THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO SUPERIOR COURT AND COURT OF LIMITED JURISDICTION RULES AND SUGGESTED NEW GENERAL RULE	)	**O R D E R** NO. 25700-A-1549

The BJA COVID Recovery Task Force Remote Proceedings Workgroup, having recommended the suggested amendments to Superior Court and Court of Limited Jurisdiction Rules and suggested new General Rule, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2024.

(b) The purpose statement as required by GR 9(e) is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2024. Comments may be sent to the following

addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov.

Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 9th day of November, 2023.

For the Court

González, C.J.

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO ARLJ 3

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
   Email: AGerl@cawh.org
   Phone: (509) 244-2773

3. Purpose of Suggested Rule Amendment

   The amendments to this rule define terms such as "appearance," "appearance through counsel" "physically appear," "participant," "remotely appear," "remote technology," and "telephonic." The proposed amendments have also moved definitions from various other court rules so as to use ARLJ 3 as a central rule for the majority of definitions of terms. These rule changes provide for uniform definitions across civil and criminal rules for courts of limited jurisdiction in one location for ease of use by practitioners and provides guidance for the use of remote technology.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

ARLJ 3
DEFINITION OF TERMS

As used in these rules, unless the context clearly requires otherwise:

(1) “Appear” or “appearance” means a physical appearance, remote appearance, or appearance through counsel.

(2) “Appear through counsel” and “appearance through counsel” means that counsel appears on behalf of the plaintiff, defendant, petitioner, or respondent.

~~(6)~~ (3) "City" shall be construed to include towns.

(4) “Counsel” means a person admitted to the practice of law by order of the Washington State Supreme Court.

~~(1)~~ (5) "Court" means any court inferior to the superior court.

(6) “Court proceeding” means all court hearings, depositions, and all other proceedings over which the court exercises jurisdiction.

~~(2)~~ (7) "Judge" shall include every judicial officer authorized, alone or with others, to hold or preside over any court of limited jurisdiction, or any court inferior to the superior court which may be hereinafter established.

~~(3)~~ (8) "Oaths" include affirmations.

~~(5)~~ (9) "Offenses against the State" shall, wherever appropriate, include offenses against a county or a city by virtue of violation of an ordinance or resolution.

(10) “Participant” means any person appearing in a court proceeding and includes, but is not limited to (A) the plaintiff, defendant, petitioner or respondent; (B) counsel for the plaintiff, defendant, petitioner or respondent; (C) witnesses; (D) interpreters; (E) jurors; and (F) court reporters for depositions.

(11) “Physically appear” and “physical appearance” means present in-person at the location of the court proceeding.

~~(4)~~ (12) "Prosecuting Attorney" or "prosecutor" includes deputy prosecuting attorneys, and city attorneys, corporation counsel, and their deputies and assistants, or such other persons as may be designated by statute or court rule.

(13) “Remotely appear” and “remote appearance” means a telephonic appearance or appearance by remote technology approved by the court.

(14) “Remote technology” means technology that permits all participants to see and hear each other during the proceedings, speak as permitted by the judge, and allows confidential communications between counsel and client. The remote connection shall be of sufficient

quality to ensure that participants are clearly visible, and the audio connection permits the making of the official court record of the proceedings.

~~(7)~~ (15) "State", whenever appropriate, shall include a city or town.

(16) “Telephonic” means audio connections that permit all participants to hear each other during the proceedings, speak as permitted by the judge, and allows confidential communications between attorney and client. The audio connections shall be of sufficient quality to permit the making of the official court record of the proceedings.

[Adopted as JAR 3 effective July 1, 1963; Renamed ARLJ 3 effective September 1, 1989.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO ARLJ 11

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
   Email: AGerl@cawh.org
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3. Purpose of Suggested Rule Amendment

   In this proposed rule change, section (a)(3) is modified to remove the term "in court." This permits remote testimony. Section (b) is amended to remove the term "face-to-face." This expands opportunities for remote interviews with probation. This rule does not mandate that interviews be in person or remote, but removes potential that the rule be interpreted to require an in-person interview for all probationers.

   During group discussions through the process there were some comments regarding the inability to assess the demeanor and identity of probationer. Members agreed local rules can address preferences of individual jurisdictions but the state rule should be open and flexible on misdemeanant probation matters. Group vote on this was nearly unanimous, with one prosecuting attorney opposing the amendment.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

ARLJ 11

MISDEMEANANT PROBATION DEPARTMENT

RULE 11 PROBATION DEPARTMENT

RULE 11.1 DEFINITION

A misdemeanant probation department, if a court elects to establish one, is an entity that provides services designed to assist the court in the management of criminal justice and thereby aid in the preservation of public order and safety. This entity may consist of probation officers and probation clerks. The method of providing these services shall be established by the presiding judge of the local court to meet the specific needs of the court.

RULE 11.2 QUALIFICATIONS AND CORE SERVICES OF PROBATIONDEPARTMENT PERSONNEL

(a) Probation Officer Qualifications.

(1) A minimum of a bachelor of arts or bachelor of science degree that provides the necessary education and skills in dealing with complex legal and human issues, as well as competence in making decisions and using discretionary judgment. A course of study in sociology, psychology, or criminal justice is preferred.

(2) Counseling skills necessary to evaluate and act on offender crisis, assess offender needs, motivate offenders, and make recommendations to the court.

(3) Education and training necessary to communicate effectively, both orally and in writing, to interview and counsel offenders with a wide variety of offender problems, including but not limited to alcoholism, domestic violence, mental illness, sexual deviancy; to testify ~~in court~~, to communicate with referral resources, and to prepare legal documents and reports.

(4) Anyone not meeting the above qualifications and having competently held the position of probation officer for the past two years shall be deemed to have met the qualifications.

(b) Probation Officer--Core Services.

(1) Conduct pre/post-sentence investigations with ~~face-to-face~~ interviews and extensive research that includes but is not limited to criminal history, contact with victims, personal history, social and economic needs, community resource needs, counseling/treatment needs, work history, family and employer support, and complete written pre/post sentence reports, which includes sentencing recommendations to the court.

(2) For offenders referred to the misdemeanant probation department, determine their risk to the community using a standardized classification system with a minimum of monthly ~~face to face~~ interviews for offenders classified at the highest level.

(3) Evaluate offenders' social problems, amenability to different types of treatment programs, and determine appropriate referral.

(4) Supervise offenders with ~~face to face~~ interviews depending on risk classification system.

(5) Oversee community agencies providing services required of offenders with input to the judicial officer (e.g., alcohol/drug, domestic violence, sexual deviancy, and mental illness).

(6) Other Duties. The core services listed under both probation officer and probation clerk are not meant to exclude other duties that may be performed by either classification of employee or other court clerical staff, such as record checks, calendaring court proceedings, and accounting of fees.

(c) Probation Clerk Qualifications.

(1) High school or equivalent diploma.

(2) Efficient in all facets of basic clerical skills including but not limited to keyboarding, computer familiarity and competence, filing, and positive public interaction.

(3) Above average ability in dealing with stress and difficult clients.

(4) Ability to complete and perform multi task assignments.

(d) Probation Clerk--Core Services.

(1) Monitor compliance of treatment obligations with professional treatment providers.

(2) Report offender noncompliance with conditions of sentence to the court.

(3) Coordinate treatment referral information, and monitor community agencies for statutory reporting compliance.

(4) Anyone not meeting the above qualifications and having held the position of probation clerk for the past two years shall be deemed to have met the qualifications.

(5) Other Duties. The core services listed under both probation officer and probation clerk are not meant to exclude other duties that may be performed by either classification of employee or other court clerical staff, such as record checks, calendaring court proceedings, and accounting of fees.

RULE 11.3 STATUTORY PROBATION SERVICE FEES TO BE USED FOR PROBATION SERVICES

All positions, which are funded by statutory probation service fees, shall be limited to working with individuals or cases who are on probation. Any additional funds raised from statutory probation services fees beyond what is necessary to fund the positions in the probation department shall be used to provide additional levels of probation services.

[Adopted effective September 1, 2001.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED NEW RULE ARLJ 15

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
   Email: AGerl@cawh.org
   Phone: (509) 244-2773

3. Purpose of Suggested Rule Amendment

   This is a new rule proposed to provide for a default appearance standard as physical appearance in limited jurisdiction courts. This rule works in conjunction with CrRLJ 3.4, ARLJ 3, and other rules authorizing remote appearances.

   Until recently, appearances were physical only, with a few exceptions. We had no need to say how participants appeared. If the statewide rule does not adopt a default for in-person, a participant may attempt appear remotely in a court that does not have remote appearances. For example: Petitioner requests vehicle impound hearing and decides to appear remotely at a court which does not have the capacity to conduct an evidentiary hearing remotely. The court maintains the discretion to allow remote appearances or to require someone to appear in-person where there is good cause to do so.

   Ultimately this rule was nearly unanimous, but was opposed by the public defense representative in the group who felt as if the presumption of personal appearance was an obstacle to accessing courts, particularly for indigent people and those suffering from some medical or mental health conditions.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted. This rule was subject to some lengthy discussion during our meetings and may benefit from a comment period.

5. Is a Public Hearing Recommended? No.

ARLJ 15
APPEARANCES BY PARTICIPANTS

(New Rule)

(a) All participants shall physically appear for court proceedings unless a statute, court rule, or order of the court permits a remote appearance or appearance through counsel.

(b) Any participant permitted to remotely appear or appear through counsel may be required to physically appear for good cause shown.

(c) Any participant required to physically appear may be permitted to remotely appear or appear through counsel in the discretion of the court.

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CRLJ 7

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
   Email: AGerl@cawh.org
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3. Purpose of Suggested Rule Amendment

   The proposed changes to this rule remove reference to "telephonic" and "telephone conference call" to replace it with "remote appearance" to encompass a variety of remote appearance platforms. The language regarding expense has been stricken as generally these appearances do not result in additional cost to the parties as had once been the case with long distance calls.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CRLJ 7
PLEADINGS ALLOWED: FORM OF MOTIONS

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is summoned under the provisions of rule 14; and a third party answer, if a third party complaint is served. No other pleadings shall be allowed, except that the court may order a reply to an answer or a third party answer.

(b) Motions and Other Papers.

(1) *How Made*. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) *Form*. The rules applicable to captions, signing, and other matters of form of pleadings apply to all written motions and other papers provided for by these rules.

(3) *Identification of Evidence*. When a motion is supported by affidavits or other papers, it shall specify the papers to be used by the moving party.

~~(4) *Telephonic* *Argument* by Remote Appearance~~. Oral argument on civil motions, including family law motions, may be heard by ~~conference telephone call~~ remote appearance the discretion of the court. ~~The expense of the call shall be shared equally by the parties unless the court directs otherwise in the ruling or decision on the motion.~~

(c) Demurrers, Pleas, etc., Abolished. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

[Adopted effective September 1, 1984; Amended effective September 1, 1989; September 1, 1994.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CRLJ 26

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

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3. Purpose of Suggested Rule Amendment

   Proposed changes to the rule to allow for remote depositions upon agreement of the parties or order of the court. Depositions are not as common in lower courts as they are in superior courts. This rule changes allows for remote depositions. If the parties do not agree, a party can motion the court for an order regarding remote depositions.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CRLJ 26
DISCOVERY

Discovery in courts of limited jurisdiction shall be permitted as follows:

(a) Specification of Damages. A party may demand a specification of damages under RCW 4.28.360.

(b) Interrogatories and Requests for Production.

(1) The following interrogatories may be submitted by any party:

(A) State the amount of general damages being claimed.

(B) State each item of special damages being claimed and the amount thereof.

(C) List the name, address, and telephone number of each person having any knowledge of facts regarding liability.

(D) List the name, address, and telephone number of each person having any knowledge of facts regarding the damages claimed.

(E) List the name, address and telephone number of each expert you intend to call as a witness at trial. For each expert, state the subject matter on which the expert is expected to testify. State the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(2) In addition to section (b)(1), any party may serve upon any other party not more than two sets of written interrogatories containing not more than 20 questions per set without prior permission of the court. Separate sections, paragraphs or categories contained within one interrogatory shall be considered separate questions for the purpose of this rule. The interrogatories shall conform to the provisions of CR 33.

(3) The following requests for production may be submitted by any party:

(A) Produce a copy of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of any judgment which may be entered in this action, or to indemnify or reimburse the payments made to satisfy the judgment.

(B) Produce a copy of any agreement, contract or other document upon which this claim is being made.

(C) Produce a copy of any bill or estimate for items for which special damage is being claimed.

(4) In addition to section (b)(3), any party may submit to any other party a request for production of up to five separate sets of groups of documents or things without prior permission of the court. The requests for production shall conform to the provisions of CR 34.

(c) Depositions.

(1) A party may take the deposition of any other party, unless the court orders otherwise.

(2) Upon agreement of the parties or order of the court, remote depositions may be conducted using a remote technology and shall be treated the same as an in-person deposition.

~~(2)~~ (3) Each party may take the deposition of two additional persons without prior permission of the court. The deposition shall conform to the provisions of CR 30.

(d) Requests for Admission.

(1) A party may serve upon any other party up to 15 written requests for admission without prior permission of the court. Separate sections, paragraphs or categories contained within one request for admission shall be considered separate requests for purposes of this rule.

(2) The requests for admission shall conform to the provisions of CR 36.

(e) Other Discovery at Discretion of Court. No additional discovery shall be allowed, except as the court may order. The court shall have discretion to decide whether to permit any additional discovery. In exercising such discretion the court shall consider (1) whether all parties are represented by counsel, (2) whether undue expense or delay in bringing the case to trial will result and (3) whether the interests of justice will be promoted.

(f) How Discovery to Be Conducted. Any discovery authorized pursuant to this rule shall be conducted in accordance with Superior Court Civil Rules 26 through 37, as governed by CRLJ 26.

(g) Time for Discovery. Twenty-one days after the service of the summons and complaint, or counterclaim, or cross complaint, the served party may demand the discovery set forth in sections (a)-(d) of this rule, or request additional discovery pursuant to section (e) of this rule.

[Amended effective September 1, 1994; September 1, 1999; September 1, 2005; September 1, 2016.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CRLJ 38

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

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   Email: AGerl@cawh.org
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3. Purpose of Suggested Rule Amendment

   Proposed amendment to the rule is to add section (i) to allow for remote trials in civil matters, in whole or in part, by agreement of the parties or order of the court. If the parties do not agree, a party may motion the court that portions or all of the trial be held remotely. The court however, maintains under ARLJ 15 the ability to hold trials in person. For example: if a particular court does not have the capacity to hold evidentiary hearings remotely.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CRLJ 38
JURY TRIAL

(a) Demand. When a trial by jury is authorized by the constitution, statutes, or decisions of the Supreme Court, any party may demand a jury which shall be selected and impaneled as required by law and this rule. At or prior to the time the case is called to be set for trial, or at such other time as directed by the court, any party may demand a jury trial of any issue triable by a jury by serving upon the other parties a demand therefor in writing, by filing the demand with the clerk, and by paying any required jury fee.

(b) Specification of Issues. In the demand a party may specify the issues which it wishes tried by a jury; otherwise, the demand shall be considered a demand for all issues so triable. If the demand requests jury trial of only some of the issues, any other party within 14 days of service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(c) Waiver of Jury Trial. The failure of a party to serve a demand as required by this rule, to file it as required by this rule, and to pay the required jury fee in accordance with this rule, constitutes a waiver of trial by jury. A demand for trial by jury once made may not be withdrawn without the consent of the parties.

(d) Impaneling the Jury.

(1) *Voir Dire.* A voir dire examination shall be conducted for the purpose of discovering any basis for challenge for cause and for the purpose of gaining knowledge to enable an intelligent exercise of peremptory challenges. The judge shall initiate the voir dire examination by identifying the parties and their respective counsel and by briefly outlining the nature of the case. The judge and the parties may then ask the prospective jurors questions touching their qualifications to serve as jurors in the case, subject to the supervision of the court as appropriate to the facts of the case.

(2) *Challenges for Cause.* If the court is of the opinion that grounds for challenge to a juror exist, it shall excuse that juror. Otherwise, any party may challenge the juror for cause. Challenges for cause shall be allowed as provided in RCW 4.44.150 through 4.44.190.

(3) *Peremptory Challenges.* The number and the manner of exercising peremptory challenges shall be as provided in RCW 4.44.130, 4.44.140, and 4.44.190.

(4) *Order of Taking Challenges*. [Reserved. See RCW 4.44.220.]

(5) *Objections to Challenges*. [Reserved. See RCW 4.44.230.]

(6) *Trial of Challenge*. [Reserved. See RCW 4.44.240.]

(e) Alternate Jurors. The court may direct that not more than three jurors in addition to the regular jury be called and impaneled to serve as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its

verdict, are unable to continue. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges for cause, and shall take the same oath as the regular jurors. Each party shall be entitled to one additional peremptory challenge which may only be exercised against alternate jurors, and other peremptory challenges allowed shall not be used against alternate jurors. If the court has found that there is a conflict of interest between parties on the same side, the court may allow each conflicting party a peremptory challenge to exercise against alternate jurors. An alternate juror who does not replace a regular juror may be discharged or temporarily excused after the jury retires to consider its verdict. When an alternate juror is temporarily excused but not discharged, the trial judge shall take appropriate steps to protect such juror from influence, interference or publicity which might affect that jurors ability to remain impartial, and the trial judge may conduct brief voir dire before seating such alternate juror for any trial or deliberations. An alternate juror may be recalled at any time that a regular juror is unable to serve. If the jury has commenced deliberations prior to replacement of a regular juror with an alternate juror, the jury shall be instructed to disregard all previous deliberations and to begin deliberations anew.

(f) Juries of Fewer Than Six. The parties may at any time stipulate that the jury shall consist of at least three but fewer than six jurors, or that a verdict of a stated majority shall be taken as the verdict or finding of the jury.

(g) Oath. [Reserved. See RCW 4.44.260.]

(h) Note-Taking by Jurors. In all cases, jurors shall be allowed to take written notes regarding the evidence presented to them and keep these notes with them during their deliberation. The court may allow jurors to keep these notes with them in the jury room during recesses, in which case jurors may review their own notes but may not share or discuss the notes with other jurors until they begin deliberating. Such notes should be treated as confidential between the jurors making them and their fellow jurors, and shall be destroyed immediately after the verdict is rendered.

(i) Remote Trials. A bench or jury trial may be conducted in whole, or in part, by remote technology upon agreement of the parties or order of the court.

[Adopted effective September 1, 1984; Amended effective September 1, 1989; October 1, 2002.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CRLJ 43

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

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3. Purpose of Suggested Rule Amendment

   The proposed amendments to this rule eliminate the need for a good cause finding to permit remote testimony, and amends language to remove "the stand" from the rule and replace it with "providing testimony." The proposed amendment also removes the requirement that a person physically stand while the oath is administered. Lastly, in several places the proposal is to change the word "attendance" to "appearance."

   These changes support remote appearances where many people do not stand, nor do they approach "the stand," and do not attend court in person, necessarily. The proposed amendments work in conjunction with other proposed changes in ARLJ 3 and ARLJ 15 proposed by the Remote Proceedings Work Group.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CRLJ 43
TAKING OF TESTIMONY

(a) Testimony.

(1) *Generally*. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise directed by the court or provided by rule or statute. ~~For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.~~

(2*) Multiple Examinations*. When two or more attorneys are upon the same side trying a case, the attorney conducting the examination of a witness shall continue until the witness is excused from ~~the stand~~ providing testimony; and all objections and offers of proof made during the examination of such witness shall be made or announced by the attorney who is conducting the examination or cross examination.

(b) and (c) [Reserved. See ER 103 and 611.]

(d) Oaths of Witnesses.

(1) *Administration*. The oaths of all witnesses

(i) shall be administered by the judge~~;~~ and

(ii) shall be administered to each witness individually.~~; and~~

~~(iii) the witness shall stand while the oath is administered~~.

(2) *Applicability*. This rule shall not apply to civil ex parte proceedings, and in such cases the manner of swearing witnesses shall be as each court may prescribe.

(3) *Affirmation in Lieu of Oath*. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) Adverse Party as Witness.

(1) *Party or Managing Agent as Adverse Witness*. A party, or anyone who at the time of the notice is an officer, director, or other managing agent (herein collectively referred to as "managing agent") of a public or private corporation, partnership or association that is a party to an action or proceeding may be examined at the instance of any adverse party. ~~Attendance~~ Appearance of such deponent or witness may be compelled solely by notice (in lieu of a subpoena) given in the manner prescribed in CR 30(b)(1) to opposing counsel of record. Notices for the attendance of a party or of a managing agent at the trial shall be given not less than 10 days before trial (exclusive of the day of service, Saturdays, Sundays, and court holidays). For

good cause shown in the manner prescribed in CR 26(c), the court may make orders for the protection of the party or managing agent to be examined.

(2) *Effect of Discovery, etc.* A party who has served interrogatories to be answered by the adverse party or who has taken the deposition of an adverse party or of the managing agent of an adverse party shall not be precluded for that reason from examining such adverse party or managing agent at the trial. Matters admitted by an adverse party or managing agent in interrogatory answers, deposition testimony, or trial testimony are not conclusively established and may be rebutted.

(3) *Refusal to ~~Attend~~ Appear and Testify; Penalties*. If a party or a managing agent refuses to ~~attend and~~ testify before the officer designated to take that person's deposition or at the trial after notice served as prescribed in CR 30(b)(1), the complaint, answer, or reply of the party may be stricken and judgment taken against the party, and the contumacious party or managing agent may also be proceeded against as in other cases of contempt. This rule shall not be construed:

(i) to compel any person to answer any question where such answer might tend to be incriminating;

(ii) to prevent a party from using a subpoena to compel the ~~attendance~~ appearance of any party or managing agent to give testimony by deposition or at the trial; nor

(iii) to limit the applicability of any other sanctions or penalties provided in CR 37 or otherwise for failure to attend and give testimony.

(g) Attorney as Witness. If any attorney offers to be a witness on behalf of the attorney's client and gives evidence on the merits, the attorney shall not argue the case to the jury, unless by permission of the court.

(h) Recording as Evidence. Whenever the testimony of a witness at a trial or hearing which was recorded is admissible in evidence at a later trial, it may be proved by the recording thereof duly certified by the person who recorded the testimony.

(i) [Reserved. See ER 804.]

(j) Record in Retrial of Nonjury Cases. In the event a cause has been remanded by the court for a new trial or the taking of further testimony, and such cause shall have been tried without a jury, and the testimony in such cause shall have been taken in full and used as the record upon review, either party upon the retrial of such cause or the taking of further testimony therein shall have the right, provided the court shall so order after an application on 10 days' notice to the opposing party or parties, to submit said record as the testimony in said cause upon its second hearing, to the same effect as if the witnesses called by either party in the earlier hearing had been called, sworn, and testified in the further hearing; but no party shall be denied the right to submit other or further testimony upon such retrial or further hearing, and the party having the right of cross examination shall have the privilege of subpoenaing any witness whose testimony is contained in such record for further cross examination.

(k) Juror Questions for Witnesses. The court shall permit jurors to submit to the court written questions directed to witnesses. Counsel shall be given an opportunity to object to such questions in a manner that does not inform the jury that an objection was made. The court shall establish procedures for submitting, objecting to, and answering questions from jurors to witnesses. The court may rephrase or reword questions from jurors to witnesses. The court may refuse on its own motion to allow a particular question from a juror to a witness.

[Adopted effective September 1, 1984; Amended effective September 1, 1989; October 1, 2002; September 1, 2006; September 1, 2022.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CRLJ 45

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
   Email: AGerl@cawh.org
   Phone: (509) 244-2773

3. Purpose of Suggested Rule Amendment

   The proposed rule changes include replacing the words "attend" and "attendance" with "appear" and "appearance." This is consistent with other rule changes and the words "appear" and "appearance" are now defined in the ARLJ 3. This supports the ability for courts to hold remote proceedings with various attendance methods.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CRLJ 45
SUBPOENA

(a) Form; Issuance.

(1) Every subpoena shall:

(A) state the name of the court from which it is issued;

(B) state the title of the action, the name of the court in which it is pending, and its case number;

(C) command each person to whom it is directed to ~~attend~~ appear and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subsections (c) and (d) of this rule.

(2) A subpoena ~~for attendance~~ to appear at a deposition shall state the method for recording the testimony.

(3) A command to a person to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A party may be compelled to produce evidence at a deposition or permit inspection only in accordance with rule 26.

(4) A subpoena may be issued by the court in which the action is pending in the name of the State of Washington or by the clerk in response to a praecipe. An attorney of record of a party or other person authorized by statute may issue and sign a subpoena, subject to RCW 5.56.010.

(b) Service.

(1) A subpoena may be served by any suitable person over 18 years of age by giving the person named therein a copy thereof, or by leaving a copy at such person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. When service is made by any person other than an officer authorized to serve process, proof of service shall be made by affidavit.

(2) A subpoena commanding production of documents and things, or inspection of premises, without a command to appear for deposition, hearing or trial, shall be served on each party in the manner prescribed by rule 5(b). Such service shall be made no fewer than five days prior to service of the subpoena on the person named therein, unless the parties otherwise agree or the court otherwise orders for good cause shown. A motion for such an order may be made ex parte.

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to subsection (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this rule;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden, provided that the court may condition denial of the motion upon a requirement that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue

hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information in camera to the court for a determination of the claim. The person responding to the subpoena must preserve the information until the claim is resolved.

(e) Subpoena for Taking Deposition, Producing Documents, or Permitting Inspection.

(1) *Witness Fees and Mileage.* [Reserved. See RCW 2.40.020.]

(2) *Place of Examination.* A resident of the state may be required to ~~attend an~~ appear for examination, produce documents, or permit inspection only in the county where the person resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of the court. A nonresident of the state may be required to ~~attend~~ appear for an examination, produce documents, or permit inspection only in the county where the person is served with a subpoena, or within 40 miles from the place of service, or at such other convenient place as is fixed by an order of the court.

(3) *Foreign Proceedings for Local Actions.* When the place of examination, production, or inspection is in another state, territory, or country, the party desiring to take the deposition, obtain production, or conduct inspection may secure the issuance of a subpoena or equivalent process in accordance with the laws of such state, territory, or country.

(4) *Local Depositions for Foreign Actions.* When any officer or person is authorized to take depositions in this state by the law of another state, territory, or country, with or without a commission, a subpoena to require ~~attendance~~ appearance before such officer or person may be issued by any court of this state for attendance at any place within its jurisdiction.

(f) Subpoena For Hearing or Trial.

(1) *When Witnesses Must ~~Attend~~ Appear—Fees and Allowances.* [Reserved. See RCW 5.56.010.]

(2) *When Excused.* A witness subpoenaed to ~~attend~~ appear in a civil case is dismissed and excused from further ~~attendance~~ appearance as soon as the witness has given testimony in chief and has been cross examined thereon, unless either party moves in open court that the witness remain in ~~attendance~~ appearance and the court so orders. Witness fees will not be allowed any witness after the day on which the witness' testimony is given, except when the witness has in open court been required to remain in further ~~attendance~~ appearance, and when so required the clerk shall note that fact.

(g) Contempt.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to ~~attend~~ appear for a deposition, produce documents, or permit inspection at a place not within the limits provided by subsection (e)(2).

(h) Form. A subpoena should be substantially in the form below.

State of Washington

[NAME OF COURT]

County of _____

No. _____

_____ **SUBPOENA IN A CIVIL CASE**

v.

_____

TO:

[ ] YOU ARE COMMANDED to appear in the above captioned court at the place, date, and time specified below to testify in the above case.

_____ _____

PLACE OF TESTIMONY COURTROOM

_____

DATE AND TIME

[ ] YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to

testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. CRLJ 26.

_____ _____

PLACE OF DEPOSITION DATE AND TIME

[ ] YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or tangible things at the place, date, and time specified below (list documents or objects):

_____ _____

PLACE DATE AND TIME

[ ] YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

_____ _____

PREMISES DATE AND TIME

_____

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

PROOF OF SERVICE

DATE _____ PLACE SERVED _____

_____

SERVED ON (PRINT NAME) MANNER OF SERVICE

_____

SERVED BY (PRINT NAME) TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the State of Washington that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

DATE/PLACE SIGNATURE OF SERVER

ADDRESS OF SERVER

CRLJ 45, Sections (c) & (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to subsection (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this rule;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden, provided that the court may condition denial of the motion upon a requirement that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information in camera to the court for a determination of the claim. The person responding to the subpoena must preserve the information until the claim is resolved.

[Adopted effective September 1, 1984; Amended effective September 1, 1989; September 1, 2009.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CRLJ 77.04

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
   Email: AGerl@cawh.org
   Phone: (509) 244-2773

3. Purpose of Suggested Rule Amendment

   The proposed changes remove the language "on coming to the stand" and specifies that the oath shall be administered before testifying. The proposal also removes the requirement that a witness physically stand, which is not typical for remote testimony. The rule is simplified for modern testimony in Washington Courts.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CRLJ 77.04
ADMINISTRATION OF OATH

The oaths or affirmations of all witnesses

(1) Shall be administered by the judge~~;~~ and

(2) Shall be administered individually to each witness before testifying. ~~on coming to the stand, not to a group and in advance; and~~

~~(3) The witness shall stand while the oath or affirmation is pronounced.~~

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CrRLJ 2.2

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
   Email: AGerl@cawh.org
   Phone: (509) 244-2773

3. Purpose of Suggested Rule Amendment

   Proposed amendments to the rule remove language to require physical presence "brought forthwith" and replaces it with "appear" which is now defined in the ARLJ 3 to accommodate remote appearances.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CrRLJ 2.2

WARRANT OF ARREST OR SUMMONS UPON COMPLAINT

(a) Issuance of Warrant of Arrest.

(1) *Generally*. If a complaint is filed and if the offense charged may be tried in the jurisdiction in which the warrant issues, and if the sentence for the offense charged may include confinement in jail, the court may direct the clerk to issue a warrant for the arrest of the defendant unless the defendant has already been arrested in connection with the offense charged and is in custody or has been released on obligation to appear in court.

(2) *Probable Cause*. A warrant of arrest must be supported by an affidavit, a statement as provided in GR 13, or sworn testimony establishing the grounds for issuing the warrant. Sworn testimony shall be recorded electronically, stenographically or by any reliable method. The evidence shall be preserved. The court must determine there is probable cause to believe that the defendant has committed the crime alleged before issuing the warrant. The evidence shall be subject to constitutional limitations for probable cause determinations and may be hearsay in whole or in part.

(3) *Ascertaining Defendant's Current Address*.

(i) Search for Address. The court shall not issue a warrant unless it determines that the complainant has attempted to ascertain the defendant's current address by searching the following: (A) the District Court Information system database (DISCIS), (B) the driver's license and identicard database maintained by the Department of Licenses; and (C) the database maintained by the Department of Corrections listing persons incarcerated and under supervision. The court in its discretion may require that other databases be searched.

(ii) Exemptions from Address Search. The search required by subdivision (i) shall not be required if (A) the defendant has already appeared in court (in person or through counsel) after filing of the same case, (B) the defendant is known to be in custody, or (C) the defendant's name is unknown.

(iii) Effect of Erroneous Issuance. If a warrant is erroneously issued in violation of this subsection (a)(3), that error shall not affect the validity of the warrant.

(b) Issuance of Summons in Lieu of Warrant.

(1) *Generally*. If a complaint is filed, the court may direct the clerk to issue a summons commanding the defendant to appear before the court at a specified time and place.

(2) *When Summons Must Issue*. The court shall direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant (i) will not appear in response to a summons, (ii) will commit a violent offense, (iii) will interfere with witnesses or the administration of justice, or (iv) is in custody.

(3) *Summons for Felony Complaint*. If the complaint charges the commission of a felony, the court may direct the clerk to issue a summons instead of a warrant unless it finds reasonable

cause to believe that the defendant will not appear in response to a summons, or that arrest is necessary to prevent bodily harm to the accused or another, in which case it may issue a warrant.

(4) *Summons*. A summons shall be in writing and in the name of the charging jurisdiction, shall be signed by the clerk with the title of that office, and shall state the date when issued. It shall state the name of the defendant and the nature of the charge, and shall summon the defendant to appear before the court at a stated time and place. The summons shall inform the defendant that failure to appear as commanded may result in the issuance of a warrant for the arrest of the accused.

(5) *Failure To Appear on Summons*. If a person fails to appear in response to a summons, or if delivery is not effected within a reasonable time, a warrant of arrest may issue, if the sentence for the offense charged may include confinement in jail.

(c) Requisites of a Warrant. The warrant shall be in writing and in the name of the charging jurisdiction, shall be signed by the judge or clerk with the title of that office, and shall state the date when issued. It shall specify the name of the defendant, or if his or her name is unknown, any name or description by which he or she can be identified with reasonable certainty. The warrant shall specify the offense charged against the defendant and that the court has found that probable cause exists to believe the defendant has committed the offense charged and shall command the defendant be arrested and ~~brought forthwith~~ appear before the court issuing the warrant. If the offense is not a capital offense, the court shall set forth in the order for the warrant, bail and/or other conditions of release.

(d) Execution; Service.

(1) *Execution of Warrant*. The warrant shall be directed to all peace officers in the state and shall be executed only by a peace officer.

(2) *Delivery of Summons*. The summons may be served any place within the state. It may be served by a peace officer, who shall deliver a copy of the same to the defendant personally, or it may be delivered by the court mailing the same, postage prepaid, to the defendant at his or her last known address.

(e) Return. The officer executing a warrant shall make return thereof to the court before whom the defendant is brought pursuant to these rules. At the request of the prosecuting authority any unexecuted warrant shall be returned to the issuing court to be canceled. The peace officer to whom a summons has been given for service shall, on or before the return date, file a return thereof with the court before whom the summons is returnable. For reasonable cause, the court may order that the warrant be returned to it.

(f) Defective Warrant or Summons.

(1) *Amendment*. No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any irregularity in the warrant or summons, but the warrant or summons may be amended so as to remedy any irregularity.

(2) *Issuance of New Warrant or Summons*. If during the preliminary examination of any person arrested under a warrant or appearing in response to a summons, it appears that the warrant or summons does not properly name or describe the defendant or the offense with which he or she is charged, or that although not guilty of the offense specified in the warrant or summons, there is reasonable ground to believe that he or she will be charged with some other offense, the judge shall not discharge or dismiss the defendant but may allow a new complaint to be filed and shall thereupon issue a new warrant or summons.

(g) **Failure to Issue Warrant--Dismissal**. Upon five days' notice to the prosecuting attorney, the court shall dismiss a charge without prejudice if (i) 90 days have elapsed since the citation or complaint was filed and (ii) on the date that the order of dismissal is entered, no warrant has been issued and the defendant has not appeared in court.

[Adopted effective September 1, 1987; Amended effective September 1, 1991; September 1, 1995; September 1, 2003; September 1, 2006; September 1, 2014; February 1, 2021.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CrRLJ 2.5

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
   Email: AGerl@cawh.org
   Phone: (509) 244-2773

3. Purpose of Suggested Rule Amendment

   The proposed amendment to this rule removes language regarding physical appearance including the requirement that a person fail to appear "before the court, either in person or by a lawyer." The language is simply left as "failed to appear" with the word "appear" being adequately defined in the ARLJ 3 as a variety of appearance forms. The changes to this rule work in conjunction with the definitions in ARLJ 3 and the new ARLJ 15.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CrRLJ 2.5
PROCEDURE ON FAILURE TO OBEY CITATION AND NOTICE

The court may order the issuance of a bench warrant for the arrest of any defendant who has failed to appear ~~before the court~~, ~~either in person or by a lawyer,~~ in answer to a citation and notice, or an order of the court, upon which the defendant has promised in writing to appear, or of which the defendant has been served with or otherwise received notice to appear, if the sentence for the offense charged may include confinement in jail.

[Adopted effective September 1, 1987; Amended effective September 1, 1991; November 21, 2006.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CrRLJ 3.2

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
   Email: AGerl@cawh.org
   Phone: (509) 244-2773

3. Purpose of Suggested Rule Amendment

   Proposed amendments to the rule remove the words "personally" and "personal" from the appearance requirement in (c)(1) and (n) which is consistent with the future of our court system. The amendment also replaces the word "necessary" with "required" which is consistent with other limited jurisdiction rules. The changes to this rule work along with the new definitions in ARLJ 3, CrRLJ 3.4, and the new proposed ARLJ 15.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CrRLJ 3.2
RELEASE OF ACCUSED

If the court does not find, or the court has not previously found, probable cause, the accused shall be released without conditions.

(a) Presumption of Release in Noncapital Cases. Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

(1) the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or

(2) there is shown a likely danger that the accused:

(a) will commit a violent crime, or

(b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, "violent crimes" may include misdemeanors and gross misdemeanors and are not limited to crimes defined as violent offenses in RCW 9.94A.030.

In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (c) and (e) of this rule.

(b) Showing of Likely Failure to Appear—Least Restrictive Conditions of Release. If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(3) Require the execution of an unsecured bond in a specified amount;

(4) Require the execution of a bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release. If this requirement is imposed, the court must also authorize a surety bond under subsection (b)(5);

(5) Require the execution of a bond with sufficient solvent or the deposit of cash in lieu thereof;

(6) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(7) Impose any condition other than detention deemed reasonably necessary to assure appearance as required.

A court of limited jurisdiction may adopt a bail schedule for persons who have been arrested on probable cause but have not yet made a preliminary appearance before a judicial officer. The adoption of such a schedule or whether to adopt a schedule, is in the discretion of each court of limited jurisdiction, and may be adopted by majority vote. Bail schedules are not subject to GR 7. The supreme court may adopt a uniform bail schedule as an appendix to these rules.

If the court determines that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the accused's appearance.

(c) Relevant Factors--Future Appearance. In determining which conditions of release will reasonably assure the accused's appearance, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's history of response to legal process, particularly court orders to ~~personally~~ appear;

(2) The accused's employment status and history, enrollment in an educational institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government;

(3) The accused's family ties and relationships;

(4) The accused's reputation, character and mental condition;

(5) The length of the accused's residence in the community;

(6) The accused's criminal record;

(7) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(8) The nature of the charge, if relevant to the risk of nonappearance;

(9) Any other factors indicating the accused's ties to the community.

(d) Showing of Substantial Danger--Conditions of Release. Upon a showing that there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following nonexclusive conditions:

(1) Prohibit the accused from approaching or communicating in any manner with particular persons or classes of persons;

(2) Prohibit the accused from going to certain geographical areas or premises;

(3) Prohibit the accused from possessing any dangerous weapons or firearms, or engaging in certain described activities or possessing or consuming any intoxicating liquors or drugs not prescribed to the accused;

(4) Require the accused to report regularly to and remain under the supervision of an officer of the court or other person or agency;

(5) Prohibit the accused from committing any violations of criminal law;

(6) Require the accused to post a secured or unsecured bond or deposit cash in lieu thereof, conditioned on compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community. If the court determines under this section that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused financial resources for the purposes of setting a bond that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice;

(7) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(8) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(9) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(10) Impose any condition other than detention to assure noninterference with the administration of justice and reduce danger to others or the community.

(e) Relevant Factors—Showing of Substantial Danger. In determining which conditions of release will reasonably assure the accused's noninterference with the administration of justice, and reduce danger to others or the community, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's criminal record;

(2) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(3) The nature of the charge;

(4) The accused's reputation, character and mental condition;

(5) The accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;

(6) Whether or not there is evidence of present threats or intimidation directed to witnesses;

(7) The accused's past record of committing offenses while on pretrial release, probation or parole; and

(8) The accused's past record of use of or threatened use of deadly weapons or firearms, especially to victim's or witnesses.

(f) Delay of Release. The court may delay release of a person in the following circumstances:

(1) If the person is intoxicated and release will jeopardize the person's safety or that of others, the court may delay release of the person or have the person transferred to the custody and care of a treatment center.

(2) If the persons mental condition is such that the court believes the person should be interviewed by a mental health professional for possible commitment to a mental treatment facility pursuant to RCW 71.05, the court may delay release of the person.

(3) Unless other grounds exist for continued detention, a person detained pursuant to this section must be released from detention not later than 24 hours after the preliminary appearance.

(g) Release in Capital Cases. Any person charged with a capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.

(h) Release After Finding or Plea of Guilty. After a person has been found or pleaded guilty, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

(i) Order for Release. A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused's release and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation.

(j) Amendment or Revocation of Order.

(1) The court ordering the release of an accused on any condition specified in this rule may at any time on change of circumstances, new information or showing of good cause amend its order to impose additional or different conditions for release.

(2) Upon a showing that the accused has willfully violated a condition of release, the court may revoke release and may order forfeiture of any bond. Before entering an order revoking release or forfeiting bail, the court shall hold a hearing. Release may be revoked only if the violation is proved by clear and convincing evidence.

(k) Arrest for Violation of Conditions.

(1) *Arrest with Warrant*. Upon the courts own motion or a verified application by the prosecuting authority alleging with specificity that an accused has willfully violated a condition of the accused's release, a court shall order the accused to appear for immediate hearing or issue a warrant directing the arrest of the accused for immediate hearing for reconsideration of conditions of release pursuant to section (j).

(2) *Arrest without Warrant*. A law enforcement officer having probable cause to believe that an accused released pending trial for a felony is about to leave the state or has violated a condition of such release under circumstances rendering the securing of a warrant impracticable may arrest the accused and take him forthwith before the court for reconsideration of conditions of release pursuant to section (j).

(l) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(m) [Reserved.]

(n) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's ~~personal~~ appearance is required ~~necessary~~ or violates conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

(o) Bail in Criminal Offense Cases--Mandatory Appearance.

(1) Except as provided in subsection (2) or (3) below, when required to reasonably assure appearance in court, bail for a person arrested for a misdemeanor shall be $500 and for a gross misdemeanor shall be $1,000. In an individual case and after hearing the court for good cause recited in a written order may set a different bail amount.

(2) A court may adopt a local rule requiring that persons subjected to custodial arrest for a certain class of offenses be held until they have appeared before a judge.

(3) Pursuant to RCW 10.31.100, a police officer shall arrest and keep in custody, until release by a judicial officer on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that the person has violated RCW 46.61.502 (Driving Under the Influence) or RCW 46.61.504 (Physical Control of a Vehicle Under the Influence) or an equivalent local ordinance and the police officer: (i) has knowledge that the person has a prior offense as defined in RCW 46.61.5055 within 10 years; or (ii) has

knowledge, based on a review of the information available to the officer at the time of arrest, that the person is charged with or is awaiting arraignment for an offense that would qualify as a prior offense as defined in RCW 46.61.5055 if it were a conviction.

NOTE: A police officer is not required to keep a person in custody if the person requires immediate medical attention and is admitted to a hospital.

(p) [Reserved.]

(q) [Reserved.]

[Adopted effective September 1, 1987; Amended effective November 17, 1989; September 1, 1991; January 1, 1992; September 1, 1992; June 25, 1993; May 1, 1994; September 1, 1994; August 15, 1995; September 1, 1995; June 5, 1996; October 31, 2000; September 1, 2002; April 1, 2003; September 1, 2005; July 1, 2012; December 8, 2015; February 28, 2017; November 20, 2018.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CrRLJ 3.2.1

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
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3. Purpose of Suggested Rule Amendment

   Proposed amendments to this rule remove the words requiring physical attendance in section (d)(1)-(2) and (g)(4)(1) and replaces with the word "appear" which is defined in the proposed changes to ARLJ 3. This is consistent with other proposed changes.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CrRLJ 3.2.1
PROCEDURE FOLLOWING WARRANTLESS ARREST—
PRELIMINARY HEARING

(a) Probable Cause Determination. A person who is arrested shall have a judicial determination of probable cause no later than 48 hours following the person's arrest, unless probable cause has been determined prior to such arrest.

(b) How Determined. The court shall determine probable cause on evidence presented by a peace officer or prosecuting authority in the same manner as provided for a warrant of arrest in CrRLJ 2.2(a). In making the probable cause determination, the court may consider an affidavit, a statement as provided in GR 13, or sworn testimony, and further may examine under oath the affiant and any witnesses the affiant may produce. Sworn testimony, including telephonic statements, shall be recorded electronically, stenographically, or by reliable method. The written or recorded evidence considered by the court may be hearsay in whole or part. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations. The court's probable cause determination may be recorded through any reliable method. If the court finds that release without bail should be denied or that conditions should attach to the release on personal recognizance, other than the promise to appear for court hearing, the court shall proceed to determine whether probable cause exists to believe that the accused committed the crime alleged, unless this determination has previously been made by a court.

(c) Court Days. For the purpose of section (a), Saturday, Sunday and holidays may be considered judicial days.

(d) Preliminary Appearance.

(1) *Adult*. Unless an accused has appeared or will appear before the superior court for a preliminary appearance, any accused detained in jail must ~~be brought~~ appear before a court of limited jurisdiction as soon as practicable after the detention is commenced, but in any event before the close of business on the next court day.

(2) *Juveniles*. Unless an accused has appeared or will appear before the superior court for a preliminary appearance, any accused in whose case the juvenile court has entered a written order declining jurisdiction and who is detained in custody, must ~~be brought~~ appear before a court of limited jurisdiction as soon as practicable after the juvenile court order is entered, but in any event before the close of business on the next court day.

(3) *Unavailability*. If an accused is unavailable for preliminary appearance because of physical or mental disability, the court may, for good cause shown and recorded by the court, enlarge the time prior to preliminary appearance.

(e) Procedure at Preliminary Appearance.

(1) At the preliminary appearance, the court shall provide for a lawyer pursuant to rule 3.1 and for pretrial release pursuant to rule 3.2, and the court shall orally inform the accused:

(i) of the nature of the charge against the accused;

(ii) of the right to be assisted by a lawyer at every stage of the proceedings; and

(iii) of the right to remain silent, and that anything the accused says may be used against him or her.

(2) If the court finds that release should be denied or that conditions should attach to release on personal recognizance, other than the promise to appear in court at subsequent hearings, the court shall proceed to determine whether probable cause exists to believe that the accused committed the offense charged, unless this determination has previously been made by a court. Before making the determination, the court may consider affidavits filed or sworn testimony and further may examine under oath the affiant and any witnesses he or she may produce. Subject to constitutional limitations, the finding of probable cause maybe based on evidence which is hearsay in whole or in part.

(f) Time Limits.

(1) Unless a written complaint is filed or the accused consents in writing or on the record in open court, an accused, following a preliminary appearance, shall not be detained in jail or subjected to conditions of release for more than 72 hours after the accused's detention in jail or release on conditions, whichever occurs first. Computation of the 72-hour period shall not include any part of Saturdays, Sundays, or holidays.

(2) If no complaint, information or indictment has been filed at the time of the preliminary appearance, and the accused has not otherwise consented, the court shall either:

(i) order in writing that the accused be released from jail or exonerated from the conditions of release at a time certain which is within the period described in subsection (f)(1); or

(ii) set a time at which the accused shall reappear before the court. The time set for reappearance must also be within the period described in subsection (f)(1). If no complaint, information or indictment has been filed by the time set for release or reappearance, the accused shall be immediately released from jail or deemed exonerated from all conditions of release.

(g) Preliminary Hearing on Felony Complaint.

(1) When a felony complaint is filed, the court may conduct a preliminary hearing to determine whether there is probable cause to believe that the accused has committed a felony unless an information or indictment is filed in superior court prior to the time set for the preliminary hearing. If the court finds probable cause, the court shall bind the defendant over to the superior court. If the court binds the accused over, or if the parties waive the preliminary hearing, an information shall be filed without unnecessary delay. Jurisdiction vests in the superior court at the time the information is filed.

(2) If at the time a felony complaint is filed with the district court the accused is detained in jail or subjected to conditions of release, the time from the filing of the complaint in district court to the filing of an information in superior court shall not exceed 30 days plus any time

which is the subject of a stipulation under subsection (g)(3). If at the time the complaint is filed with the district court the accused is not detained in jail or subjected to conditions of release, the time from the accused's first appearance in district court which next follows the filing of the complaint to the time of the filing of an information in superior court shall not exceed 30 days, excluding any time which is the subject of a stipulation under subsection (g)(3). If the applicable time period specified above elapses and no information has been filed in superior court, the case shall be dismissed without prejudice.

(3) Before or after the preliminary hearing or a waiver thereof, the court may delay a preliminary hearing or defer a bind-over date if the parties stipulate in writing that the case shall remain in the court of limited jurisdiction for a specified time, which may be in addition to the 30-day time limit established in subsection (g)(2).

(4) A preliminary hearing shall be conducted as follows:

(i) the defendant may as a matter of right ~~be present~~ appear at such hearing;

(ii) the court shall inform the defendant of the charge unless the defendant waives such reading;

(iii) witnesses shall be examined under oath and may be cross-examined;

(iv) the defendant may testify and call witnesses in the defendant's behalf.

(5) If a preliminary hearing on the felony complaint is held and the court finds that probable cause does not exist, the charge shall be dismissed, and may be refiled only if a motion to set aside the finding is granted by the superior court. The superior court shall determine whether, at the time of the hearing on such motion, there is probable cause to believe that the defendant has committed a felony.

(6) If a preliminary hearing is held, the court shall file the record in superior court promptly after notice that the information has been filed. The record shall include, but not be limited to, all written pleadings, docket entries, the bond, and any exhibits filed in the court of limited jurisdiction. Upon written request of any party, the court shall file the recording of any testimony.

[Adopted effective September 1, 1987; Amended effective July 1, 1992; September 1, 1995; September 1, 2002; September 1, 2014; February 1, 2021.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CrRLJ 3.3

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

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3. Purpose of Suggested Rule Amendment

Proposed amendments to the rule include removal of the definition of "appearance" which is now in ARLJ 3, changing the word "presence" to "appearance" in (c)(2)(ii), changing "presence" to "remote or physical appearance" in section (f)(1), changing the word "in" to "by" in section (d)(1), and changes to the resetting of the commencement date in section (c)(2)(ii).

The changes to this rule assist in facilitating remote proceedings and continuances. The changes work in conjunction with CrRLJ 3.4, ARLJ 3 and ARLJ 15. There was much discussion and debate regarding section (c)(2)(ii) regarding speedy trial and resetting of commencement dates. The question centered around whether an appearance through counsel should reset a commencement date for speedy trial. The group came to the consensus that the commencement date could be reset by "the defendant's next physical appearance, remote appearance, or appearance through counsel in the court's discretion." This rule was ultimately approved unanimously after extensive editing by the workgroup.

4. Is Expedited Consideration Requested?

Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CrRLJ 3.3
TIME FOR TRIAL

(a) General Provisions.

(1) *Responsibility of Court*. It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime.

(2) *Precedence Over Civil Cases.* Criminal trials shall take precedence over civil trials.

(3) Definitions. For purposes of this rule:

(i) "Pending charge" means the charge for which the allowable time for trial is being computed.

(ii) "Related charge" means a charge based on the same conduct as the pending charge that is ultimately filed in the trial court.

~~(iii) "Appearance" means the defendant's physical presence in the trial court. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously placed on the record under the cause number of the pending charge. (iv) "Arraignment" means the date determined under CrRLJ 4.1(b).~~

~~(iv)~~ (iii) "Arraignment" Means the date determined under CrRLJ 4.1(b).

~~(v)~~ (iv) "Detained in jail" means held in the custody of a correctional facility pursuant to the pending charge. Such detention excludes any period in which a defendant is on electric home monitoring, is being held in custody on an unrelated charge or hold, or is serving a sentence of confinement.

~~(iv)~~ (v) "Trial court" means the court where the pending charge was filed.

(4) *Construction*. The allowable time for trial shall be computed in accordance with this rule. If a trial is timely under the language of this rule but was delayed by circumstances not addressed in this rule or CrRLJ 4.1, the pending charge shall not be dismissed unless the defendant's constitutional right to a speedy trial was violated.

(5) *Related Charges.* The computation of the allowable time for trial of a pending charge shall apply equally to related charges.

(6) *Reporting of Untimely Trials.* The court shall report to the Administrative Office of the Courts, on a form determined by that office, any case in which

(i) the court dismissed a charge on a determination pursuant to section (h) that the charge had not been brought to trial within the time allowed by this rule, or

(ii) the time limits would have been violated absent the cure period authorized by section (g).

(b) Time for Trial.

(1*) Defendant Detained in Jail*. A defendant who is detained in jail shall be brought to trial within the longer of

(i) 60 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5).

(2) *Defendant Not Detained in Jail*. A defendant who is not detained in jail shall be brought to trial within the longer of

(i) 90 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5).

(3) *Release of Defendant*. If a defendant is released from jail before the 60-day time limit has expired, the limit shall be extended to 90 days.

(4) *Return to Custody following Release*. If a defendant not detained in jail at the time the trial date was set is subsequently returned to custody on the same or related charge, the 90-day limit shall continue to apply. If the defendant is detained in jail when trial is reset following a new commencement date, the 60-day limit shall apply.

(5) *Allowable Time after Excluded Period*. If any period of time is excluded pursuant to section (e), the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period.

(c) Commencement date.

(1) *Initial Commencement Date*. The initial commencement date shall be the date of arraignment as determined under CrRLJ 4.1.

(2) *Resetting of commencement date*. On occurrence of one of the following events, a new commencement date shall be established, and the elapsed time shall be reset to zero. If more than one of these events occurs, the commencement date shall be the latest of the dates specified in this subsection.

(i) *Waiver*. The filing of a written waiver of the defendant's rights under this rule signed by the defendant. The new commencement date shall be the date specified in the waiver, which shall not be earlier than the date on which the waiver was filed. If no date is specified, the commencement date shall be the date of the trial contemporaneously or subsequently set by the court.

(ii) *Failure to Appear*. The failure of the defendant to appear for any proceeding at which the defendant's ~~presence~~ appearance was required. The new commencement date shall be the date of the defendant's next physical appearance, remote appearance, or appearance through counsel in the court's discretion. The prosecutor shall be notified of the appearance and the appearance must be contemporaneously placed on the record under the cause number of the pending charge.

(iii) *New Trial*. The entry of an order granting a mistrial or a new trial or allowing the defendant to withdraw a plea of guilty. The new commencement date shall be the date the order is entered.

(iv) *Appellate Review or Stay*. The acceptance of review or grant of a stay by an appellate court, or the issuance of a writ of certiorari, mandamus, or prohibition. The new commencement date shall be the date of the defendant's appearance that next follows the receipt by the clerk of the trial court of the mandate or written order terminating review or stay.

(v) *Collateral Proceeding*. The entry of an order granting a new trial pursuant to a personal restraint proceeding, a habeas corpus proceeding, or a motion to vacate judgment. The new commencement date shall be the date of the defendant's appearance that next follows either the expiration of the time to appeal such order or the receipt by the clerk of the trial court of notice of action terminating the collateral proceeding, whichever comes later.

(vi) *Change of venue*. The entry of an order granting a change of venue. The new commencement date shall be the date of the order.

(vii) *Disqualification of Counsel*. The disqualification of the defense attorney or prosecuting attorney. The new commencement date shall be the date of the disqualification.

(viii) *Deferred Prosecution*. The filing of a motion for deferred prosecution. The new commencement date shall be the date that an order is entered denying the motion or revoking the deferred prosecution.

(d) Trial Settings and Notice—Objections—Loss of Right to Object.

(1) *Initial Setting of Trial Date*. The court shall, within 15 days of the defendant's actual arraignment ~~in~~ by the trial court or at the pretrial hearing, set a date for trial which is within the time limits prescribed by this rule and notify counsel for each party of the date set. If a defendant is not represented by counsel, the notice shall be given to the defendant and may be mailed to the defendant's last known address. The notice shall set forth the proper date of the defendant's arraignment and the date set for trial.

(2) *Resetting of Trial Date*. When the court determines that the trial date should be reset for any reason, including but not limited to the applicability of a new commencement date pursuant to subsection (c)(2) or a period of exclusion pursuant to section (e), the court shall set a new date for trial which is within the time limits prescribed and notify each party of the date set.

(3) *Objection to Trial Setting*. A party who objects to the date set on the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial date within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date is not within the time limits prescribed by this rule.

(4) *Loss of Right to Object*. If a trial date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for trial, subject to section (g). A later trial date shall be timely only if the commencement date is reset pursuant to subsection (c)(2) or there is a subsequent excluded period pursuant to section (e) and subsection (b)(5).

(e) Excluded Periods. The following periods shall be excluded in computing the time for trial:

(1) *Competency Proceedings*. All proceedings relating to the competency of a defendant to stand trial on the pending charge, beginning on the date when the competency examination is ordered and terminating when the court enters a written order finding the defendant to be competent.

(2) *Proceedings on Unrelated Charges*. Arraignment, pre-trial proceedings, trial, and sentencing on an unrelated charge.

(3) *Continuances*. Delay granted by the court pursuant to section (f).

(4) *Period between Dismissal and Filing*. The time between the dismissal of a charge and the refiling of the same or related charge.

(5) *Disposition of Related Charge*. The period between the commencement of trial or the entry of a plea of guilty on one charge and the defendant's arraignment in the trial court on a related charge.

(6) *Defendant Subject to Foreign or Federal Custody or Conditions*. The time during which a defendant is detained in jail or prison outside the county in which the defendant is charged or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the State of Washington.

(7) *Juvenile Proceedings*. All proceedings in juvenile court.

(8) *Unavoidable or unforeseen Circumstances*. Unavoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties. This exclusion also applies to the cure period of section (g).

(9) *Disqualification of Judge*. A five-day period of time commencing with the disqualification of the judge to whom the case is assigned for trial.

(f) Continuances. Continuances or other delays may be granted as follows:

(1) *Written Agreement*. Upon written agreement of the parties which must be signed by defense counsel or the defendant or all defendants, the court may continue the trial to a specified date. In the absence of the defendant's signature or ~~presence~~ remote or physical appearance at the hearing, defense counsel's signature constitutes a representation that the defendant has been consulted and agrees to the continuance. The court's notice to defense counsel of new hearing dates constitutes notice to the defendant.

(2) *Motion by the Court or a Party*. On motion of the court or a party, the court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense. The motion must be filed before the time for trial has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(g) Cure Period. The court may continue the case beyond the limits specified in section (b) on motion of the court or a party made within five days after the time for trial has expired. Such a continuance may be granted only once in the case upon a finding on the record or in writing that the defendant will not be substantially prejudiced in the presentation of his or her defense. The period of delay shall be for no more than 14 days for a defendant detained in jail, or 28 days for a defendant not detained in jail, from the date that the continuance is granted. The court may direct the parties to remain in attendance or be on call for trial assignment during the cure period.

(h) Dismissal With Prejudice. A charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice. The State shall provide notice of dismissal to the victim and at the court's discretion shall allow the victim to address the court regarding the impact of the crime. No case shall be dismissed for time-to-trial reasons except as expressly required by this rule, a statute, or the state or federal constitution.

[Adopted effective September 1, 1987; amended effective November 29, 1991; July 1, 1992; September 1, 1995; September 1, 2003; November 25, 2003; January 1, 2023.

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CrRLJ 3.4

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
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   Phone: (509) 244-2773

3. Purpose of Suggested Rule Amendment

   Proposed rule changes include moving definitions to ARLJ 3 for ease of use, changing the word "presence" to "appear" in section (e), correcting the spelling or the word "appearance" in section (e) and changing the definition of the word "appearance" to include additional information regarding stays pursuant to RCW 10.77.

   Defense counsel felt strongly regarding the inclusion of language regarding counsel's representations for a client with pending challenges under RCW 10.77. It is reasonable that an attorney not affirm that their client has waived the right to be present when a 10.77 evaluation is pending. If the client lacks capacity to understand, the client may not have the capacity to waive those rights. The workgroup agreed that it was something to be included in the rule.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CrRLJ 3.4
APPEARANCE OF THE DEFENDANT

(a) Appearance Required. The appearance of the defendant is required at all hearings set by the court.

(b) Appearance. A defendant's appearance through counsel requires that counsel affirm, in writing or in open court, that they have consulted with the defendant since the last appearance and that the defendant waives the right to be present at the instant hearing, unless the matter is stayed pursuant to proceedings under Chapter 10.77 RCW.

~~**(b) Definitions.** For purposes of this rule, "appear" or "appearance" means the defendant's physical appearance, remote appearance, or appearance through counsel as defined in the ARLJs. :~~

~~(1) "Physical appearance" means the defendant's appearance pursuant to the CrRLJ 3.3(a) definition of appearance.~~

~~(2) "Remote appearance" means the defendant appears through a telephonic or videoconference platform approved by the court.~~

~~(3) "Appearance through counsel" means that counsel appears on behalf of the defendant. Appearance through counsel requires that counsel affirm, in writing or in open court, that they have consulted with the defendant since the last appearance and that the defendant waives the right to be present at the instant hearing.~~

(c) When Physical Appearance Is Required. The defendant's physical appearance (or remote appearance in the court's discretion) is required at the arraignment (if one is held), at every stage of the trial including empaneling the jury, returning the verdict, imposing the sentence, and at hearings set by the court upon a finding of good cause, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.

(d) Effect of Voluntary Absence. The defendant's voluntary absence after the trial has commenced in their presence shall not prevent continuing with the trial to and including the return of the verdict. A corporation may appear through counsel for all purposes. In prosecutions for offenses punishable by fine only, the court, with the defendant's written consent, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

(e) Failure to Appear. In order to require the defendant's physical or remote ~~presence~~ appearance at any hearing other than those listed in subpart (c), the court must find good cause. If in any case the defendant fails to appear when their ~~appearence~~ appearance is required, the court may order the clerk to issue a bench warrant for the defendant's arrest, which may be served as a warrant of arrest in other cases.

[Adopted effective December 28, 1999; Amended effective September 1, 2017; July 31, 2018; February 1, 2021; September 1, 2022; November 29, 2022.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CrRLJ 4.1

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

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3. Purpose of Suggested Rule Amendment

   Proposed changes for this rule remove the reference to definition of "appearance" because it is unnecessary. This change works in conjunction with new ARLJ 3 which includes the definition of "appearance" and is the same for all rules.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CrRLJ 4.1
ARRAIGNMENT

(a) Time.

(1) *Defendant Detained in Jail*. The defendant shall be arraigned not later than 14 days after the date the complaint or citation and notice is filed in court, if the defendant is (i) detained in a county or city jail in the county where the charges are pending, or (ii) subject to conditions of release imposed in connection with the same charges.

(2) *Defendant Not Detained in Jail*. The defendant shall be arraigned not later than 14 days after that appearance which next follows the filing of the complaint or citation and notice, if the defendant is not detained in such jail or subject to such conditions of release. Any delay in bringing the defendant before the court shall not affect the allowable time for arraignment, regardless of the reason for the delay. ~~For purposes of this rule, "appearance" has the meaning defined in CrRLJ 3.3(a)(3)(iii).~~

(b) Objection to Arraignment Date--Loss of Right to Object. A party who objects to the date of arraignment on the ground that it is not within the time limits prescribed by this rule must state the objection to the court at the time of the arraignment. If the court rules that the objection is correct, it shall establish and announce the proper date of arraignment. That date shall constitute the arraignment date for purposes of CrRLJ 3.3. A party who fails to object as required shall lose the right to object, and the arraignment date shall be conclusively established as the date upon which the defendant was actually arraigned.

(c) Counsel. If the defendant appears without counsel, the court shall inform the defendant of his or her right to have counsel before being arraigned. The court shall inquire if the defendant has counsel. If the defendant is not represented and is unable to obtain counsel due to indigence, counsel shall be assigned to the defendant by the court, unless the defendant makes a knowing, voluntary and intelligent waiver of counsel.

(d) Waiver of Counsel. If the defendant chooses to proceed without counsel, the court shall determine on the record whether the waiver is made voluntarily, competently and with knowledge of the consequences. The court shall make a thorough inquiry of the defendant's understanding before accepting the waiver. If the court finds the waiver valid, an appropriate finding shall be entered in the record. Unless the waiver is valid, the court shall not proceed with the arraignment until counsel is provided. Waiver of counsel at arraignment shall not preclude the defendant from claiming the right to counsel in subsequent proceedings in the cause, and the defendant shall be so informed.

(e) Name. Defendant shall be asked his or her true name. If the defendant alleges that their true name is one other than that by which he or she is charged, it must be entered in the record, and subsequent proceedings shall be had against him or her by that name or other names relevant to the proceedings.

(f) Reading. The complaint or citation and notice or the substance of the charge, shall be read to the defendant, unless the reading is waived, and a copy shall be given to the defendant.

(g) Appearance by Defendant's Lawyer. Except as otherwise provided by statute or by local court rule, a lawyer may enter an appearance or a plea of not guilty on behalf of a client for any offense. Such appearance or plea may be entered only after a complaint or citation and notice has been filed.

(1) The appearance or the plea of not guilty shall be made only in writing or in open court, and eliminates the need for a further arraignment.

(2) An appearance that waives arraignment but fails to state a plea shall be deemed to constitute entry of a plea of not guilty.

(3) An appearance under this rule constitutes a waiver of any defect in the complaint or the citation and notice except for failure to charge a crime which may be raised at any time and except for any other defect that is specifically stated in writing or on the record at the time the appearance is entered.

(4) A written appearance shall commence the running of the time periods established in rule 3.3 from the date of its receipt by the court, unless the time periods have previously been commenced by an appearance in open court.

(5) Telephonic requests or notices by either the defendant or the defendant's lawyer shall not constitute an arraignment or an appearance or entry of a plea, and shall not commence the running of the time periods under rule 3.3.

(6) The appearance by a lawyer authorized by this rule shall be construed as an "arraignment" under the other provisions of these rules.

[Adopted effective September 1, 1987; Amended effective September 1, 1995; September 1, 2003; September 1, 2010.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CrRLJ 4.6

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
   Email: AGerl@cawh.org
   Phone: (509) 244-2773

3. Purpose of Suggested Rule Amendment

   Proposed amendments include changing the words "attend" and "attending" to "appear" and "appearing," removing the term "place" and replacing it with "manner of appearance" or "manner" and specifying that the depositions be taken as provided in the Civil Rules for Courts of Limited Jurisdiction.

   These changes are important because they reference terms which are defined to include various forms of appearances. The changes work in conjunction with the new definitions in ARLJ 3 that we have proposed. The rule also removes the physical references for in person depositions, leaving room for remote depositions as proposed in the amendments to CRLJ 26.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CrRLJ 4.6
DEPOSITIONS

(a) When Taken. Upon a showing that a prospective witness may be unable to ~~attend~~ appear or prevented from ~~attending~~ appearing at a trial or hearing or if a witness refuses to discuss the case with either lawyer and that his or her testimony is material and that it is necessary to take his or her deposition in order to prevent a failure of justice, the court at any time after the filing of a complaint or citation and notice may upon motion of a party and notice to the parties order that his or her testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and ~~place~~ manner of appearance for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time and may change the ~~place~~ manner of taking.

(c) How Taken. A deposition shall be taken in the manner provided in the Civil Rules for Courts of Limited Jurisdiction ~~civil actions~~. No deposition shall be used in evidence against any defendant who has not had notice of and an opportunity to participate in or ~~be present~~ appear at the taking thereof.

(d) Use. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as witness, or as substantive evidence under circumstances permitted by the Rules of Evidence.

(e) Objections to Admissibility. Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

[Adopted effective September 1, 1987.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CrRLJ 4.8

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
   Email: AGerl@cawh.org
   Phone: (509) 244-2773

3. Purpose of Suggested Rule Amendment

   Proposed changes for this rule remove the word "attend" and "attendance" to replace with "appear" or "appearance". This change is consistent with other rule changes.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CrRLJ 4.8
SUBPOENAS

(a) For ~~Attendance of~~ Witnesses at Hearing or Trial. A subpoena commanding a person to ~~attend~~ appear and give testimony at a hearing or at trial ("a subpoena for testimony") shall be issued as follows:

(1) *Form; Issuance*.

(A) A subpoena for testimony shall (i) state the title of the action, the case number, the name of the court in which the action is pending, and, if different, the name of the court from which the subpoena is issued and (ii) command each person to whom it is directed to ~~attend~~ appear and give testimony at a specified time and place.

(B) (i) The court in which the action is pending or before which ~~attendance~~ appearance is required may issue a subpoena for testimony under the seal of that court, or the clerk may issue the subpoena for testimony in response to a praecipe. (ii) An attorney for a party also may sign and issue a subpoena for testimony unless subsection (iii) of this rule applies. (iii) The judge must approve a subpoena for a witness outside the county or counties contiguous with it unless the witness is an employee of the Washington State Department of Licensing; a Washington police department or sheriff's office; or the Washington State Patrol, including the Washington State Patrol Crime Laboratory Division and the Washington State Patrol Toxicology Laboratory Division.

(C) A command to a person to produce evidence or to permit inspection may be joined with a subpoena for testimony or may be issued separately under subsection (b) of this rule.

(2) *Notice*. Notice to each party of the issuance of a subpoena for testimony is not required; provided that, when a subpoena for testimony also commands the person to whom it is directed to produce evidence or to permit inspection of things, the serving party shall give advance notice of such subpoena in the manner described in subsection (b) of this rule.

(3) *Service – How Made*. A subpoena for testimony may be served by any suitable person over 18 years of age, by giving the witness a copy thereof, or by leaving a copy at the witness's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. When service is made by any person other than an officer authorized to serve process, proof of service shall be made by affidavit or declaration. A subpoena for testimony may also be served by first-class mail, postage prepaid, together with a waiver of personal service and instructions for returning such waiver to the attorney of record of the party to the action in whose behalf the witness is required to appear. Service by mail shall be deemed complete upon the filing of the returned waiver of personal service, signed in affidavit or declaration form.

(4) *When Witness Excused*. A witness subpoenaed to ~~attend~~ appear at a hearing or trial is excused from further ~~attendance~~ appearance as soon as the witness has given testimony in chief and has been crossexamined thereon, unless a party moves in open court that the witness remain

~~in attendance~~ and the court so orders. Witness fees will not be allowed any witness after the day on which the witness's testimony is given, except when the witness has in open court been required to remain ~~in further~~ ~~attendance~~, and when so required the clerk shall note that fact in the minutes.

(b) For Producing Evidence or Permitting Inspection. A subpoena commanding a person to produce and permit inspection and copying of designated documents, tangible things, or premises in the possession, custody, or control of that person ("a subpoena for production") shall be issued as follows:

(1*) Form Issuance*.

(A) A subpoena for production shall (i) state the title of the action, the case number, the name of the court in which the action is pending, and, if different, the name of the court from which the subpoena is issued, (ii) command each person to whom it is directed to produce and permit inspection and copying of documentary evidence, tangible things, or premises in the possession, custody, or control of that person at a specified time and place, and (iii) set forth the text of subsection (b)(4) of this rule.

(B) The court in which the action is pending or before which attendance is required may issue a subpoena for production under the seal of that court or the clerk may issue the subpoena in response to a praecipe. An attorney for a party also may sign and issue a subpoena for production.

(C) A subpoena for production may be joined with a subpoena for testimony, or it may be issued separately, provided that a subpoena to inspect premises may not be combined with other subpoenas issued pursuant to this rule.

(2) *Notice*. Notice to parties of the issuance of a subpoena for production is not required provided that, whenever a party intends to serve a subpoena for production seeking evidence or inspection of things or premises belonging or pertaining to a defendant who is not the party seeking or issuing the subpoena, the serving party must give all parties advance notice; and provided that whenever any party intends to serve a subpoena for production seeking evidence or inspection of things belonging or pertaining to an alleged victim or complaining witness, the serving party shall provide advance notice to all parties and to the alleged victim or complaining witness; and provided that a subpoena for inspection of premises must be signed by the court and only after good cause is shown and advance notice is provided to all parties and the owner or occupier of the premises.

(A) *Time and Manner*. If advance notice is required under this rule, then no fewer than five days prior to service on the person named in the subpoena for production, notice shall be provided in the manner prescribed by CRLJ 5(b). The parties may agree to shorten the time for advance notice when a subpoena seeks solely evidence or tangible things belonging or pertaining to a defendant. The court may shorten the time for advance notice upon a showing of good cause by a party; provided that, any alleged victim or complaining witness whose evidence, tangible

things, or premises are sought shall receive notice and an opportunity to be heard on any motion to shorten time.

(B) *Court May Excuse Notice*. A court on ex parte motion may excuse compliance with the advance notice requirement upon the serving party's showing of good cause; any such court order, along with a copy of the subpoena for which notice is excused, shall be filed under seal pursuant to GR 15.

(3) *Service – How Made*. A subpoena for production shall be served in the manner prescribed in CRLJ 5(b); provided that if the subpoena for production is joined with a subpoena for testimony, then subsection (a)(3) of this rule shall govern service.

(4) *Protection of Persons Subject to Subpoena for Production*. On timely motion, the court may quash or modify a subpoena for production if it (A) fails to allow reasonable time for compliance, (B) requires disclosure of privileged or other protected matter and no exception or waiver applies, (C) is unreasonable, oppressive, or unduly burdensome, or (D) exceeds the scope of discovery otherwise permitted under the criminal rules. The court may condition denial of a motion to quash or modify upon the advancement by the party on whose behalf the subpoena for production is issued of the reasonable cost of producing the books, papers, documents, tangible things, or premises.

(5) *Applicability of Other Notice and Privacy Provisions*. The provisions of this rule do not modify or limit privacy protections and notice requirements provided by court rule, statute, regulation, or other applicable law.

(c) Contempt. Failure by any person without adequate excuse to obey a subpoena served on that person may be deemed a contempt of the court from which the subpoena issued. No subpoena shall be the basis for a material witness warrant or a contempt of court citation unless there is proof of personal receipt.

[Adopted effective September 1, 1987; Amended effective September 1, 2015; September 1, 2022.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CrRLJ 6.12

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
   Email: AGerl@cawh.org
   Phone: (509) 244-2773

3. Purpose of Suggested Rule Amendment

   Proposed amendments to the rule include removing the words "attend" and "production" and in some cases replacing it with the words "appear" or "appearance." This allows for flexibility in remote appearances consistent with other rule changes, including the new proposed ARLJ 15.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CrRLJ 6.12
WITNESSES

(a) Who May Testify. Any person may be a witness in any action or proceeding under these rules except as hereinafter provided or as provided in the Rules of Evidence.

(b) When Excused. A witness subpoenaed to ~~attend~~ appear in a criminal case is dismissed and excused ~~from further attendance~~ as soon as he or she has given his or her testimony in chief and has been cross-examined thereon, unless either party ~~makes~~ requests in open court that the witness remain ~~in attendance~~; and witness fees will not be allowed any witness after the day on which his or her testimony is given, except when the witness has in open court been required to remain. ~~in further attendance.~~

(c) Persons Incompetent To Testify. The following persons are incompetent to testify: (1) those who are of unsound mind, or intoxicated at the time of their ~~production~~ appearance for examination; and (2) those who do not have the capacity of receiving just impressions of the facts about which they are examined or who do not have the capacity of relating them truly. This shall not affect any recognized privileges.

(d) Not Excluded on Grounds of Interest. No person offered as a witness shall be excluded from giving evidence by reason of his or her interest in the result of the action, as a party thereto or otherwise, but such interest may be shown to affect his or her credibility.

[Adopted effective September 1, 1987.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CrRLJ 7.3

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
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   Phone: (509) 244-2773

3. Purpose of Suggested Rule Amendment.

   Proposed amendments to rule change the word "present" to "appearing" in section (h) to permit and facilitate remote appearance. This change is consistent with other proposed rule changes.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CrRLJ 7.3
JUDGMENT

A judgment of conviction shall set forth whether the defendant was represented by a lawyer or waived representation by a lawyer, the plea, the verdict or findings, and the adjudication and sentence. The court may order that its sentence include special conditions or requirements, including a specified schedule for the payment of a fine, restitution, or other costs, or the performance of community service. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judge or clerk shall enter the judgment on the record. The judgment and record of the sentencing proceedings of the courts of limited jurisdiction shall be preserved in perpetuity, either in an electronic or hard copy format. "Hard copy format" may include microfilm, microfiche, or a paper copy. At a minimum, the judgment and record of the sentencing proceedings shall include:

(a) Defendant's name;

(b) Defendant's ID numbers;

(c) Citation to the statute or ordinance, including subsections, under which the defendant was sentenced;

(d) Identification of any charge to which the defendant pleaded guilty or was found guilty that is a crime of domestic violence under state law;

(e) Arraignment date;

(f) The plea, and the date entered;

(g) Representation by or waiver of lawyer, as well as date of lawyer's appearance or waiver;

(h) The parties ~~present~~ appearing, including but not limited to the judge, attorneys, prosecutor, defense counsel, witnesses;

(i) Verdict or findings, and the date entered;

(j) Adjudication and sentence, and the date entered;

(k) Conditions or requirements of the sentence, including but not limited to a specified schedule for the payment of a fine, restitution, or other costs, performance of community service, counseling or treatment;

(l) The outcomes of any hearings held on the case, including but not limited to noncompliance hearings, reviews. The judgment and record of the sentencing proceedings shall be prima facie evidence of a valid conviction in subsequent proceedings in courts of limited jurisdiction and in superior court.

[Adopted effective September 1. 1987; Amended effective June 4, 1997; Dec. 28, 2010.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CrRLJ 7.6

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

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3. Purpose of Suggested Rule Amendment

   Proposed amendments to the rule to change "shall be present" to "physically or remotely appears, or" and changed the term "present" to "appear." The purpose of the rule change is to allow for remote appearances at probation hearings. The rule continues to require the defendant's presence at a hearing either physically or remotely, but also gives the court discretion to permit appearance through counsel. The rule maintains the right to physically appear at all evidentiary hearings, but uses the word "appear" instead of "present" consistent with the other court rule changes and ARLJ 3 definitions.

   As the workgroup voted, one group member objected to the "physically or remotely appear" and preferred the term "appear." The member did not agree with the voted language to create a presumption of physical or remote presence. The proposal was ultimately adopted to be proposed by a majority vote of 5:2 with one prosecutor and one defense attorney voting against the propose language and preferring the language of the current rule which was amended in 2023.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

CrRLJ 7.6
PROBATION

(a) Probation. After conviction of an offense the defendant may be placed on probation as provided by law.

(b) Jurisdiction. Pursuant to RCW 39.34.180, the court may transfer probation.

(c) Revocation or Modification of Probation. The court shall not revoke or modify probation except (1) after a hearing in which the defendant ~~shall be present~~ physically or remotely appears, or (2) upon stipulation of the parties. The defendant has the right to ~~be~~ physically ~~present~~ appear at all evidentiary hearings and any hearing the defense sets to reconsider bail or conditions of release. The court has discretion to allow the defendant to appear through counsel ~~or remotely~~.

(d) Release Pending Probation Hearing. If the defendant has been arrested for an alleged probation violation, the court shall release the defendant within 24 hours or hold a hearing on the next judicial day to determine release conditions pursuant to rule 3.2.

(e) Timing of Probation Hearing. If a defendant is held in custody on the alleged probation violation, the court must hold a probation hearing in which the defendant has the right to ~~be~~ physically ~~present~~ appear within two weeks of the defendant's arrest unless the defendant requests a continuance. If the hearing is not set for a date within two weeks of arrest, the defendant shall be released pending the hearing.

(f) Rights of the Defendant Unless Waived. The defendant is entitled to be represented by a lawyer, and a lawyer shall be appointed for a defendant financially unable to obtain one. Before a probation hearing, the probationer shall be advised of the nature of the alleged violation and provided discovery of evidence supporting the allegation, including names and contact information of witnesses. If the defendant seeks to cross-examine witnesses, the defendant shall give notice at least three days before the hearing. A defendant who gives such notice shall have the right to confront adverse witnesses unless the court specifically finds good cause for not allowing confrontation. At the hearing, the defendant shall have the right to present evidence and cross-examine any witnesses.

(g) Record of Grounds for Decision. If the court revokes probation, it shall state the grounds for its decision succinctly in the record.

[Adopted effective September 1, 1987. Amended effective January 1, 2023; May 2, 2023.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO IRLJ 3.3

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
   Email: AGerl@cawh.org
   Phone: (509) 244-2773

3. Purpose of Suggested Rule Amendment

   Proposed amendments to the rule include changing the language addressing appearance through counsel at contested hearings.

   During discussions with the group, there was concern expressed about allowing law enforcement to appear remotely infraction hearing. There was also argument that RCW 46.63.090(2) confers a right to confront the witness in person. Ultimately, the rule was extensively discussed and modified resulting in a unanimous vote by the group as it is presented here. This rule in combination with ARLJ 15, as proposed, addresses the Court's ability to require in person testimony where deemed appropriate.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

IRLJ 3.3
PROCEDURE AT CONTESTED HEARING

(a) Generally. The court shall conduct the hearing for contesting the notice of infraction on the record in accordance with applicable law.

(b) Representation by Lawyer. At a contested hearing, the plaintiff shall be represented by a lawyer representative of the prosecuting authority when prescribed by local court rule. The defendant may be represented by a lawyer. If the defendant is represented by a lawyer and the lawyer has filed a notice of appearance, including a waiver of the defendant's presence, the defendant ~~need not~~ ~~personally~~ may appear through counsel at the contested hearing unless the defendant's presence is otherwise required by statute or the court rules.

(c) Rules of Evidence. The Rules of Evidence and statutes that relate to evidence in infraction cases shall apply to contested hearings. The court may consider the notice of infraction and any other written report made under oath submitted by the officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing, unless the defendant has caused the officer to be served with a subpoena to appear in accordance with instructions from the court issued pursuant to rule 2.6(a)(2).

(d) Factual Determination. The court shall determine whether the plaintiff has proved by a preponderance of the evidence that the defendant committed the infraction. If the court finds the infraction was committed, it shall enter an appropriate order on its records. If the court finds the infraction was not committed, it shall enter an order dismissing the case.

(e) Disposition. If the court determines that the infraction has been committed, it may assess a monetary penalty against the defendant. The monetary penalty assessed may not exceed the monetary penalty provided for the infraction by law. The court may waive or suspend a portion of the monetary penalty, or provide for time payments, or in lieu of monetary payment provide for the performance of community restitution as provided by law. The court has continuing jurisdiction and authority to supervise disposition for not more than one (1) year.

[Adopted as JTIR effective January 1, 1981; Amended effective March 20, 1981. Changed from JTIR to IRLJ effective September 1, 1992; September 1, 1997; January 3, 2006; September 1, 2018.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO IRLJ 3.4

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
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3. Purpose of Suggested Rule Amendment

   Proposed amendment changes the word "attend" to "appear" to facilitate remote proceedings in infraction hearings. This change is consistent with the other amendments proposed by the workgroup.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

IRLJ 3.4
HEARING ON MITIGATING CIRCUMSTANCES

(a) Generally. The court shall conduct the hearing concerning mitigating circumstances in accordance with applicable law.

(b) Procedure at Hearing. The court shall hold an informal hearing which shall not be governed by the Rules of Evidence. Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the judge, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. The plaintiff and the defendant may each be represented by a lawyer. The defendant may present witnesses, but they may not be compelled to ~~attend~~ appear.

(c) Disposition. The court shall determine whether the defendant's explanation of the events justifies reduction of the monetary penalty. The court shall enter an order finding the defendant committed the infraction and may assess a monetary penalty. The court may not impose a penalty in excess of the monetary penalty provided for the infraction by law. The court may waive or suspend a portion of the monetary penalty, or provide for time payments, or in lieu of monetary payment provide for the performance of community restitution as provided by law. The court has continuing jurisdiction and authority to supervise disposition for not more than one (1) year.

[Adopted effective January 1, 1981; Amended effective September 1, 1992; January 3, 2006.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO IRLJ 3.5

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

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3. Purpose of Suggested Rule Amendment

   Proposed amendments to the rule to remove section (b) in its entirety regarding telephonic and video conferencing. This type of hearing is permitted elsewhere in the limited jurisdiction rules and is defined in ARLJ 3. This section to the rule is no longer necessary.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

IRLJ 3.5
LOCAL RULE OPTIONS

(a) Decisions on Written Statements.

(1) *Local Court Form.* Each court shall promulgate a form for defendants to use in hearings decided on written statements. The form shall be available on the court's website and shall also be provided to the defendant upon request. The form shall contain:

(i) blank space for the defendant to write their statement contesting the infraction or to explain mitigating circumstances;

(ii) notice that the defendant may attest that they do not have the current ability to pay the infraction in full;

(iii) information on how to submit evidence of inability to pay, obtain a payment plan, and inform the person that failure to pay or enter into a payment plan may result in collection action, including garnishment of wages or other assets;

(iv) a statement that, for a contested hearing, if it is determined that the defendant committed the infraction, the defendant agrees to pay any monetary penalty authorized by law and assessed by the court;

(v) a statement, that for a mitigation hearing, the defendant promises to pay the monetary penalty authorized by law or, at the discretion of the court, any reduced penalty that may be set; and

(vi) a signature block for the defendant that contains certification language consistent with GR 13, and notice that the defendant may sign the form in any manner consistent with GR 30.

(2) *Contested Hearing Procedures.* The court shall examine the citing officer's report and any statement or documents submitted by the defendant. The examination may be held in chambers and shall take place within one hundred and twenty (120) days after the defendant filed the response to the notice of infraction. The court shall determine whether the plaintiff has proved by a preponderance of the evidence submitted whether the infraction was committed.

(3) *Mitigation Hearing Procedures.* A mitigation hearing based on a written statement may be held in chambers and shall take place within 120 days after the defendant filed the response to the notice of infraction.

(4) *Notice to Defendant.* The court shall notify the defendant in writing of its decision, including any penalty imposed.

(5) *No Appeal Permitted.* There shall be no appeal from a decision on written statements.

~~**(b) Telephonic or Video Conference Mitigation Hearings.**~~

~~(1) Local Rule Permitted. A court may adopt a local rule permitting defendants a mitigation hearing by telephone or video conference in lieu of an in-person appearance; such proceedings are open to the public.~~

~~(2) Requirements. Such local rule shall comply with the requirements that the hearings shall be conducted on the record and the defendant be advised that the hearing is being audio recorded, and the court shall advise the defendant in writing of its decision and any penalty imposed.~~

[Adopted as JTIR effective January 1, 1981. Changed from JTIR to IRLJ effective September 1, 1992; Amended effective September 1, 1997; January 3, 2006; September 1, 2017; January 1, 2023.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO IRLJ 6.7

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Angelle Gerl, Co-Chair BJA Remote Proceedings Work Group – CLJ level
   Email: AGerl@cawh.org
   Phone: (509) 244-2773

3. Purpose of Suggested Rule Amendment

   Proposed amendment to the rule to change the court requiring "presence" to "appearance" to better facilitate remote proceedings. This change is consistent with other rule changes and promotes continuity of language throughout the limited jurisdiction rules.

4. Is Expedited Consideration Requested?

   Yes. Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No.

IRLJ 6.7
IDENTITY CHALLENGES AND RELIEF FROM JUDGMENT

(a) Relief from Judgment. A motion to waive or suspend a fine, or to convert a penalty to community restitution, or to vacate a judgment is governed by CRLJ 60(b).

(b) Identity Challenge.

(1) *Right Granted*. In addition to the rights granted defendants pursuant to rule 6.7(a), a defendant may move to vacate a judgment that was entered after a failure to respond to a notice of infraction on the basis that he or she was mistakenly identified as the person who allegedly committed the infraction.

(2) *Identity Affidavit.* A defendant moving to vacate a judgment for mistaken identification shall file an affidavit or certification with the court in which the infraction was found committed and with the office of the prosecuting authority assigned to the court stating that he or she could not be the person identified by the citing officer as having committed the infraction, citing a factual basis for the assertion and stating that he or she was not served with the notice of infraction.

(3) *Adjudication Pending Hearing.* The court may, at its discretion, set aside the default judgment pending the hearing.

(4) *Scheduling of Hearings.* An identification hearing shall be scheduled for not less than 14 days and not more than 120 days from the date an identity affidavit is filed unless otherwise agreed by the defendant. The court shall send the defendant written notice of the time, place and date of the hearing within 28 days of the receipt of the request for hearing.

(5) *Hearing Procedure.* The court may require the ~~presence of the~~ defendant to appear at the scheduled hearing. At the hearing, identification may be established by methods other than direct identification in court.

(6) *Disposition.* If the court determines that the named defendant was the person identified by the citing officer as the person who committed the infraction or was served with the notice of infraction, the infraction shall remain committed or be re-adjudicated as committed.

[Adopted effective September 1, 1994; amended effective January 3, 2006; February 28, 2006; February 1, 2021.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CR 1

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Jim Rogers, Co-Chair BJA Remote Proceedings Work Group – Superior Court Level
   Email: Jim.Rogers@kingcounty.gov
   Phone: 206-477-1597

3. Purpose of Suggested Rule Amendment

   Amend CR 1 to include that remote proceedings are permitted in the effort to secure the just, speedy and inexpensive determination of every action.

   This amendment had the majority of the votes (7-3). Several voted for no change to the existing rule.

4. Is Expedited Consideration Requested?

   Expedited consideration is essential. The Court should seriously consider passing amended rules permitting remote proceedings before the Supreme Court's Emergency Order is lifted. Use of remote technology in superior courts is now widespread. For some jurisdictions, it has become essential to maintain access to justice. President's Corner > The Rural Attorney Shortage is Turning Into a Crisis in Washington State - Washington State Bar News (wabarnews.org) Members of our Group in rural areas noted that remote technology assists them by allowing out of town counsel to appear.

5. Is a Public Hearing Recommended? No

[Attach suggested rule amendment]

CR 1
SCOPE OF RULES

These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action. To this end, proceedings held by remote means are permitted.

[Adopted effective July 1, 1967; September 1, 2005.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CR 7

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Jim Rogers, Co-Chair BJA Remote Proceedings Work Group – Superior Court Level
   Email: Jim.Rogers@kingcounty.gov
   Phone: 206-477-1597

3. Purpose of Suggested Rule Amendment

   This proposed amendment allows motions to be heard by remote means, rather than only telephonic. The Civil Group unanimously supported this.

   The committees' view is that "remote means" is a better phrase to use to encompass all technology and all future technology.

4. Is Expedited Consideration Requested?

   Expedited consideration is essential. The Court should seriously consider passing amended rules permitting remote proceedings before the Supreme Court's Emergency Order is lifted. Use of remote technology in superior courts is now widespread. For some jurisdictions, it has become essential to maintain access to justice. President's Corner > The Rural Attorney Shortage is Turning Into a Crisis in Washington State - Washington State Bar News (wabarnews.org) Members of our Group in rural areas noted that remote technology assists them by allowing out of town counsel to appear.

5. Is a Public Hearing Recommended? No

[Attach suggested rule amendment]

CR 7
PLEADINGS ALLOWED; FORM OF MOTIONS

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is summoned under the provisions of rule 14; and a third party answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

(b) Motions and Other Papers.

(1) *How Made*. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) *Form*. The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) *Signing*. All motions shall be signed in accordance with rule 11.

(4) *Identification of Evidence*. When a motion is supported by affidavits or other papers, it shall specify the papers to be used by the moving party.

(5) ~~*Telephonic*~~*Oral Argument by Remote Means*. Oral argument on civil motions, including family law motions, may be heard by remote means ~~conference telephone call~~ in the discretion of the court. ~~The expense of the call shall be shared equally by the parties~~ Parties shall bear their own costs of participation by conference call or other remote means unless the court directs otherwise in the ruling or decision on the motion.

(c) Demurrers, Pleas, etc., Abolished. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

(d) Security for Costs. [Reserved. See RCW 4.84.210 et seq.]

[Adopted effective July 1, 1967; Amended effective September 1, 1985; September 1, 1994.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CR 26

1. Proponent Organization: BJA Remote Proceedings Work Group Civil

2. Spokesperson & Contact Info:

Judge Jim Rogers, Co-Chair BJA Remote Proceedings Work Group – Superior Court Level
Email: Jim.Rogers@kingcounty.gov
Phone: 206-477-1597

3. Purpose of Suggested Rule Amendment

This is a very simple proposed amendment in section (f) that allows the parties to appear by remote means at a pretrial conference. The Civil Group unanimously supports this change.

4. Is Expedited Consideration Requested?

Expedited consideration is essential. The Court should seriously consider passing amended rules permitting remote proceedings before the Supreme Court's Emergency Order is lifted. Use of remote technology in superior courts is now widespread. For some jurisdictions, it has become essential to maintain access to justice. President's Corner > The Rural Attorney Shortage is Turning Into a Crisis in Washington State - Washington State Bar News (wabarnews.org) Members of our Group in rural areas noted that remote technology assists them by allowing out of town counsel to appear.

5. Is a Public Hearing Recommended? No

[Attach suggested rule amendment]

CR 26
GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests foradmission.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the courtin accordance with these rules, the scope of discovery is as follows:

(1) *In General*. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in section (a) shall be limited by the court if it determines that:

(A) the discovery sought is unreasonably cumulative or duplicative, or is obtainablefrom some other source that is more convenient, less burdensome, or less expensive;

(B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(C) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties, resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under section (c).

(2) *Insurance Agreements*. A party may obtain discovery and production of: (i) the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment; and (ii) any documents affecting coverage (such as denying coverage, extending coverage, or reserving rights) from or on behalf of such person to the covered person or the covered person's representative. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this section, an application for insurance shallnot be treated as part of an insurance agreement.

(3) *Structured Settlements and Awards*. In a case where a settlement or final award provides for all or part of the recovery to be paid in the future, a party entitled to such payments may obtain disclosure of the actual cost to the defendant of making such payments. This disclosure may be obtained during settlement negotiations upon written demand by a party entitled to such payments. If disclosure of cost is demanded, the defendant may withdraw the offer of a structured settlement at any time before the offer is accepted.

(4) *Trial Preparation: Materials*. Subject to the provisions of subsection (b)(5) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including a party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of such party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this section, a statement previously made is,

(A) a written statement signed or otherwise adopted or approved by the person making it, or

(B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(5) *Trial Preparation: Experts*. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and to state such other information about the expert as may be discoverable under these rules. (ii) A party may, subject to the provisions of this rule and of rules 30 and 31, depose each person whom any other party expects to call as an expert witness at trial.

(B) A party may discover facts known or opinions held by an expert who is not expected to be called as a witness at trial, only as provided in rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subsections (b)(5)(A)(ii) and (b)(5)(B) of this rule; and (ii) with respect to discovery obtained under subsection (b)(5)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subsection (b)(5)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(6) *Claims of Privilege or Protection as Trial-Preparation Materials for Information Produced*. If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; and must take reasonable steps to retrieve the information if the party disclosed it before being notified. Either party may promptly present the information in camera to the court for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(7) *Discovery From Treating Health Care Providers*. The party seeking discovery from a treating health care provider shall pay a reasonable fee for the reasonable time spent in responding to the discovery. If no agreement for the amount of the fee is reached in advance, absent an order to the contrary under section (c), the discovery shall occur and the health care provider or any party may later seek an order setting the amount of the fee to be paid by the party who sought the discovery. This subsection shall not apply to the provision of records under RCW 70.02 or any similar statute, nor to discovery authorized under any rules for criminal matters.

(8) *Treaties or Conventions*. If the methods of discovery provided by applicable treaty or convention are inadequate or inequitable and additional discovery is not prohibited by the treaty or convention, a party may employ the discovery methods described in these rules to supplement the discovery method provided by such treaty or convention.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that the contents of a deposition not be disclosed or be disclosed only in a designated way;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement response with respect to any question directly addressed to:

(A) the identity and location of persons having knowledge of discoverable matters, and

(B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert witness is expected to testify, and the substance of the expert witness's testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which:

(A) the party knows that the response was incorrect when made, or

(B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed b order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(4) Failure to seasonably supplement in accordance with this rule will subject the party to such terms and conditions as the trial court may deem appropriate.

(f) Discovery Conference. At any time after commencement of an action the court may direct the attorneys for the parties to ~~appear before it for~~ attend a conference by remote means or in person on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party.

Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by rule 16.

(g) Signing of Discovery Requests, Responses, and Objections. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that the attorney or the party has read the request, response, or objection, and that to the best of their knowledge, information, and belief formed after a reasonable inquiry it is:

(1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

(h) Use of Discovery Materials. A party filing discovery materials on order of the court or for use in a proceeding or trial shall file only those portions upon which the party relies and may file a copy in lieu of the original.

(i) Motions; Conference of Counsel Required. The court will not entertain any motion or objection with respect to rules 26 through 37 unless counsel have conferred with respect to the motion or objection. Counsel for the moving or objecting party shall arrange for a mutually convenient conference, whether in person or by telephone or by other remote means. If the court finds that counsel for any party, upon whom a motion or objection in respect to matters covered by such rules has been served, has willfully refused or failed to confer in good faith, the court may apply the sanctions provided under rule 37(b). Any motion seeking an order to compel discovery or obtain protection shall include counsel's certification that the conference requirements of this rule have been met.

(j) Access to Discovery Materials Under RCW 4.24.

(1) *In General*. For purposes of this rule, "discovery materials" means depositions, answers to interrogatories, documents or electronic data produced and physically exchanged in response to requests for production, and admissions pursuant to rules 26-37.

(2) *Motion*. The motion for access to discovery materials under the provisions of RCW 4.24 shall be filed in the court that heard the action in which the discovery took place. The person seeking access shall serve a copy of the motion on every party to the action, and on nonparties if ordered by the court.

(3) *Decision*. The provisions of RCW 4.24 shall determine whether the motion for access to discovery materials should be granted.

[Adopted effective July 1, 1967; Amended effective July 1, 1972; September 1, 1985; September 1, 1989; December 28, 1990; September 1, 1992; September 17, 1993; September 1, 1995; January 12, 2010; April 28, 2015.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CR 30

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Jim Rogers, Co-Chair BJA Remote Proceedings Work Group – Superior Court Level
   Email: Jim.Rogers@kingcounty.gov
   Phone: 206-477-1597

3. Purpose of Suggested Rule Amendment

   This proposed amendment allows remote depositions of witnesses. The Civil Group was unanimous as to most amendments to the rule except 30(b)(7). After meeting with the Supreme Court Rules Committee, the Civil Group redrafted this section and it passed by majority vote. This included the Superior Court Judges Association Rules Committee.

   This proposed amended rule's section 30(b)(7) follows closely the proposed amended CR 43 section on the same topic. Proposed amended CR 43 was passed by this group unanimously.

4. Is Expedited Consideration Requested?

   Expedited consideration is essential. The Court should seriously consider passing amended rules permitting remote proceedings before the Supreme Court's Emergency Order is lifted. Use of remote technology in superior courts is now widespread. For some jurisdictions, it has become essential to maintain access to justice. President's Corner > The Rural Attorney Shortage is Turning Into a Crisis in Washington State - Washington State Bar News (wabarnews.org) Members of our Group in rural areas noted that remote technology assists them by allowing out of town counsel to appear.

5. Is a Public Hearing Recommended? No

[Attach suggested rule amendment]

CR 30
DEPOSITIONS UPON ORAL EXAMINATION

(a) When Depositions May Be Taken. After the summons and a copy of the complaint are served, or the complaint is filed, whichever shall first occur, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under rule 4(e), except that leave is not required:

(1) if a defendant has served a notice of taking deposition or otherwise sought discovery; or

(2) if special notice is given as provided in subsection (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of Examination: General Requirements; Special Notice; Nonstenographic Recording; Production of Documents and Things; Deposition of Organization; Video Recording.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing of not less than 5 days pursuant to CR 6 to every other party to the action and to the deponent, if not a party or a managing agent of a party. Notice to a deponent who is not a party or a managing agent of a party may be given by mail, email or by any means reasonably likely to provide actual notice. The notice shall state the time and place for taking the deposition, ~~and~~ the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the deponent or the particular class or group to which the deponent belongs. If the deposition will be conducted by remote means, the notice shall provide the information and instructions necessary to appear and attend remotely. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. A party seeking to compel the attendance of a deponent who is not a party or a managing agent of a party must serve a subpoena on that deponent in accordance with rule 45. Failure to give 5 days, notice to a deponent who is not a party or a managing agent of a party may be grounds for the imposition of sanctions in favor of the deponent, but shall not automatically constitute grounds for quashing the subpoena.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice

(A) states that the person to be examined is about to go out of the state and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and

(B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by rule 11 are applicable to the certification.

If a party shows that when the party was served with notice under this subsection (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against the party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. The stipulation or the order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at the party's own expense. Any objections under section (c), any changes made by the witness, the witness's signature identifying the deposition as the witness's own or the statement of the officer that is required if the witness does not sign, as provided in section (e), and the certification of the officer required by section (f) shall be set forth in a writing to accompany a deposition recorded by nonstenographic means.

(4) The notice to a party deponent may be accompanied by a request made in compliance with rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of rule 34 shall apply to the request, including the time established by rule 34(b) for the party to respond to the request.

(5) A party may in a notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. In that event the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters known on which the deponent will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to the matters known or reasonably available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(6) ~~The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or by other electronic means. For the purposes of this rule and rules 37(a)(1), 37(b)(1), and 45(d), a deposition taken by telephone or by other electronic means is taken at the place where the deponent is to answer the propounded questions.~~

(7) Any party may take a deposition in person or by remote means. Parties are strongly encouraged to agree to the mode and manner of deposition, in person or remote, before notice is served. The deposition shall proceed as noticed unless within three days of receipt of notice an objecting party or the deponent files a motion objecting to the notice. In determining whether a deposition shall proceed in person or by remote means, the Court may consider the following non-exclusive factors and any other factor the court deems appropriate: (a) the role of the witness in the case; (b) the complexity of the case; (c) whether there will be prejudice to any party or the witness if testimony by remote means is permitted (d) whether the witness is subject to the Court's subpoena power and, thus, whether a party will at any point have the opportunity to question the witness in person; and (e) whether the noted mode of deposition serves the purposes of CR 1.

(8) *Video recording of depositions*.

(A) Any party may video record the deposition of any party or witness without leave of court provided that written notice is served on all parties not less than 20 days before the deposition date, and specifically states that the deposition will be video recorded. Failure to so state shall preclude the use of video recording equipment at the deposition, absent agreement of the parties or court order.

(B) No party may video record a deposition within 120 days of the later of the date of filing or service of the lawsuit, absent agreement of the parties or court order.

(C) On motion of a party made prior to the deposition, the court shall order that a video recorded deposition be postponed or begun subject to being continued, on such terms as are just, if the court finds that the deposition is to be taken before the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent or other means, for cross examination of the deponent.

(D) Unless otherwise stipulated to by the parties, the expense of video recording shall be borne by the noting party and shall not be taxed as costs. Any party, at that party's expense, may obtain a copy of the video recording.

(E) A stenographic record of the deposition shall be made simultaneously with the video recording at the expense of the noting party.

(F) The area to be used for video recording testimony shall be suitable in size, have adequate lighting and be reasonably quiet. The physical arrangements shall be fair to all parties. The deposition shall begin by a statement on the record of:

(i) the operator’s name, address and telephone number,

(ii) the name and address of the operator’s employer,

(iii) the date, time, and place of the deposition,

(iv) the caption of the case,

(v) the name of the deponent, and

(vi) the name of the party giving notice of the deposition. The officer before whom the deposition is taken shall be identified and swear the deponent on camera. At the conclusion of the deposition, it shall be stated on the record that the deposition is concluded. When more than one storage device is used to record the video recording, the operator shall announce on camera the end of each separate storage device on which the video recording is preserved, such as each tape or disk (if any), and the beginning of the next one.

(G) Absent agreement of the parties or court order, if all or any part of the video recording will be offered at trial, the party offering it must order the stenographic record to be fully transcribed at that party's expense. A party intending to offer a video recording of a deposition in evidence shall notify all parties in writing of that intent and the parts of the deposition to be offered within sufficient time for a stenographic transcript to be prepared, and for objections to be made and ruled on before the trial or hearing. Objections to all or part of the deposition shall be made in writing within sufficient time to allow for rulings on them and for editing of the video recording. The court shall permit further designations of testimony and objections as fairness may require. In excluding objectionable testimony or comments or objections of counsel, the court may order that an edited copy of the video recording be made, or that the person playing the recording at trial suppress the objectionable portions of the recording. In no event, however, shall the original video recording be affected by any editing process.

(H) After the deposition has been taken, the operator of the video recording equipment shall submit with the video recording a certificate that the recording is a correct and complete record of the testimony by the deponent. If the video recording is stored exclusively on a computer or service (including cloud storage) and not on an easily removable and portable storage device, the certificate shall so state and indicate measures taken to preserve it. Unless otherwise agreed by the parties on the record, the operator shall retain custody or control of the original video recording. The custodian shall store it under conditions that will protect it against loss, destruction, or tampering, and shall preserve as far as practicable the quality of the recording and the technical integrity of the testimony and images it contains. The custodian of the original video recording shall retain custody of it until 6 months after final disposition of the action, unless the court, on motion of any party and for good cause shown, orders that the recording be preserved for a longer period.

(I) The use of video recorded depositions shall be subject to rule 32.

(c) Examination and Cross Examination; Record of Examination; Oath; Objections. Examination and cross examination of witnesses may proceed as permitted at the trial under the provisions of the Washington Rules of Evidence (ER). The officer before whom the deposition is to be taken under rule 28(a) shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. However, such oath and recording may be administered by the officer from a location remote from the deponent. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subsection (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. A judge of the superior court, or a special master if one is appointed pursuant to rule 53.3, may make telephone rulings on objections made during depositions. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion To Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the

deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefore; and the deposition may then be used as fully as though signed unless on a motion to suppress under rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Service by Officer; Exhibits; Copies; Notice.

(1) The officer shall certify on the deposition transcript that the witness was duly sworn and that the transcript is a true record of the testimony given by the witness. The officer shall then secure the transcript in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly serve it on the person who ordered the transcript, unless the court orders otherwise. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that:

(A) the person producing the materials may substitute copies to be marked for identification, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals; and

(B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to the deposition transcript and filed with the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefore, the officer shall furnish a copy of the deposition transcript to any party or the deponent.

(3) The officer serving or filing the deposition transcript shall give prompt notice of such action to all parties and file such notice with the clerk of the court.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by such party and such other party’s attorney in attending, including reasonable attorney fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because such party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by such other party and such other party’s attorney in attending, including reasonable attorney fees.

(h) Conduct of Depositions. The following shall govern deposition practice:

(1) *Conduct of Examining Counsel*. Examining counsel will refrain from asking questions he or she knows to be beyond the legitimate scope of discovery, and from undue repetition.

(2) *Objections*. Only objections which are not reserved for time of trial by these rules or which are based on privileges or raised to questions seeking information beyond the scope of discovery may be made during the course of the deposition. All objections shall be concise and must not suggest or coach answers from the deponent. Argumentative interruptions by counsel shall not be permitted.

(3) *Instructions Not To Answer*. Instructions to the deponent not to answer questions are improper, except when based upon privilege or pursuant to rule 30(d). When a privilege is claimed the deponent shall nevertheless answer questions related to the existence, extent, or waiver of the privilege, such as the date of communication, identity of the declarant, and in whose presence the statement was made.

(4) *Responsiveness*. Witnesses shall be instructed to answer all questions directly and without evasion to the extent of their testimonial knowledge, unless properly instructed by counsel not to answer.

(5) *Private Consultation*. Except where agreed to, attorneys shall not privately confer with deponents during the deposition, or between a question and an answer except for the purpose of determining the existence of privilege. This includes communication in all forms. Conferences with attorneys during normal recesses and at adjournment are permissible unless prohibited by the court.

(6) *Courtroom Standard*. All counsel and parties shall conduct themselves in depositions with the same courtesy and respect for the rules that are required in the courtroom during trial.

(7) *Depositions by Remote Means.* In any deposition taken by remote means, in addition to the above rules, the following provisions apply:

(a) The witness's demeanor and appearance shall remain their own as if they were in-person and shall not be manipulated or altered.

(b) Absent agreement by the parties, or court order, the only persons permitted in the room with the deponent during a remote deposition are the deponent's lawyer or employees of the deponent's lawyer, the lawyer retaining an expert being deposed, an interpreter, the court reporter and videographer. Each person in the room with the deponent during a remote deposition shall remain audible and visible for the duration of the deposition.

(c) If the deposition is being video recorded (see CR 30(b)(8)), the recording shall only be of the witness and not of other participants to the deposition proceeding.

(d) During the deposition, unless specifically requested to do so by the examining attorney, the deponent shall not refer to any notes, or any electronic or other means used for communication, such as email and messaging.

(e) No one shall attempt to influence the deponent's response to an examiner's question in any manner, including visually, verbally, and in writing such as notes, text message, email, and electronic chat functions.

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CR 39

1. Proponent Organization: BJA Remote Proceedings Work Group Civil

2. Spokesperson & Contact Info:

Judge Jim Rogers, Co-Chair BJA Remote Proceedings Work Group – Superior Court Level
Email: Jim.Rogers@kingcounty.gov
Phone: 206-477-1597

3. Purpose of Suggested Rule Amendment

This is the trial rule. The Civil Group unanimously supports this change.

Section (d) is proposed as an amendment to allow remote trials either held entirely remotely or where some parties or counsel appear remotely.

(d)(1): The rule allows an entirely remote trial only by agreement of the parties. The court cannot order it. An entirely remote trial is one held entirely on remote technology.

(d)(2) This section addresses several matters.

a. Notice must be given by a party wishing to hold an entirely remote trial.
b. Under this proposed section, if there is no agreement, the trial shall be in person.
c. A court is authorized to allow some parties or lawyers to appear remotely if they so request, even in an in-person trial.

This last part of the rule governs a so-called 'hybrid" trial which now occur quite frequently in our State. While the rule does not so limit, this occurs largely in bench trials in civil, family law and dependency matters. For parties in some parts of our State, the ability to bring in a lawyer remotely can be an access to justice issue. See President's Corner > The Rural Attorney Shortage is Turning Into a Crisis in Washington State - Washington State Bar News (wabarnews.org). We heard repeatedly that some jurisdictions must be able to allow lawyers to appear remotely for some matters because there is not sufficient available local legal representation.

This rule and these amendments do not govern pretrial matters, witnesses, or jury selection.

4. Is Expedited Consideration Requested?

Expedited consideration is essential. The Court should seriously consider passing amended rules permitting remote proceedings before the Supreme Court's Emergency Order is lifted. Use of remote technology in superior courts is now widespread. For some jurisdictions, it has become essential to maintain access to justice. Members of our Group in rural areas noted that remote technology assists them by allowing out of town counsel to appear.

5. Is a Public Hearing Recommended? No

[Attach suggested rule amendment]

CR 39
TRIAL BY JURY OR BY THE COURT

(-) Issues--How Tried. [Reserved. See RCW 4.40.010 through 4.40.070.]

(a) By Jury.

(1) *Rule*. When trial by jury has been demanded as provided in rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless:

(A) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury; or

(B) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the constitution or statutes of the state.

(2) *Questions of Fact for Jury*. [Reserved. See RCW 4.44.090.]

(b) By the Court.

(1) *Rule*. Issues not demanded for trial by jury as provided in rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(2) *Questions of Law To Be Decided by Court*. [Reserved. See RCW 4.44.080.]

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court, upon motion or of its own initiative, may try an issue with an advisory jury or it may, with the consent of both parties, order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

(d) <u>Trials by Remote Means.</u>

(1) <u>By Stipulation. If the parties agree and the court approves, a trial may occur entirely or in part by remote means. In any remote trial, all participants must be able to see, hear, and speak with each other. The video and audio should be of sufficient quality to ensure participants are easily seen and understood. The court shall ensure that all hearings conducted pursuant to this rule are open to the public and that the public shall be able to simultaneously see and hear all participants.</u>

(2) <u>If any party proposes to hold a trial by remote means, a hearing shall be scheduled at least 30 days before trial, with at least 7 days' notice to the court and parties. The parties may agree to</u>

this hearing occurring fewer than 30 days before trial. Alternatively, the parties may present an agreement or stipulation that the trial be held by remote means. If all parties do not agree, the trial shall be held in person; provided however, the court may allow a party or counsel to appear by remote means at an in person trial. This rule does not address voir dire or pretrial matters. CR 43 governs whether any witness can be called remotely at a trial held in person.

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CR 43

1. Proponent Organization: BJA Remote Proceedings Work Group Civil

2. Spokesperson & Contact Info:

   Judge Jim Rogers, Co-Chair BJA Remote Proceedings Work Group – Superior Court Level
   Email: Jim.Rogers@kingcounty.gov
   Phone: 206-477-1597

3. Purpose of Suggested Rule Amendment

   This is the rule for witnesses called for trial. The Civil Group unanimously supports this change.

   The proposed amendments allow the following:

   a. A witness may be called to testify remotely if the parties agree; or
   b. A witness may be called to testify remotely if a party requests and the trial court orders it over the objection of another party (see below explanation). In reaching this decision, the proposed amendments require a court to consider certain factors, including the interests of justice per CR1, prejudice to a party, and the ability of a party to subpoena a witness.
   c. A witness served a 43(f) notice must appear in person.
   d. Parties must give notice to call a witness by remote means.
   e. The rule includes the language that the Court shall have appropriate safeguards.

   The committee considered how a court should decide when one party wishes to call a witness by remote means and the other side objects to this procedure. More and more, parties call experts, medical doctors and some lay witnesses by remote means.

   Another way the issue may arise is when a witness appears live but cannot be completed within a schedule and must physically leave. Such a witness is sometimes completed by remote means.

   The rule recognizes that there can be valid reasons to allow remote testimony and valid reasons to object to remote testimony and creates a process for courts to decide the issue.

   The vote in support of this amendment was unanimous. KCBA abstained from all voting.

4. Is Expedited Consideration Requested?

   Expedited consideration is essential. The Court should seriously consider passing amended rules permitting remote proceedings before the Supreme Court's Emergency Order is lifted. Use of remote technology in superior courts is now widespread. For some jurisdictions, it has become essential to maintain access to justice. President's Corner > The Rural Attorney Shortage is Turning Into a Crisis in Washington State - Washington State Bar News (wabarnews.org) Members of our Group in rural areas noted that remote technology assists them by allowing out of town counsel to appear.

5. Is a Public Hearing Recommended? No

[Attach suggested rule amendment]

CR 43
TAKING OF TESTIMONY

(a) Testimony.

(1) Generally. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise directed by the court or provided by rule or statute. ~~For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.~~ Except as provided in CR 43(f)(1), the Court may permit, with appropriate safeguards, testimony by remote means if the parties agree and the Court approves, or if the Court determines the purposes of CR 1 will be served. In determining whether testimony should be allowed by remote means per CR 1, the court may consider whether the witness is subject to a trial subpoena; whether there will be any prejudice to any party or the witness if testimony by remote means is permitted; the witness' access to technology that allows the witness to be seen and heard; and court's ability to facilitate remote testimony. Advance notice of a party's intention to use remote testimony must be given no less than 10 days prior to trial, absent good cause shown.

(2) Multiple Examinations. When two or more attorneys are upon the same side trying a case, the attorney conducting the examination of a witness shall continue until the witness is excused from the stand; and all objections and offers of proof made during the examination of such witness shall be made or announced by the attorney who is conducting the examination or cross examination.

(b) and (c) [Reserved. See ER 103 and 611.]

(d) Oaths of Witnesses.

(1) *Administration*. The oaths of all witnesses in the superior court

(A) shall be administered by the judge;

(B) shall be administered to each witness individually; and

(C) the witness shall stand while the oath is administered~~.~~ unless the witness is testifying by remote means.

(2) *Applicability*. This rule shall not apply to civil ex parte proceedings or default divorce cases and in such cases the manner of swearing witnesses shall be as each superior court may prescribe.

(3) *Affirmation in Lieu of Oath*. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions.

(1) *Generally.* When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions. Oral testimony may be taken by remote means.

(2) *For injunctions, etc.* On application for injunction or motion to dissolve an injunction or discharge an attachment, or to appoint or discharge a receiver, the notice thereof shall designate the kind of evidence to be introduced on the hearing. If the application is to be heard on affidavits, copies thereof must be served by the moving party upon the adverse party at least 3 days before the hearing. Oral testimony shall not be taken on such hearing unless permission of the court is first obtained and notice of such permission served upon the adverse party at least 3 days before the hearing. This rule shall not be construed as pertaining to applications for restraining orders or for appointment of temporary receivers.

(f) Adverse Party as Witness.

(1) *Party or Managing Agent as Adverse Witness*. A party, or anyone who at the time of the notice is an officer, director, or other managing agent (herein collectively referred to as "managing agent") of a public or private corporation, partnership or association which is a party to an action or proceeding may be examined at the instance of any adverse party. Attendance of such deponent or witness may be compelled solely by notice (in lieu of a subpoena) given in the manner prescribed in rule 30(b)(1) to opposing counsel of record. Notices for the attendance of a party or of a managing agent at the trial shall be given not less than 10 days before trial pursuant to CR 6. For good cause shown in the manner prescribed in rule 26(c), the court may make orders for the protection of the party or managing agent to be examined.

(2) *Effect of Discovery, etc*. A party who has served interrogatories to be answered by the adverse party or who has taken the deposition of an adverse party or of the managing agent of an adverse party shall not be precluded for that reason from examining such adverse party or managing agent at the trial. Matters admitted by the adverse party or managing agent in interrogatory answers, deposition testimony, or trial testimony are not conclusively established and may be rebutted.

(3) *Refusal To Attend and Testify; Penalties*. If a party or a managing agent refuses to attend and testify before the officer designated to take the party's deposition or at the trial after notice served as prescribed in rule 30(b)(1), the complaint, answer, or reply of the party may be stricken and judgment taken against the party, and the contumacious party or managing agent may also be proceeded against as in other cases of contempt. This rule shall not be construed:

(A) to compel any person to answer any question where such answer might tend to be incriminating;

(B) to prevent a party from using a subpoena to compel the attendance of any party or managing agent to give testimony by deposition or at the trial; nor

(C) to limit the applicability of any other sanctions or penalties provided in rule 37 or otherwise for failure to attend and give testimony.

(g) Attorney as Witness. If any attorney offers to be a witness on behalf of the attorney's client and gives evidence on the merits, the attorney shall not argue the case to the jury, unless by permission of the court.

(h) Report or Transcript as Evidence. Whenever the testimony of a witness at a trial or hearing which was reported is admissible in evidence at a later trial, it may be proved by the certified transcript thereof.

(i) [Reserved. See ER 804.]

(j) Report of Proceedings in Retrial of Nonjury Cases. In the event a cause has been remanded by the court for a new trial or the taking of further testimony, and such cause shall have been tried without a jury, and the testimony in such cause shall have been taken in full and used as the report of proceedings upon review, either party upon the retrial of such cause or the taking of further testimony therein shall have the right, provided the court shall so order after an application on 10 days' notice to the opposing party or parties, to submit said report of proceedings as the testimony in said cause upon its second hearing, to the same effect as if the witnesses called by either party in the earlier hearing had been called, sworn, and testified in the further hearing; but no party shall be denied the right to submit other or further testimony upon such retrial or further hearing, and the party having the right of cross examination shall have the privilege of subpoenaing any witness whose testimony is contained in such report of proceedings for further cross examination.

(k) Juror Questions for Witnesses. The court shall permit jurors to submit to the court written questions directed to witnesses. Counsel shall be given an opportunity to object to such questions in a manner that does not inform the jury that an objection was made. The court shall establish procedures for submitting, objecting to, and answering questions from jurors to witnesses. The court may rephrase or reword questions from jurors to witnesses. The court may refuse on its own motion to allow a particular question from a juror to a witness.

[Adopted effective July 1, 1967; Amended effective January 1, 1977; April 2, 1979; September 1, 1988; October 1, 2002; September 1, 2006, September 1, 2010; April 28, 2015; September 1, 2015; February 1, 2021.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CR 45

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Jim Rogers, Co-Chair BJA Remote Proceedings Work Group – Superior Court Level
   Email: Jim.Rogers@kingcounty.gov
   Phone: 206-477-1597

3. Purpose of Suggested Rule Amendment

   This proposed amendment is to give notice to a potential witness that the deposition may be held by remote means and so changes the notice that witness must be given. The Civil Group unanimously supports this change.

   This amendment is not intended to change Washington law or the law of any other state regarding a witness' rights or the legal requirements to subpoena in another state.

4. Is Expedited Consideration Requested?

   Expedited consideration is essential. The Court should seriously consider passing amended rules permitting remote proceedings before the Supreme Court's Emergency Order is lifted. Use of remote technology in superior courts is now widespread. For some jurisdictions, it has become essential to maintain access to justice. President's Corner > The Rural Attorney Shortage is Turning Into a Crisis in Washington State - Washington State Bar News (wabarnews.org) Members of our Group in rural areas noted that remote technology assists them by allowing out of town counsel to appear.

5. Is a Public Hearing Recommended? No

[Attach suggested rule amendment]

CR 45
SUBPOENA

(a) Form; Issuance.

(1) Every subpoena shall:

(A) state the name of the court from which it is issued;

(B) state the title of the action, the name of the court in which it is pending, and its case number;

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified, and, if testimony will be taken by remote means, will so state; and

(D) set forth the text of subsections (c) and (d) of this rule.

(2) A subpoena for attendance at a deposition shall state the method for recording the testimony and whether the deposition will be conducted in person or by remote means.

(3) A command to a person to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A party may be compelled to produce evidence at a deposition or permit inspection only in accordance with rule 34.

(4) A subpoena may be issued by the court in which the action is pending under the seal of that court or by the clerk in response to a praecipe. An attorney of record of a party or other person authorized by statute may issue and sign a subpoena, subject to RCW 5.56.010.

(b) Service.

(1) A subpoena may be served by any suitable person over 18 years of age by giving the person named therein a copy thereof, or by leaving a copy at such person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. When service is made by any person other than an officer authorized to serve process, proof of service shall be made by affidavit.

(2) A subpoena commanding production of documents and things, or inspection of premises, without a command to appear for deposition, hearing or trial, shall be served on each party in the manner prescribed by rule 5(b). Such service shall be made no fewer than five (5) days prior to service of the subpoena on the person named therein, unless the parties otherwise agree or the court otherwise orders for good cause shown. A motion for such an order may be made ex parte.

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)

(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to subsection (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)

(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this rule;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden, provided that the court may condition denial of the motion upon a requirement that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2)

(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information in camera to the court for a determination of the claim. The person responding to the subpoena must preserve the information until the claim is resolved.

(e) Subpoena for Taking Deposition, Producing Documents, or Permitting Inspection.

(1) *Witness Fees and Mileage*. [Reserved. See RCW 2.40.020.]

(2) *Place of Examination.* A resident of the state may be required to attend an examination, produce documents, or permit inspection only in the county where the person resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of the court. A nonresident of the state may be required to attend an examination, produce documents, or permit inspection only in the county where the person is served with a subpoena, or within 40 miles from the place of service, or at such other convenient place as is fixed by an order of the court.

(3) *Foreign Proceedings for Local Actions.* When the place of examination, production, or inspection is in another state, territory, or country, the party desiring to take the deposition, obtain production, or conduct inspection may secure the issuance of a subpoena or equivalent process in accordance with the laws of such state, territory, or country.

(4) *Local Depositions for Foreign Actions.* When any officer or person is authorized to take depositions in this state by the law of another state, territory, or country, with or without a commission, a subpoena to require attendance before such officer or person may be issued by any court of this state for attendance at any place within its jurisdiction.

(f) Subpoena For Hearing or Trial.

(1) *When Witnesses Must Attend – Fees and Allowances*. [Reserved. See RCW 5.56.010.]

(2) *When Excused.* A witness subpoenaed to attend in a civil case is dismissed and excused from further attendance as soon as the witness has given testimony in chief and has been cross-examined thereon, unless either party moves in open court that the witness remain in attendance and the court so orders. Witness fees will not be allowed any witness after the day on which the witness' testimony is given, except when the witness has in open court been required to remain in further attendance, and when so required the clerk shall note that fact.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend a deposition, produce documents, or permit inspection at a place not within the limits provided by subsection (e)(2).

(h) Form. A subpoena should be substantially in the form below.

Issued by the
SUPERIOR COURT FOR THE STATE OF WASHINGTON
_____COUNTY

No. _____

SUBPOENA IN A CIVIL CASE

_____

v.

_____

TO:

☐ YOU ARE COMMANDED to appear in the Superior Court of the State of Washington at the place, date, and time specified below to testify in the abovecase.

PLACE OF TESTIMONY OR REMOTE MEANS LINK	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. CR 30(b)(6).

PLACE OF DEPOSITION OR REMOTE MEANS LINK NOTICE: If you are commanded to appear by remote means and you do not have adequate access to the necessary technology, you must notify the issuing officer in writing within 5 days of receiving this subpoena.	DATE AND TIME METHOD OF RECORDING

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or tangible things at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

PROOF OF SERVICE

DATE PLACE

SERVED

SERVED ON (PRINT NAME) MANNER OF SERVICE

SERVED BY (PRINT NAME) TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the State of Washington that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

DATE/PLACE SIGNATURE OF SERVER

ADDRESS OF SERVER

CR 45, Sections (c) & (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) If the person commanded to appear by remote means does not have adequate access to the necessary technology, they shall notify the issuing officer in writing within 5 days of receiving the subpoena. The issuing officer or commanding attorney must thereafter arrange access to the necessary technology for the witness, or issue an amended subpoena to conduct the deposition in person.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this rule;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden, provided that, the court may condition denial of the motion upon a requirement that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information in camera to the court for a determination of the claim. The person responding to the subpoena must preserve the information until the claim is resolved.

[Amended effective July 1 1967; Amended effective July 1, 1972; September 1, 1983; September 1, 1993; September 1, 2007; January 12, 2010.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO CrR 3.4

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Jim Rogers, Co-Chair BJA Remote Proceedings Work Group – Superior Court Level
   Email: Jim.Rogers@kingcounty.gov
   Phone: 206-477-1597

3. Purpose of Suggested Rule Amendment

   This amendment does not change the substance of the rule. It merely substitutes "video" for "remote" to conform with all other proposed rules. It was the view of the committees that the reference to technology should be more general (thus "remote"). The Criminal Group unanimously supports this change.

4. Is Expedited Consideration Requested?

   Expedited consideration is essential. The Court should seriously consider passing amended rules permitting remote proceedings before the Supreme Court's Emergency Order is lifted. Use of remote technology in superior courts is now widespread. For some jurisdictions, it has become essential to maintain access to justice. President's Corner > The Rural Attorney Shortage is Turning Into a Crisis in Washington State - Washington State Bar News (wabarnews.org) Members of our Group in rural areas noted that remote technology assists them by allowing out of town counsel to appear.

5. Is a Public Hearing Recommended? No

[Attach suggested rule amendment]

CrR 3.4
PRESENCE OF THE DEFENDANT

(a) Presence Defined. Unless a court order or this rule specifically requires the physical presence of the defendant, the defendant may appear remotely or through counsel. Appearance through counsel requires that counsel either (i) present a waiver the defendant has signed indicating the defendant wishes to appear through counsel or (ii) affirm, in writing or in open court, that this is the defendant's preference.

(b) When Necessary. The defendant shall be present physically or remotely (in the court's discretion) at the arraignment (if one is held), at every stage of the trial including the empaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.

(c) Effect of Voluntary Absence. In prosecutions for offenses not punishable by death, the defendant's voluntary absence after the trial has commenced in his presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by counsel for all purposes. In prosecutions for offenses punishable by fine only, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

(d) Defendant Not Present. In order to require the defendant's physical presence at any hearing other than those listed in subpart (b), the court must find good cause. If in any case the defendant is not present when his or her personal attendance is necessary, the court may order the clerk to issue a bench warrant for the defendant's arrest, which may be served as a warrant of arrest in other cases.

(e) ~~Videoconference~~ Remote Proceedings.

(1) *Authorization*. Preliminary appearances held pursuant to CrR 3.2.1, arraignments held pursuant to this rule and CrR 4.1, bail hearings held pursuant to CrR 3.2, and trial settings held pursuant to CrR 3.3, may be conducted by ~~video conference~~ remote technology in which all participants can simultaneously see, hear, and speak with each other. Such proceedings shall be deemed held in open court and in the defendant's presence for the purposes of any statute, court rule or policy. All ~~video conference~~ hearings conducted pursuant to this rule shall be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Any party may request an in person hearing, which may in the trial court judge's discretion be granted.

(2) *Agreement*. Other trial court proceedings including the entry of a Statement of Defendant on Plea of Guilty as provided for by CrR 4.2 may be conducted by ~~video conference~~ remote technology only by agreement of the parties, either in writing or on the record, and upon the approval of the trial court judge pursuant to local court rule.

(3) *Standards for ~~Video Conference~~ Proceedings Held Remotely*. The judge, counsel, all parties, and the public must be able to see and hear each other during proceedings, and speak as permitted by the judge. The video and audio should be of sufficient quality to ensure participants are easily seen and understood. ~~Video conference facilities~~ Remote technology must provide for confidential communications between attorney and client, including a means during the hearing

for the attorney and the client to read and review all documents executed therein, and security sufficient to protect the safety of all participants and observers. For purposes of ~~videoconference~~ proceedings by remote technology, the electronic or facsimile signatures of the defendant, counsel, interested parties, and the court shall be treated as if they were original signatures. This includes all orders on judgment and sentence, no contact orders, statements of defendant on pleas of guilty, and other documents or pleadings as the court shall determine are appropriate or necessary. ~~In interpreted proceedings, the interpreter must be located next to the defendant and t~~The proceeding must be conducted to assure that the interpreter can hear and speak with the defendant and hear all participants.

(f) ~~Videoconference~~ Proceedings by Remote Technology under RCW 10.77.

(1) *Authorization*. Proceedings held pursuant to chapter 10.77 RCW may be conducted by ~~video conference~~ remote technology in which all participants can simultaneously see, hear, and speak with each other except as otherwise directed by the trial court judge. When these proceedings are conducted via ~~video conference~~ remote technology, it is presumed that all participants will be physically present in the courtroom except for the forensic evaluator unless as otherwise provided by these rules, or as excused or excluded by the court for good cause shown. Good cause may include circumstances where at the time of the hearing, the court does not have the technological capability or equipment to conduct the conference by video as provided in this rule. Such ~~video~~ proceedings shall be deemed held in open court and in the defendant's presence for the purposes of any statute, court rule, or policy. All ~~video conference~~ remote technology hearings conducted pursuant to this rule shall be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Five days prior to the hearing date, any party may request the forensic evaluator be physically present in the courtroom, which may in the trial court judge's discretion be granted.

(2) Standards for ~~Video Conference~~ Proceedings by Remote Technology under chapter 10.77 RCW. The judge, counsel, all parties, and the public must be able to see and hear each other during the proceedings, and speak as permitted by the judge. ~~Video conference facilities~~ Remote technology must provide for confidential communications between attorney and client and security sufficient to protect the safety of all participants and observers. In interpreted proceedings, the ~~interpreter must be located next to the defendant and the~~ proceeding must be conducted to assure that the interpreter can hear and speak with the defendant and hear all participants.

Comment

Supersedes RCW 10.01.080; RCW 10.46.120, .130; RCW 10.64.020, .030.

[Adopted effective July 1, 1973; Amended effective September 1, 1995; December 28, 1999; April 3, 2001; September 1, 2017; July 31, 2018; February 1, 2021.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO GR 11.3

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

Judge Jim Rogers, Co-Chair BJA Remote Proceedings Work Group – Superior Court Level
Email: Jim.Rogers@kingcounty.gov
Phone: 206-477-1597

3. Purpose of Suggested Rule Amendment

The purpose of this proposed amendment is to allow remote interpretation**.** This rule includes basic safeguards. The remote Groups support this change.

It should be noted that the Washington State Interpreter and Language Access Commission (ILAC) does not support any change at this time. ILAC's position is as follows: the ILAC recently proposed, and this Court adopted, changes to 11.3 and the ILAC believes these changes are sufficient because the rule already allows for remote interpretation (with appropriate safeguards); ILAC has not heard concerns from any stakeholders about the recently enacted rule; and additional training and studies would be warranted before amending it again. Regardless, the Task Force and ILAC have agreed to partner on these important issues for guidance to courts.

This Task Force defers to the Court as to whether to consider this proposal in light of the opposition, as long as it is understood that we have learned in our meetings and through our data that remote interpretation is absolutely essential for almost all jurisdictions, whether by telephone or video. Many jurisdictions simply cannot afford in person interpreters, or do not have ready access to live in-person interpreters for certain languages, for parties or witnesses who appear live in their courts. Justice is delayed or dismissed in some cases.

Also, the pandemic led to a seismic shift in what interpreters agree to do. Many simply will not come to court any longer. It appears that many interpreters can afford to turn down in person work, through their ability to find remote work across wide geographical areas. ILAC shares this concern and has made addressing the shortage of interpreters a high priority.

The differences between the existing rule (that was rewritten by the ILAC and passed by this Court) and the proposed rule here can be easily summarized. The difference is when a court

must find good cause to allow remote interpretation. In the existing rule, good cause is required to allow remote interpretation for evidentiary hearings of all types, criminal and civil. In the proposed rule, good cause is required to allow remote interpretation for criminal matters only, whether non-evidentiary or evidentiary. The proposed rule reflects the current reality that many protection order hearings and many, many other civil matters are conducted at least partially remotely without a finding of good cause.

Both rules are silent on a very common situation where a witness or party does not appear live in the courtroom but "remotes in" from home or work. Where is the interpreter required to be, for the purposes of appearing "live?" In the remote party's home? Or the courtroom? The reality is that in such a case, the interpreter always will be remote in some sense, either because the interpreter will not be at the location of the witness (which almost never happens) or because the interpreter will not be in court. One assumes that courts will routinely find good cause in such a situation and move forward. During the pandemic, such situations were common and handled easily.

4. Is Expedited Consideration Requested?

   Expedited consideration is essential. The Court should seriously consider passing amended rules permitting remote proceedings before the Supreme Court's Emergency Order is lifted. Use of remote technology in superior courts is now widespread. For some jurisdictions, it has become essential to maintain access to justice. President's Corner > The Rural Attorney Shortage is Turning Into a Crisis in Washington State - Washington State Bar News (wabarnews.org) Members of our Group in rural areas noted that remote technology assists them by allowing out of town counsel to appear.

5. Is a Public Hearing Recommended? No

[Attach suggested rule amendment]

GR 11.3
REMOTE INTERPRETATION

(a) Interpreters may be appointed to provide interpretation via ~~audio~~ remote means ~~only *or audiovisual communication platforms*~~ for ~~nonevidentiary~~ all non-criminal proceedings and those criminal proceedings in which good cause is shown. ~~For evidentiary proceedings, the interpreter shall appear in person unless the court makes a good cause finding that an in-person interpreter is not practicable.~~ The court shall make a preliminary determination on the record, on the basis of the testimony of the person utilizing the interpreter services, and shall inquire on the record to ensure the ability of the interpreter and the person utilizing the services of the interpreter to clearly communicate with each other. ~~of the person's ability to participate via remote interpretation services.~~

(b) Chapters 2.42 and 2.43 RCW and GR 11.2 must be followed regarding the interpreter's qualifications and Code of Professional Responsibility for Judiciary Interpreters.

(c) In all remote interpreting court events, both the LEP individual and the interpreter must have clear audio of all participants throughout the hearing. In video remote court events, the person with hearing loss and the interpreter must also have a clear video image of all the participants throughout the hearing.

(d) If the telephonic or video technology does not allow simultaneous interpreting, the hearing shall be conducted to allow consecutive interpretation of all statements.

(e) The court must provide a means for confidential attorney-client communications during hearings, and allow for these communications to be interpreted confidentially.

(f) To ensure accuracy of the record, where practicable, courts should provide relevant case information and documents to the interpreter, in advance of the hearing, including but not limited to:

(i) Copies of documents furnished to other participants such as complaints, guilty pleas, briefs, jury instructions, infraction tickets, police reports, etc.

(ii) Names of all participants such as the parties, judge, attorneys, and witnesses.

(iii) If not practicable to provide documents in advance, courts should allow time for the interpreter to review documents or evidence when necessary for accurate interpretation.

(g) Written documents, the content of which would normally be interpreted, must be read aloud by a person other than the interpreter to allow for full interpretation of the material by the interpreter.

(h) Upon the request of a party, the court may make and maintain a recording of the spoken language interpretations or a video recording of the signed language interpretations made during a hearing. Any recordings permitted by this subparagraph shall be made and maintained in the same manner as other audio or video recordings of court proceedings.

(i) When using remote interpreter services in combination with remote legal proceedings, courts should ensure the following: the LEP person or person with hearing loss is able to access the necessary technology to join the proceeding remotely; the remote technology allows for

confidential attorney-client communications, or the court provides alternative means for these communications; the remote technology allows for simultaneous interpreting, or the court shall conduct the hearing using consecutive interpretation and take measures to ensure interpretation of all statements; translated instructions on appearing remotely are provided, or alternative access to this information is provided through interpretation services; audio and video feeds are clear; and judges, court staff, attorneys, and interpreters are trained on the use of the remote platform.

Comments:

[1] While remote interpretation is permissible, in-person interpreting services are the primary and preferred way of providing interpreter services for legal proceedings. Because video remote interpreting provides participants interpreters the ability to see and hear all parties, it is more effective than telephonic interpreter services. Allowing remote interpretation for evidentiary hearings will provide flexibility to courts to create greater accessibility. However, in using this mode of delivering interpreter services, where the interpreter is remotely situated, courts must ensure that the remote interpretation is as effective and meaningful as it would be in person and that the LEP (Limited English Proficient) person or person with hearing loss is provided full access to the proceedings.

Interpreting in courts involves more than the communications that occur during a legal proceeding, and courts utilizing remote interpretation should develop measures to address how LEP persons and persons with hearing loss will have access to communications occurring outside the courtroom where the in-person interpreter would have facilitated this communication. Courts should make a preliminary determination on the record regarding the effectiveness of remote interpretation and the ability of the person utilizing the interpreter service to meaningfully participate at each occurrence because circumstances may change over time necessitating an ongoing determination that the remote interpretation is effective and enables the parties to meaningfully participate.

[2] Section (b) reinforces the requirement that interpreters appointed to appear remotely must meet the qualification standards established in chapters 2.42 and 2.43 RCW and they must be familiar with and comply with the Code of Professional Responsibility for Judiciary Interpreters. Courts are discouraged from using telephonic interpreter service providers who cannot meet the qualification standards outlined in chapters 2.42 and 2.43 RCW.

[3] Section (c) discusses the importance of courts using appropriate equipment and technology when providing interpretation services through remote means. Courts should ensure that the technology provides clear audio and video, where applicable, to all participants. Because of the different technology and arrangement within a given court, audio transmissions can be interrupted by background noise or by distance from the sound equipment. This can limit the ability of the interpreter to accurately interpret. Where the LEP person or person with hearing loss is also appearing remotely, as is contemplated in (h), courts should also ensure that the technology allows for full access to all visual and auditory information.

When utilizing remote video interpreting for persons with hearing loss, the following performance standards must be met: real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; a sharply delineated image that is large enough to display the face, arms, hands, and fingers of both the interpreter and the person using sign language; and clear, audible transmission of voices.

[4] Section (e) reiterates the importance of the ability of individuals to consult with their attorneys, throughout a legal proceeding. When the interpreter is appearing remotely, courts should develop practices to allow these communications to occur. At times, the court interpreter will interpret communications between an LEP or Deaf litigant and an attorney just before a hearing is starting, during court recesses, and at the conclusion of a hearing. These practices should be supported even when the court is using remote interpreting services.

[5] Section (h). For court interpreting, it is the industry standard to use simultaneous interpreting mode when the LEP or Deaf individual is not an active speaker or signer. The use of consecutive interpreting mode is the industry standard for witness testimony where the witness is themselves LEP or Deaf. This allows for the English interpretation to be on the record. This section also addresses situations where, at the request of a party, the court is to make a recording of the interpretation throughout the hearing, aside from privileged communications. If the court is not able to meet this requirement, an in-person hearing is more appropriate to allow recording of both the statements made on the record and the interpretation throughout during the hearing. Recordings shall not be made of interpretations during jury discussions and deliberations off the record.

[6] Section (i) contemplates a situation where the legal proceeding is occurring remotely, including the interpretation. In this situation, all or most parties and participants at the hearing are appearing remotely and additional precautions regarding accessibility are warranted. This section highlights some of the additional considerations courts should make when coupling remote interpretation with a remote legal proceeding.

[Adopted effective September 1, 1994; Amended effective September 1, 2005; December 29, 2020; May 3, 2022; November 1, 2022.]

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO GR 41

1. Proponent Organization: BJA Remote Proceedings Work Group Civil

2. Spokesperson & Contact Info:

Judge Jim Rogers, Co-Chair BJA Remote Proceedings Work Group – Superior Court Level
Email: Jim.Rogers@kingcounty.gov
Phone: 206-477-1597

3. Purpose of Suggested Rule Amendment

This is a proposed new rule allowing jury selection by remote technology (this is not the rule formerly proposed by King County Superior).

The Superior Court Civil Group, including the Superior Court Judges Rules Committee, the Superior Court Criminal Group, and the Courts of Limited Jurisdiction Rules Committee all support this rule. The CLJ Rules Committee approval includes the following statement:

> DMCJA Rules supports GR 41 but does have a concern with GR 41(d). We agree that that applications and filters that alter the juror's appearance should not be used. However, we are concerned that the language of the proposed rule would prohibit a juror from blurring their background. We feel that blurring one's background would enhance juror privacy, decrease potential distractions, and have no real impact on the ability to perceive the juror. GR 41(d) is the only section that does not give the trial judge discretion to alter these requirements where circumstances warrant an exception.

(The DMCJA Rules Committee was informed that the WSSC will consider but not edit proposed rules.)

This rule allows jury selection by remote technology and provides safeguards.

The rule specifically requires that a juror without technology may not be excused and requires their inclusion in the voir dire process, by the juror appearing in person.

Section (d) states that "[t]he juror's demeanor and appearance shall remain their own as if they were in-person and shall not be manipulated or altered." This section prohibits the use of any applications on a computer that would affect credibility. The section goes on to say "[j]urors 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." The use of filters has interfered with connectivity for some people coming in remotely.

The use of remote jury selection has largely, but not exclusively, been used in King County Superior Court where it originated as an emergency measure. However, as the process improved, where it now takes about the same amount of time as in-person jury selection (remote used to take longer), the advantages became obvious for criminal and civil cases. The court can summon far more jurors to appear remotely than would fit in any courthouse in person. When more jurors are available, cases no longer wait days or weeks for enough jurors to begin voir dire. This method now gets cases to jury selection more quickly and as a result, defendants waiting in jail are heard more quickly, and lawyers for civil parties and local governments don't wait, saving hundreds of thousands of dollars in attorney fees (governments pay for prosecutors and public defenders).

The parties and the judge see the jurors' faces far more closely than before on video and can question more effectively. Trial judges can assess GR 37 challenges more easily because jurors can be seen and heard more easily.

4. Is Expedited Consideration Requested?

   Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted.

5. Is a Public Hearing Recommended? No

[Attach suggested rule amendment]

Proposed General Rule 41
[NEW]

Jury Selection by Using Remote Technology

(a) Scope of rule. This rule addresses the procedures for conducting jury selection using remote technology.

(b) Jury selection using remote technology. In all cases, jury selection may be conducted using remote technology in which all participants can simultaneously see, hear, and speak with each other. The technology should be of sufficient quality to ensure participants are easily seen and understood.

(c) Procedures prior to jury selection. The court may divide the venire into smaller groups and determine the number of remote participants per voir dire session. The court shall confirm with prospective jurors that they can participate in jury selection using remote technology. 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.

(d) Juror remote appearance. The juror's demeanor and appearance shall remain their own as if they were in-person and shall not be manipulated or altered. 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.

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO JuCR 11.XX

1. Proponent Organization: BJA Remote Proceedings Work Group

2. Spokesperson & Contact Info:

   Judge Jim Rogers, Co-Chair BJA Remote Proceedings Work Group – Superior Court Level
   Email: Jim.Rogers@kingcounty.gov
   Phone: 206-477-1597

3. Purpose of Suggested Rule Amendment

   This proposed new rule allows individuals to appear by remote technology with additional safeguards that are consistent with existing CrR 3.4(e). The Group supports this new rule.

   In some jurisdictions, dependency matters can frequently be held partially in person and partially by remote technology. In some jurisdictions, it is a matter of access to justice, as some counsel (in rural areas) and some parents have difficulty appearing in person. The Group agreed that it was appropriate to give courts control over who appears in person and who appears remotely.

4. Is Expedited Consideration Requested?
   Expedited consideration is essential. The Supreme Court Emergency Order will be lifted soon and some form of amended or new rules addressing remote proceedings should be passed before the Order is lifted

5. Is a Public Hearing Recommended? No

[Attach suggested rule amendment]

JUVENILE COURT RULE 11.XX
PROCEEDINGS USING REMOTE TECHNOLOGY
AUTHORIZED
(NEW)

(a) Application. This rule applies to cases filed under chapter 13.34 RCW, chapter 13.36 RCW, and chapter 13.38 RCW.

(b) The court may allow persons to use remote technology (e.g., telephone, video conferencing) to appear at any hearing, provided that the hearing comports with due process and, if applicable, CR 43. If the court allows appearances by remote technology, the following provisions apply.

(1) Any person whose remote technology does not allow them to participate clearly and consistently may be required to appear in person.

(2) All hearings shall be public, and the public shall be able to hear and, if applicable, see persons using remote technology.

(3) Represented persons shall have the opportunity to communicate confidentially with their counsel, including before the cross-examination of any witnesses, and these private consultations shall not be recorded.

(4) Persons shall immediately inform the court if their ability to understand or participate in the proceeding is or becomes compromised by the use of remote technology.

(5) If a person uses remote technology to appear, and their appearance is disconnected, and they do not immediately contact the court or re-appear in person or by remote technology, the court may determine if the person voluntarily absented themselves from the proceeding.

(6) Nothing in this rule infringes upon the authority of the court to control and manage the proceeding.

(c) Interpreters. GR 11.3 applies.