposed new court rule JuCR 11.23. The proposed rule would let courts “allow persons to use remote technology (e.g., telephone, video conferencing) to appear at any hearing” in a dependency case. We object to the rule as written because it allows broad judicial discretion without providing sufficient guidance about how to use that discretion.

We agree with the comment submitted by the King County Department of Public Defense but write separately to share our additional thoughts.

Any rule on remote hearings in dependency cases must safeguard against courts prioritizing judicial efficiency or convenience over a parent’s right to meaningfully access the courts when their fundamental interests are at stake. Trial court procedures must provide a meaningful opportunity for parents not only to participate, but also to defend and assist their counsel in defending against the infringement of their parenting rights and relationships. Although the Supreme Court of Washington has found there was no absolute right of a parent to be physically present at their termination trial hearings, the dependency court cannot force a parent to participate remotely without providing meaningful opportunity to hear the evidence in the State’s case or to assist their attorney during the trial. *See In re the Matter of M.B.*, 195 Wn.2d 859, 871-74, 467 P.3d 969, 975–77 (2020). Furthermore, GR 33

requires courts to consider requests for accommodations by people with disabilities, which may include requests to appear in person.

Any mandate that a parent, who has fundamental interests in keeping their family together, participate remotely in their dependency court proceedings must be accompanied by a court procedure that supports meaningful access to that specific court hearing, a meaningful opportunity to hear the evidence and a meaningful opportunity to assist their attorney. The proposed rule provides no guidance about accommodating parents so that they can participate meaningfully in their cases when they appear remotely.

We are further concerned by subsection (b)(5) of the proposed rule, which states that if a person is using remote technology to appear is disconnected and they fail to immediately contact the court or reappear, the court may determine they voluntarily left the hearing. Many parents in dependency cases are represented by appointed counsel because they are indigent. An assumption that a failure of technology is a failure of the parent to remain in a hearing is unfair to parents who lack reliable technology due to incarceration or other circumstances. This subsection would harm parents and their children because it would cause courts to treat people with the least resources the most harshly.

Finally, we are concerned that the proposed rule would let courts allow testifying professional parties, such as social workers from the Department of Children Youth and Families (DCYF) and court appointed special advocates, to appear remotely merely for their own convenience. At hearings where testimony is taken and a parent's fundamental rights are at stake, the default should be for these important witnesses to appear in person so that they can be subject to meaningful cross examination and scrutiny. RCW 13.34.090 sets out statutory rights of parents in dependency proceedings, which include the rights to be heard on their own behalf, to examine witnesses, and to introduce evidence. Parents may find they are best able to enforce these rights when the State's witnesses are present in court. At the very least, the rule should give courts guidance about when it may allow professional parties to appear remotely.

Thank you for your time and attention.

Sincerely,

A handwritten signature in cursive script, reading "D'Adre Cunningham".

D'Adre Cunningham
Incarcerated Parents Project Resource Attorney

A handwritten signature in cursive script, reading "Magda Baker".

Magda Baker
Director of Legal Services

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
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Sent: Tuesday, April 30, 2024 2:44 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: D'Adre Cunningham <dadre@defensenet.org>
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Attached is the Washington Defender Association's comment regarding proposed court rule JuCR 11.23.

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