

BJA COURT RECOVERY TASK FORCE



**WASHINGTON
COURTS**

MEETING PACKET

**OCTOBER 18, 2021
2:00 – 4:00 P.M.**

VIDEOCONFERENCE



BJA Court Recovery Task Force

October 18, 2021, 2:00 – 4:00 pm

ZOOM Meeting

AGENDA

<p>1. Welcome (5 minutes)</p> <p>Approve August 4, 2021 Minutes (p. 3)</p>	<p>Chief Justice Steven González Judge Judith Ramseyer Judge Scott Ahlf</p>
<p>2. Statewide Updates (20 min)</p> <p>Supreme Court/Court Orders</p> <p>Association Updates</p> <p>AOC</p>	<p>Chief Justice Steven González</p> <p>Judge Judith Ramseyer Judge Scott Ahlf</p> <p>Dawn Marie Rubio/Chris Stanley</p>
<p>3. Court Rules Project (45 min) (p. 12) Review and discuss issues document</p> <p>Proposals GR 39 and 41 (p. 21) Motion: Endorse committees proposed comments to GR 39 and 41</p>	<p>Judge Judith Ramseyer/Jeanne Englert</p> <p>General Civil Litigation Committee Justice Debra Stephens/Luke Phifer</p>
<p>4. Committee Updates (45 minutes) <i>Share remaining activities and policy changes needed</i></p> <ul style="list-style-type: none"> • Lessons Learned • Criminal Matters <ul style="list-style-type: none"> ○ Juvenile Criminal Civil (p. 48) ○ Therapeutic (p. 49) ○ Adult • Family Law (p. 50) • Child Welfare (p. 51) • Technology Considerations • General Civil Litigation 	<p>Judge Judith Ramseyer</p> <p>Judge Scott Ahlf Judge Ruth Reukauf Judge Jeff Smith Amy Muth</p> <p>Terry Price</p> <p>Linnea Anderson</p> <p>Dawn Marie Rubio</p> <p>Justice Debra Stephens</p>
<p>5. Next Steps (5 minutes) Summary of action items from meeting</p>	<p>Chief Justice Steve González</p>
<p>5. Future Meetings</p> <ul style="list-style-type: none"> • December 6, 3:00–5:00 	
<p>6. Adjourn</p>	

Persons with a disability, who require accommodation, should notify Jeanne Englert at 360-705-5207 or Jeanne.englert@courts.wa.gov. While notice five days prior to the event is preferred, every effort will be made to provide accommodations, when requested.



**Board for Judicial Administration (BJA)
Court Recovery Task Force (CRTF)
Wednesday, August 4, 2021, 2:30 – 4:30 p.m.
Videoconference**

DRAFT MEETING MINUTES

Participants:

Chief Justice Steven González, co-chair
Judge Scott Ahlf, co-chair
Judge Judith Ramseyer, co-chair
Vivienne Alpaugh
Linnea Anderson
Justin Bingham
Cindy Bricker
Alice Brown
Adam Cornell
Dennis Cronin
Todd Dowell
Judge David Estudillo
Alan Funk
Arina Gertseva
William Hairston
Christopher Hoxie
Jessica Humphreys
Judge Carolyn Jewett
Katrin Johnson
Ray Kahler
Jamie Kambich
Crystal Lambert
Erin Lennon
Judith Lurie
Lassana Magassa

Lori Mendoza
Justice Sheryl Gordon McCloud
Sophia Byrd McSherry
Judge Rich Melnick
Amy Muth
Jenn Nguyen
Judge Marilyn Paja
Rebecca Pennell
Terry Price
Judge Ruth Reukauf
Juliana Roe
Dawn Marie Rubio
P. Diane Schneider
Jason Schwarz
Larry Shannon
Judge Jackie Shea-Brown
Justice Debra Stephens
Judge Lisa Sutton
Lorrie Thompson

**Administrative Office of the Courts
(AOC) Staff:**
Jeanne Englert
Penny Larsen
Caroline Tawes
Kelley Amburgey-Richardson

Call to Order

The meeting was called to order at 2:30 p.m. and Chief Justice González welcomed the participants.

Approval of June 9, 2021, Meeting Minutes

It was moved by Chief Justice González and seconded by Dawn Marie Rubio to approve the June 9, 2021, meeting minutes. The motion carried unanimously.

Innovating Justice Awards

The Innovating Justice awards were presented to 1) Jamie Kambich, Senior System Integrator at AOC, who was nominated by Justice Montoya-Lewis, Susan Carlson, and

Erin Lennon for his leadership in developing inmate e-filing from each of the Washington State prisons to all three divisions of the Courts of Appeals and the Washington State Supreme Court; and 2) Judge Judith Ramseyer, who was nominated by Judge Jackie Shea Brown, Judge David Estudillo, Judge Kitty-Ann van Doorninck, Judge Jennifer Forbes, Judge Sean O'Donnell, and Jim Bamberger for her leadership during COVID, including initiating the Unlawful Detainer and Protection Order Workgroups, and efforts regarding the court's responsibility to in ensure race equity.

Statewide Updates

Court Orders

The order suspending Rap 18.8(b) expired at the end of July. The Supreme Court Rules Committee has been working with the CRTF. The comment period for CR 39 and GR 40 has been extended an additional 60 days.

Association Updates

Due to the pandemic, Superior Courts across the state, especially the larger counties, have backlogs of thousands of cases. Courts continue to make accommodations to conduct jury trials in person, including in many cases renting large facilities for jury selection and trial. Backlogs have been compounded by resentencing required by the *Blake* decision. Funding for a scheduling referee to facilitate remote hearings is being requested in the supplemental budget. The Eviction Resolution Program Project (ERPP) was codified and funded and now is available to all counties in the state. The Superior Court Judges' Association (SCJA) is preparing for the 2022 Legislative session.

There are huge backlogs in the courts of limited jurisdiction as well. The District and Municipal Court Judges' Association (DMCJA) proposed amendments to CrRLJ 3.3, CrRLJ 3.4, and Rule 43 were included in the meeting materials. The DMCJA is working with AOC on distribution of \$4.5 million in new grant funding over the next two years for therapeutic courts.

There was a discussion about reconciling rule proposals by the SCJA and the DMCJA.

AOC/Rescue Funds

Dawn Marie Rubio said \$1.2 million of CARES funding is still available to address the backlog in courts. Applications are reviewed weekly.

Chief Justice González and Dawn Marie Rubio submitted a request to the Legislature for \$85 to \$102 million of American Rescue Plan Act (ARPA) funds. There has not been a reply yet, and they will make another request to access remaining funds.

There could be a statewide allotment of Justice Assistance Grant (JAG) money to address the COVID backlog.

The AOC is working on distribution methods for court security funds, the Uniform Guardian Act (UGA) funds, funds to support the ERP, and the three pots of *Blake*

dollars. After the retirement of Chief Financial Officer (CFO) and Management Director Ramsey Radwan, AOC welcomed new CFO and Management Director Christopher Stanley.

There is additional funding for interpreter reimbursement, and language access plans for the appellate courts are being drafted.

Gender and Justice Commission Gender Justice Study presentation

The Gender and Justice Commission (GJC) conducted the 2021 Gender Justice Study to gain a better understanding of gender bias in Washington State courts. Justice Gordon McCloud reviewed the overarching goals of the 2021 Study and the five recommendations resulting from the study. Justice Gordon McCloud thanked the AOC, Dawn Marie Rubio, the Office of Civil Legal Aid, and the Office of Public Defense for their cooperation and resources. A summary of the Study was included in the meeting materials.

Workplace Harassment Survey presentation

Dr. Gertseva presented a high-level review of the methodology and objectives of the Workplace Harassment Survey. Those surveyed included employees of the Washington State courts, Superior Court Clerks' offices, and judicial branch agencies. The purpose of the survey was to examine the landscape of harassment experienced by these employees.

The final report will be published around the second week of September.

Committee Updates

Lessons Learned

This Committee recently distributed proposed court rules and emergency orders to the other CRTF Committees and requested that those Committees assess the proposals to determine if the proposals have merit. If so, Committees can help facilitate vetting and further development into a rule for submission to the Supreme Court Rules Committee. The deadline to respond is September 3 so the Lessons Learned Committee can consolidate the information for the Supreme Court Rules Committee. If a Committee needs an extension, please contact Judge Ramseyer or Jeanne Englert.

Committees also may comment directly to the Supreme Court Rules Committee. Please be clear that comments are from an individual Committee, and do not necessarily reflect the opinions of the CRTF as a whole. Individuals also are welcome to comment on their own.

Therapeutic Courts

The therapeutic courts are beginning to see an increase in participants.

Criminal Matters Committee/Juvenile Criminal/Civil

All sub committees are working on court rules.

Adult

This Committee will meet in August to work on court rule comments.

Family Law

The informal domestic relations trial rule comment period has been extended. It is important to get a wide range and as many comments as possible. The digital signature issue has been sent to this Committee. There are links to provide comments on page 25 of the meeting materials.

Child Welfare

The Committee is expanding guidance for child welfare dependency court and how to be a resource. The Committee has begun synthesizing recommendations for all hazard emergency training.

Technology Considerations

This Committee met today to discuss the status of their court website project to identify how to bring uniformity across court websites. The co-chairs have been in contact with director of the Gates Service Law Program to discuss creating a basic outline and structure for a website mock-up to present to courts. The goal is to create uniformity across all court websites.

Dawn Marie Rubio reminded the Committees it might be helpful to use Technology Committee guidelines for the court rule analysis.

General Civil Litigation

This Committee is coordinating comments on the Zoom voir dire, informal domestic relations trials, and GR 39, remote jury trials. Committees can share comments on these rules through Box or by e-mail. The Committee intends to request an extension to the comment period for these rules.

This Committee is interested in taking deeper look at using artificial intelligence platforms for depositions, recording proceedings, and testimony.

This Committee will meet next in early September.

Next steps

CRTF members should review the Lessons Learned report that encompasses action items for future.

Comments are needed on rules and reports.

There being no further business, the meeting was adjourned at 4:34 p.m.

Motion Summary from the June 9, 2021, Meeting

Motion Summary	Status
Approve the June 9, 2021, meeting minutes.	Passed

Action Items from the June 9, 2021, Meeting

Action Item	Status
CRTF members should review the Lessons Learned report that encompasses action items for future.	



WASHINGTON
COURTS

**Board for Judicial Administration
Court Recovery Task Force**

*Midterm Highlights
September 2021*

Introduction

In May 2020, the Board for Judicial Administration (BJA) created the Court Recovery Task Force to assess current court impacts from COVID-19; develop and implement strategies to ensure that every court can provide fair, timely, and accessible justice; and provide recommendations for ongoing court operations and recovery after the public health emergency subsides.

The [Task Force](#) began meeting in June 2020 and developed 12 committees to look at various aspects in the court system. These are: Technology Considerations, Facilities and Logistics, General Civil Litigation, Family Law, Child Welfare, Criminal Matters (Subcommittees: Juvenile Criminal Civil, Therapeutic, Adult), Appellate Courts, Lessons Learned, Public Outreach, and Communication. Committees developed work plans that identified activities and tasks to address, and gathered information from the broader justice community and court users on pandemic impacts. Some recommended policy changes and/or best practices information.

Approximately 100 court personnel and justice stakeholders participated in the Task Force and/or committees. A full committee roster can be found [here](#).

Highlights

BJA Court Recovery Summit

The Task Force co-sponsored the BJA Court Recovery Summit on August 25, 2020. Over 100 attendees from a variety of disciplines attended Jeffery Robinson's presentation, *Excerpts from "Who We Are: A Chronicle of Racism in America"* and then participated in several discussion groups that explored racism in the courts and court practices and impacts from the pandemic.

Task Force Committees and Activities

The Court Recovery Task Force has twelve committees. Each committee is listed [here](#) and includes a brief highlight of the committee's goal and activities. Committees that have achieved their goals and no longer meet include: Appellate, Public Outreach (AOC Communications continues to share Task Force information with the broader public), and Facilities and Logistics.

Appellate Court Committee

Goal: Reduce case backlog in superior courts by facilitating the transfer of certain appeals under the Administrative Procedures Act (APA) and the Land Use Petition Act (LUPA) from the superior court to the court of appeals.

Activities: [SB 5225](#) was passed concerning direct appeals to the court of appeals of cases brought under the administrative procedure act and the land use petition act.

Child Welfare Committee

Goal: Form recommendations to improve court practices in child welfare cases resulting in better outcomes for children, youth, and families that include considerations of race equity, trauma, access to justice, technology, and funding in light of the limitations courts have experienced due to the global pandemic.

Activities: Created Sample Pre-Trial Order for Remote/Virtual Dependency Fact Finding or Termination of Parental Rights, Sample Discovery Agreement, Sample Witness List which can

be found [here](#). Proposed changes to CR 43. Currently in the process of updating guidelines for hearing fact finding and termination of parental rights trials to include broad guidance informed by further lessons learned.

Criminal Matters Subcommittees

The Criminal Matters Committee has met several times as a large group. Several members are on each subcommittee to ensure information sharing and non-duplication of the work.

Juvenile Criminal/Civil

Goal: Identify and make recommendations on short-term operation changes needed to recover from the pandemic and opportunities for long-term juvenile criminal and civil system changes that include considerations of race, gender, equity, and access to justice, and practices that align with healthy youth development, technology, and funding needs to ensure better outcomes for youth.

Activities: Identified two statute changes, diversion extensions and fingerprinting in juvenile proceedings that are being brought forward during the 2022 Legislative session.

Therapeutic Courts

Goal: Address immediate impacts of COVID on therapeutic and problem-solving courts and court users, and identify what changes should continue past the pandemic.

Activities: Conducted a survey and provided a [summary](#) on therapeutic/problem solving courts' operational needs and service delivery in the changing environment. Distributed [materials](#) (talking points, article template, strategies document) to remind public defenders/private bar and prosecutors that therapeutic courts are open and available for hearings and services.

Adult Criminal

Goal: Address immediate impacts of COVID on courts and court users and identify what changes should continue past the pandemic.

Activities: Developed surveys to obtain feedback on COVID impacts from defendants and jurors, participated in various conversations around COVID impacts on adult criminal cases, and have been identifying remote contact/hearing challenges and successes.

Facilities and Logistics Committee

Goal: Assist the court community in their efforts to respond to the logistical and facility related challenges due to the COVID pandemic.

Activities: Developed and disseminated [two checklists](#) for court administrators to consult when preparing for jury trials and Continuity of Operations Plans (COOP) planning. Conducted a survey of courthouse security providers to gather information about challenges of providing courthouse security during the pandemic and the policies and practices that have been put in place to deal with them. Created a state-wide communication network of courthouse security professionals and court administrators to exchange information on addressing challenges and establishing best practices related to the pandemic and meeting the requirements of General Rule 36.

Family Law Committee

Goal: Research possible customer service improvements for family law litigants.

Activities: Explored the feasibility of automated text notifications to litigants, the barriers

some litigants may have using digital signatures, and the feasibility of Proposed General Rule 40 on Informal Family Law Trials.

General Civil Litigation Committee

Goal: Identify challenges in litigating civil cases including service of process, discovery, and pre-trial motions, as well as trial to get civil litigation moving, improving equal access to justice, and helping provide guidance/best practices.

Activities: Drafted language for use in court orders presuming the use of remote depositions and electronic service of process; explored ways to incentivize parties to agree to six-person jury trials and ways to reduce the number of preemptory challenges available to parties in civil litigation trials, which would further reduce space needed for social distancing; and electronic filing systems utilized in other states.

Lessons Learned Committee

Goal: Identify and recommend innovations and best practices, and serve as a clearinghouse to assist in coordinating surveys to ensure committees do not duplicate efforts and overload court community respondents.

Activities: Conducted a comprehensive [survey](#) of court administrators to collect baseline data on changes in court operations and ongoing needs, and implemented an unrepresented litigant survey in four languages. The committee is collecting lessons learned from pandemic impacts and changing court operations and stakeholder feedback about possible court rule changes.

Public Outreach Committee

Goal: Coordinate communication efforts around courts and COVID impacts and resources, share the work of the Task Force, and develop communication materials as needed.

Activities: Expanded and utilized the [Virtual Court Directory](#). Also executed a communications plan for the eviction for non-payment of rent project to educate the public on how to access the seven pilot project sites in Washington.

Technology Committee

Goal: Establish guidelines for courts to use and reference in order to evaluate and implement court technology.

Activities: Developed a [detailed list of objectives and guidelines](#) for courts to use in adopting and implementing the use of technology in court proceedings based on [Access to Justice](#) and [NCSC Guiding Principles](#) and are exploring [court website information](#) that would be helpful to increase access to and consistency of information on court websites.

Ongoing Activities and Next Steps

Committees are continuing their work on identified goals including:

- 1) Court Rules Project: analyzing and evaluating input to update court rules and emergency orders to reflect pandemic-related changes to court operations and practices.
- 2) Legislative advocacy during 2022 on identified statute changes.
- 3) Collecting and compiling lessons learned from the various committees and the Task Force as a whole.
- 4) Development of best practices and future court operational considerations as needed.

**Court Recovery Task Force (CRTF)
Lessons Learned Committee Submission
10/18/2021**

Court Rules Issues Update

The Supreme Court solicited input from stakeholders concerning: (1) any emergency rule changes or Supreme Court order provisions that should be continued beyond the state of emergency, including any modifications; and (2) any such rule changes or provisions that should be rescinded, either immediately or when no longer needed.

The Supreme Court asked the CRTF Lessons Learned Committee to coordinate the evaluation of the comments to help address near-term needs and possible revisions to emergency orders, as well as long-term needs and the processing of permanent rule proposals under General Rule 9.

CRTF committees and outside groups were given a list of issues with corresponding comments to evaluate the comments, determine which court rule (s) is impacted, and offer recommendations on whether or not a court rule should be created or revised, or whether there is no need for changes post the pandemic.

Below is a list of these issues grouped by category and identified next steps.

Issues that should be pursued by RCW or court rules change

(Lessons Learned will follow up with committees to move these forward)

- Use of electronic signatures without affidavit required under GR 17
- Option for everyone with status in the case and their attorneys to appear remotely either by video or telephone
- More latitude for remote testimony in child welfare cases
- Allow electronic filing, electronic or fax service upon counsel (not original service), and require courts to make their dockets and pleadings available online.
- Judicial discretion in scheduling hearings
- Remote in-custody proceedings
- Reporting FTAs to DOL
- Signature for defendants
- Defense notice to defendant
- Remote civil trials – GR 39, 41
- Electronic Service of process
- Electronic signatures
- Electronic Records
- Electronic filing
- Technology Access for jurors

Issues that are still being considered

- Remote Interpretation
- Remote juvenile justice proceedings (waiting on some other changes but available if needed)
- Open courts/public access
- Deferring Jury Service

Issues that were not pursued because

- 1) it was too complex or there was disagreement among stakeholders*
 - Remote criminal pretrial
 - Bench warrants
 - Adult Fingerprinting
 - In-person criminal trials

- 2) another group is already addressing it through a RCW or court rules change or no follow up is needed
 - In-person appellate arguments
 - Remote appellate arguments
 - Remote criminal trials
 - Remote jury selection (General Civil)
 - Legal representation in evictions
 - Extended juvenile jurisdiction
 - Juvenile bench warrants
 - Juvenile fingerprinting

- 3) unsure or no response was given*
 - Remote Civil commitment hearings
 - Suspended indigent defense standards
 - Ex parte no contact orders
 - Remote civil pretrial
 - Civil protection orders
 - Entry of default orders
 - Vaccine guidance for jurors
 - Remote dispositions

*The Task Force needs to determine if these issues should be assigned to another group or if there are any further steps at this time.

Dear Chief Justice Gonzalez and the Court Recovery Taskforce:

The Adult Offender Subcommittee of the Criminal Matters Committee has met to review the provisions of the Fifth Revised Emergency Order that concern criminal matters.

Our subcommittee is made up of judges, prosecutors, and criminal defense attorneys. We have identified areas of agreement, and when we did, we have proposed comments and draft rule language. While we share the common goal of a fair and smoothly functioning criminal legal system that there were areas where we could not reconcile our different institutional perspectives.

On the topics where the committee has not been able to reach consensus, we hope our professional organizations will supply more detailed feedback to the Court so it may fully consider those viewpoints.

Several of the areas relating to remote criminal proceedings were addressed by the Remote Jury Trial Taskforce chaired by Judge Rebecca Pennell. Three of our members also served on that committee, and we believe that those issues were thoroughly considered by that Taskforce, and we elected to defer to the Taskforce's findings in those areas.

There were three issues that, after review, we determined our input was either unnecessary or the issue was not an area our subcommittee had the expertise to address. Those issues were remote civil commitment hearings, reporting FTAs to DOL, fingerprinting, and suspended indigent defense standards. No one on our subcommittee has experience with civil commitment hearings, the DOL issue is expected to be resolved either through the Legislature or the courts, we see the fingerprinting issue as a legislative one, and while we support the need to ensure that all defendants have effective assistance of counsel, we believe that this is an issue better addressed through the Council on Public Defense, the Office of Public Defense and the defender organizations.

Thank you for allowing us to provide our input on these important issues. We are pleased to further assist the Court and Court Recovery Taskforce in any other way.

COVID Recovery Task Force

Adult Offender Subcommittee, Criminal Matters Committee

Agreed Issues

- Judicial Discretion in Scheduling Hearings
- Remote Proceedings for Pretrial Hearings
- Attorney Signatures on Behalf of Defendants
- Peremptory Challenges
- Defense Attorney Notice to Defendants/FTAs

Deferred Issues

- All provisions related to remote proceedings except for pretrial matters (*i.e.*, evidentiary hearings with or without testimony, in custody proceedings, all stages of a criminal trial including voir dire, trial testimony). Please note that our subcommittee is in agreement that remote voir dire should continue.

No Consensus

- Bench Warrants
- Speedy Trial

RECOMMENDATIONS

ISSUE #1: Judicial Discretion in Scheduling Hearings

Emergency Order Provisions: Sections 10 and 15(c):

Section 10: “Courts retain discretion in the scheduling of hearings, except that priority should be given to pretrial release and bail modification motions, as well as plea hearings and sentencing or disposition hearings that result in the anticipated release of the defendant or respondent from pretrial detention within 30 days. Parties are not required to file motions to shorten time in scheduling any of these matters.”

Section 15(c): “Parties may present agreed orders for release of in-custody defendants and respondents, which should be considered expeditiously.”

Court Rules Impacted: CrR/CrRLJ 8.1; CrR 8.5

Proposed Amendments to CrR/CrRLJ 8.1 and CrR 8.5:

CrR/CrRLJ 8.1(c)(1) (new subsection):

Exceptions. Parties may note a motion less than 5 days before the time specified for the hearing for pretrial release and bail modification motions, as well as plea hearings and sentencing or disposition hearings that result in the anticipated release of the defendant or respondent from pretrial detention within 30 days. Notice of the hearing must still be attempted to all parties entitled to notice under statute and court rule. The court in its discretion may determine whether the hearing should be continued in the interest of providing sufficient notice to any party.

CrRLJ 8.5 – Calendars (new rule):

Courts retain discretion in the scheduling of hearings, except that priority should be given to pretrial release and bail modification motions, as well as plea hearings and sentencing or disposition hearings that result in the anticipated release of the defendant or respondent from pretrial detention within 30 days.

CrR 8.5 – Calendars

In setting cases for trial, unless otherwise provided by statute, preference shall be given to criminal over civil cases, and criminal cases where the defendant or a witness is in confinement shall have preference over other criminal cases. ADD: Priority should be given to pretrial release and bail modification motions, as well as plea hearings and sentencing or disposition hearings that result in the anticipated release of the defendant or respondent from pretrial detention within 30 days.

ISSUE #2: Remote Pretrial Hearings

Emergency Order Provision: Section 16:

“Courts should continue to allow telephonic or video appearances for all scheduled criminal and juvenile offender hearings whenever appropriate. All in-person appearances must be conducted with strict observance of social distancing and other public health measures. For all hearings that involve a critical stage of the proceedings, courts shall provide a means for defendants and respondents to have the opportunity for private and continual discussion with their attorney.”

Court Rules Impacted: CrR 3.4

Proposed Amendments: None. We believe this provision is covered in CrR 3.4.

ISSUE #3: Attorney Signature on Behalf of Defendant

Emergency Order Provision: Section 13(a): “Defense counsel is not required to obtain signatures from defendants or respondents on orders to continue criminal or juvenile offender matters.”

Court Rules Impacted: None; this would be new

Proposed Amendments:

New Rule: “Defense counsel is not required to obtain signatures from defendants or respondents on orders to continue criminal or juvenile offender matters.”

ISSUE #4: Notice of Hearings; FTAs and Issuance of Warrants

Emergency Order Provision: Section 13(c): “Defense counsel shall provide notice to defendants and respondents of new court dates.”

Court Rules Impacted: None; this would be new

Proposed Amendments:

The provisions concerning defense counsel providing notice of future court hearings to their clients required more discussion within the subcommittee. The subcommittee was unanimous that defense counsel are in the best position to provide actual notice to defendants. This is a great efficiency for the Courts in that it no longer has to print and distribute orders for new dates on every case. The rule shifts the burden of service to defense counsel, but in doing so also creates a potential ethical conflict for defense counsel. Should a defendant fail to appear for a future court appearance, RPCs 1.6 and 3.3 prohibit defense attorneys from disclosing to the court or opposing counsel if their clients received notice of that date. WSBA Advisory Op. 1311 states:

The Committee reviewed your inquiry concerning informal meetings between you as a public defender and the presiding judge, during which the judge asks whether clients have been meeting with you. The Committee was of the opinion that such information would constitute confidences or secrets of your client, and that pursuant to RPC 1.6 you could not disclose such information unless your client consented to disclosure or you were ordered to do so by the court. The Committee was further of the opinion that RPC 3.3 would prohibit you from making evasive answers to such questions.

As a result, courts will be presented with a prosecutorial motion for a bench warrant upon a defendant’s failure to appear and consider the motion either without information about whether notice was served, or in the alternative, by compelling defense counsel to breach violate RPC 1.6 and 3.3 to learn whether service was effectuated. The subcommittee concluded that the provision allowing defense counsel to provide notice to defendants should be retained, but that defense counsel should not be placed in a position to violate the RPCs or become witnesses in a case against their own client. The subcommittee agreed that any future court rule should address cases where the defendant fails to appear after notice by defense counsel, and provide guidance to courts on correct FTA procedure. One FTA procedure considered by the subcommittee: the court to notes the failure to appear and issues a summons to the defendant for a future court date; a warrant can then issue if the defendant fails to appear for the new court date. This is the current practice in many courts in Washington under the emergency order. We recommend proposed rules that reflect current practice

Proposed New Court Rules: CrR 4.11 and CrRLJ 4.11:

Proposed CrR 4.11:

The Court shall provide notice of new hearing dates to defendants by delivering a copy to the party or the party's attorney or by mailing it to the party's last known address. Notice of new hearing dates to counsel shall not constitute notice sufficient to issue a warrant for failure to appear pursuant to CrR 3.4(d). When a defendant fails to appear at a hearing pursuant to CrR 3.4(d) after learning of the hearing through counsel, the court shall note the non-appearance and summons the defendant to a hearing where, if the defendant fails to appear, the court may order the clerk to issue a warrant for the defendant's arrest.

Proposed CrRLJ 4.11:

The Court shall provide notice of new hearing dates to defendants by delivering a copy to the party or the party's attorney or by mailing it to the party's last known address. Notice of new hearing dates by counsel shall not constitute notice sufficient to issue a warrant for failure to appear pursuant to CrRLJ 3.4(d). When a defendant fails to appear at a hearing pursuant to CrRLJ 3.4(d) after learning of the hearing through counsel, the court shall note the non-appearance and summons the defendant to a hearing where, if the defendant fails to appear, the court may order the clerk to issue a warrant for the defendant's arrest.

ISSUE #5: Peremptory Challenges

The subcommittee members agree that any limitations on the exercise of peremptory challenges should be removed.

The Supreme Court
State of Washington

DEBRA L. STEPHENS
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TEMPLE OF JUSTICE
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September 24, 2021

Sent via email

Jeanne Englert
Administrative Manager, Board of Judicial Administration
1112 Quince St SE
Olympia, WA 98501

Dear Ms. Englert:

On behalf of the General Civil Litigation Committee (GCLC) of the Court Recovery Task Force (CRTF), I am pleased to submit our input to date concerning remote proceedings. This input reflects our consideration of the suggestions and comments that were collected earlier this year from Washington courts and justice community stakeholders and it focuses immediately on the pending court rule proposals for a new General Rule (GR) 41 and for amendments to Civil Rule (CR) 39. Our suggestions and notes on these proposed rules are attached along with a letter we received from the WSBA Solo & Small Practice section. We intend to seek endorsement from the CRTF to submit formal comments to the Washington Supreme Court Rules Committee, which are due no later than December 29, 2021.

Our committee continues to look closely at the full spectrum of court rules governing civil cases that appear to be impacted by remote proceedings, our list of which is attached. In particular, we are examining the use of transcription technologies, which have evolved and expanded during the pandemic. Many of our members have experience with these technologies in taking depositions and we are gathering additional information and considering possible revisions to current deposition court rules. To that end, we anticipate supplementing our submission.

We look forward to reviewing the input received from our colleagues on the other CRTF committees and anticipate incorporating that input into our work as we move forward. Please let

me know if you have any questions concerning our submission or if you need additional information at this time.

Very truly yours,



Debra L. Stephens, Justice
Washington State Supreme Court

cc: Luke Phifer

Attachments:

GCLC suggestions and notes on proposed CR 39
GCLC suggestions and notes on proposed GR 41
Ltr to GCLC from WSBA Solo & Small practice section
GCLC List of rules potentially affected by remote proceedings

**Proposed Amendments to CR 39
TRIAL BY JURY OR BY THE COURT**

(-) – (c) [Unchanged.]

(d) Manner of Trials.

(1) Generally. Except as otherwise authorized by these rules, ~~or by statute, or by court order,~~ all trials upon the merits shall be conducted in open court, ~~and, so far as convenient, in a regular courtroom.~~

Commented [CDP1]: The Civil Litigation TF believes it would be helpful to have definition(s) that apply to terms such as “open court” that will come up in a number of different circumstances.

(2) Videoconference Trials.

A. By the Court. On the court’s own initiative, or on motion ~~of the by a parties~~ or their attorneys of record, a trial by the court may occur over videoconference, ~~or portions thereof,~~ in which all participants can simultaneously see, hear, and speak ~~with each other at all times.~~ The video and audio should be of sufficient quality to ensure participants are easily seen and understood.

i. Before ordering a video-conference trial by the court, ~~the court shall state the reasons for its decision and may consider the nature of the case, the court shall consider~~ the number of parties, the number of trial witnesses, the type of evidence to be presented, ~~whether the parties have significant financial and nonfinancial interests at stake, whether the use of remote interpreting services will detract from the presentation of evidence, the parties ability to conduct a videoconference trial, the length of time trial has been pending, the potential impact of not conducting the trial by videoconference, such as the availability of witnesses and preservation of evidence, and any other relevant circumstances.~~

B. By Jury. On the court’s own initiative, or on motion ~~by a party of the parties~~ or their attorneys of record, a ~~jury trial, or portions thereof, trial by jury~~ may occur by videoconference. ~~While on the record, the Any jury trial occurring by videoconference must allow all participants to be simultaneously visible and able to hear and speak at all times. see, hear, and speak with each other.~~ The video and audio should be of sufficient quality to ensure participants are easily seen and understood. Jury trials may be conducted by videoconference only:

i. ~~When there is written agreement of the parties that has been approved by the court. If approved, the court shall sign an order allowing the remote video trial, and attach the agreement of the parties to its order. the agreement shall be filed with the court before the start of trial and the court is in agreement; or. The agreement shall be filed with the court before the start of trial; or~~

ii. Over objection of a party or parties for good cause in compelling circumstances. In conducting trial by jury over videoconference, the court shall ensure appropriate safeguards are in place; and:

Commented [CDP2]: There are differing opinions within our committee regarding whether the Court should be able to compel parties to in person trial vs videoconference trial when the parties are in agreement for a videoconference trial. Issues implicated are access to justice in terms of the difference in cost between in person and videoconference, the court’s inherent ability to control the manner of proceedings before it, forum shopping if parties know one judge will agree to videoconference trial while others will not, jury pool considerations, etc.

(a) ~~May~~Shall consider the nature of the case, ~~including the~~ number of parties, ~~the~~ number of trial witnesses, the type of evidence to be presented, whether the parties have significant ~~financial and~~ non-financial interests at stake, whether the use of remote interpreting services will detract from the presentation of evidence, the parties ability to conduct a videoconference trial, ~~the length of time trial has been pending, the potential impact of not conducting the trial by videoconference, such as the availability of witnesses and preservation of evidence, and any other relevant considerations in support of its decision. and~~ ~~any other relevant circumstances; and~~

~~(b) Shall enter written findings outlining its reasons for conducting trial by videoconference. The court shall analyze the length of time trial has been pending, the potential impact of not conducting the trial by videoconference, such as the availability of witnesses and preservation of evidence, and any other considerations in support of its decision.~~

C. ~~Nothing in sections (2)(A)-(B) above precludes the court from revisiting the decision regarding videoconferencing should technical or other circumstances arise.~~

(3) *Notice.* Whether on its own initiative or by motion ~~of the~~of a party~~ies~~ or their attorneys of record, no videoconference trial shall be heard unless the court holds a hearing no fewer than 30 days before the trial date. At the hearing, the court shall announce its decision on a trial by videoconference and address appropriate safeguards. The parties or their attorneys of record may agree to this hearing occurring within 30 days of trial. ~~For agreed matters, the court may waive the hearing in its discretion.~~

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Proposed General Rule 401¹
[NEW]

Jury Selection by Videoconference

(a) **Scope of rule.** This rule addresses the procedures for conducting jury selection by videoconference in civil cases.

(b) **Jury selection by videoconference.** ~~In all cases, j~~Jury selection may be conducted by videoconference in which all participants can simultaneously see, hear, and speak with each other. ~~The video and audio 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 video participants per voir dire session, in accord with RCW 2.36.065. The court shall confirm with prospective jurors that they can participate in jury selection by videoconference. The court shall not excuse ~~potential~~² jurors from jury service who cannot participate in jury selection by videoconference due to lack of resources or access and shall have a duty to arrange for alternative methods, ~~including but not limited to in person voir dire,~~ for such ~~potential~~ jurors.

(d) **Procedures during jury selection.** When conducting jury selection using videoconferencing, over video, the court shall:

1. Confirm that all ~~potential~~ jurors can see and hear the participants; court and parties;
2. Inform ~~potential~~ jurors that their cameras must remain on and that they must remain in camera view throughout jury selection;
3. Instruct ~~potential~~ jurors on procedures to be employed during jury selection, including that jurors give (i) their full care and attention must be on to jury selection, (ii) that all other devices should be turned off during jury selection, and (iii) they should be alone in the space in which they are participating in jury selection unless extraordinary circumstances are present that the court finds sufficient to allow the jurors participation³;
4. Inform the parties and ~~potential~~ jurors that any screen shots, visual, video, or audio recording of the hearing, other than the official record, is prohibited absent court permission; and
5. A judge may, within his or her discretion, allow the use of virtual backgrounds. Prohibit jurors from using filters or virtual backgrounds or other programs or applications to alter their appearance in any way or the appearance of the space in

¹ We have concerns about this rule being a GR rather than just a civil rule. We would like to have input from criminal law practitioners and suggest the language in (a) to limit the use of videoconferencing for jury selection to civil cases.

² This language is in conflict with the definition of juror in RCW 2.36.010(4) "Juror" means an person summoned for service on a petit jury, grand jury, or jury of inquest as defined in this chapter." We have removed the word "potential" throughout this rule.

³ We believe that the court, in its preliminary instruction can provide instructions to the jury on these other issues. A pattern instruction or a "best practices" instructions can be drafted.

~~which they are physically located while participating in jury selection. A juror may use a virtual background with prior approval of the court. Any approved background must be plain, blurred, or otherwise nondistracting.~~

~~(e) **Public access.** 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.⁴~~

⁴ We do not think this section is necessary. The constitutional requirement of holding open and public trials obviously applies to jury selection.

General Rules Affected by Remote Proceedings

GR 11.3: Remote Interpretation

This rule requires in-person interpretation unless the court makes a “good cause” finding that an in-person interpreter is not practicable, only then will the alternative, remote interpretation be allowed. Stakeholders may want to take a closer look at this standard and “good cause” requirement given the increased frequency of remote proceedings.

GR 11.4: Team Interpretation

This rule lays out the situations where team interpretation (needing more than one interpreter) is necessary and gives baseline guidance on interpreting logistics. As it is written, the rule does not mention procedures for remote team interpretation, and additional guidance on remote team interpretation may be helpful.

GR 12.4(h): Washington State Bar Association Access to Records

This provision establishes the procedure for review of WSBA records access decisions. The process includes a review proceeding by the Bar’s Executive Director. Additional language permitting remote review proceedings may be necessary.

GR 15: Destruction, Sealing, and Redaction of Court Records

Under this rule, parties must request a hearing to seal, redact, or destroy court records. It may be helpful to include the authorization of remote hearings.

GR 16: Courtroom photography and Recording by the News Media

This rule allows “[v]ideo and audio recording and still photography by the news media . . . *in the courtroom.*” Additional guidance is needed authorizing and providing logistical guidance for media access to remote proceedings, including streaming, screen recording, etc.

GR 19: Video Conference Proceeding

This rule authorizes AOC to provide standards related to technical assistance for video conference proceedings. It may be helpful to provide further guidance for

remote proceedings in this rule, and to consider whether to clarify AOC's role in light of broad authorization of remote proceedings.

***GR 30: Electronic Filing and Service:**

This rule outlines the authorization and processes for electronic filing and electronic signatures. The rule allows local court rules to be adopted regarding electronic filing/signatures, and it may be helpful to provide a more uniform rule. We may also want to review the rule's prohibition of certain documents from being filed electronically. (Justice Stephens mentioned that someone else would be looking at this, but we included it for completeness)

***GR 34: Waiver of Court and Clerk's Fees and Charges in Civil Matter on the Basis of Indigency:**

This rule governs when a waiver of fees is permitted based on indigency. Under GR 34(a)(2), it may be helpful to provide guidance on electronic filing of an indigency application.

GR 36: Trial Court Security:

This rule outlines security measures to ensure the safety of courthouses. It does not provide much guidance on security for remote proceedings, and it may be helpful to outline procedures for the safe administration of remote proceedings.

GR 37: Jury Selection

This rule provides standards to eliminate bias in jury selection. We did not have any specific section that needs to be changed. But it may be helpful to consider whether new dynamics of remote jury selection may require further refining this rule to combat new possible sources of bias involved in remote jury selection.

GR 38: Open Access to Courts (Civil Arrests):

This rule outlines the prohibitions on civil arrests without a warrant or judicial order for arrest. These prohibitions on civil arrests are framed as applying to a physical court. GR 38(a)(1) (applying the prohibition when a person is "inside a court of law"). We might need to adjust these rules to allow for no arrests during any court proceedings to ensure the rule encompasses remote proceedings.

Civil Rules Affected by Remote Proceedings

CR 7: Pleadings Allowed; Form of Motions

This rule governs pleadings and motion procedures. CR 7(b)(5) provides that oral argument on civil motions “may be heard by conference call in the discretion of the court.” This rule could be amended, or an additional subsection could be added, to allow oral argument on civil motions via videoconference.

CR 16: Pretrial Procedure and Formulating Issues

This rule empowers the court to “direct the attorneys for the parties to appear before it for a conference.” CR 16(a). Any such appearances will be impacted by the possibility of remote proceedings.

CR 26: General Provisions Governing Discovery

This is a comprehensive rule governing discovery practice.

- CR 26(f) empowers the court to order “the parties to appear before it” for a discovery conference upon motion by any party. This rule could be modified to allow remote appearances.
- CR 26(i) provides for discovery conferences between counsel “in person or by telephone,” which the court may want to amend by including a video-conferencing option.

CR 28: Persons Before Whom Depositions May Be Taken

This rule outlines the persons before whom depositions may be taken within Washington, the United States, and in foreign countries. The court may want to clarify that a deposition may be taken “before” certain officers *virtually*.

CR 30: Depositions Upon Oral Examination

This is a comprehensive rule governing deposition practice.

- CR 30(b)(1) provides that “notice shall state the time and place for taking the deposition.” This could be amended to allow notice of a virtual deposition.
- CR 30(b)(2)(A) provides that leave of court is not required for the taking of a deposition if the notice “states that the person to be examined is about to go out of state and will be unavailable for examination unless the person’s deposition is taken before expiration of the 30-day period.” This rule could be re-imagined or eliminated entirely given the possibility of remote depositions.

- CR 30(b)(7) provides that 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.” This rule could be amended to specifically provide for depositions taken by videoconference.
- CR 30(b)(8) governs video recording of depositions. As written, the rule does not contemplate video recordings in the context of remote depositions (e.g., CR 30(b)(8)(F) requires a video-recorded deposition to start with a statement on the record of the camera operator’s name, contact information, employer, etc.). This rule and its subparts could be amended to account for a remote setting.
- CR 30(c) governs direct and cross examination, records of examination, oaths, and objections. This rule already provides that the “oath and recording may be administered by the officer from a location remote from the deponent,” but it also includes limiting language: “[a] judge of the superior court, or a special master . . . may make telephone rulings on objections made during depositions.” This rule could be amended to allow objections via videoconference.

CR 32: Use of Depositions in Court Proceedings

This rule governs use of depositions at hearings and trial.

- CR 32(3)(B) allows use of a witness’s deposition by any party for any purpose if the court finds that the witness resides out of the county and more than 20 miles from the place of trial. The court may wish to reevaluate this rule in the context of remote trials.
- CR 32(5)(A) allows use of the deposition of an expert witness “who resides outside the state of Washington” where reasonable notice is provided to all parties before the trial date. The court may wish to reevaluate this rule in the context of remote trials.

CR 35: Physical and Mental Examination of Persons

This rule allows the court, upon motion by any party, to order a physical or mental examination of a person whose mental or physical condition is in controversy. The court may consider expressly allowing virtual CR 35 examinations when feasible given the prominence of tele-health appointments.

CR 38: Jury Trial of Right

This rule governs the procedures for demanding a jury trial. This rule could be amended to allow parties to demand a remote jury trial.

CR 41: Dismissal of Actions

This rule governs mandatory, voluntary, and involuntary dismissals. Rule 41(e) requires counsel to notify the court of any settlement “by telephone or in person.” This rule could be amended to permit other remote methods of providing notice.

CR 43: Taking of Testimony

This rule governs procedures for witness testimony.

- CR 43(a)(1) requires witness testimony to be taken orally in open court, but the court may for “good cause in compelling circumstances . . . permit testimony in open court by contemporaneous transmission from a different location.” The court may wish to relax the requirements surrounding remote witness testimony.
- CR 43(d)(1)(C) requires witnesses to stand while taking oaths. This may be unnecessary in remote settings.

CR 45: Subpoena

This rule governs subpoena procedures.

- CR 45(a)(1)(C) requires all subpoenas to command the recipient to give testimony “at a time and place therein specified.” This language could be amended to provide for remote testimony.
- CR 45(e)(2) (“Place of Examination”) discusses the deposition attendance requirements for witnesses who reside in and out of state. These requirements could be reevaluated given the possibility of remote depositions.
- CR 45(f) provides that a witness is excused after cross-examination unless a party moves “in open court that the witness remain in attendance and the court so orders.” This language does not explicitly contemplate remote proceedings and could be amended to that effect.

CR 47: Jurors

This rule governs procedures related to juries, including juror examination, alternate jurors, and notetaking. This entire rule could be amended to create formal procedures for remote voir dire and remote trials.

- CR 47(i) provides for separation or sequestration of the jury. This language could be amended to account for a remote setting.
- CR 47(j) provides that jurors may take written notes and allows jurors “to keep these notes with them in the jury room during recesses.” This language could be amended to account for a remote setting.

CR 51: Instructions to Jury and Deliberation

This rule governs additional procedures related to juries, including jury instructions and deliberation. CR 51(h) (“Deliberation”) provides that when retiring for deliberation, the jury “shall take with all exhibits received in evidence” but “[p]leadings shall not go to the jury room.” This language could be amended to account for remote settings.

CR 53.4: Procedures for Mandatory Mediation of Health Care Claims

This rule governs procedure for all claims subject to mandatory mediation under RCW 7.70.100 and .110.

- Rule 53(f)(2) provides that the mediator “shall fix a time and place for the mediation conference.” This language could be amended to expressly provide for remote settings.
- Rule 53(f)(5) requires that all parties, counsel, and insurers “shall attend the mediation in person.” This language could be amended to allow remote mediations.

CR 54: Judgments and Costs

This rule governs entry of judgments. Rule 54(f)(2)(C) provides that no order judgment shall be signed or entered until opposing counsel receives notice unless “presentation is made after entry of verdict or findings and while opposing counsel is in open court.” This rule could be amended to account for remote proceedings.

CR 60: Relief from Judgment or Order

This rule governs relief from court orders based on clerical mistakes, inadvertence, newly discovered evidence, etc. CR 60 (e)(2) requires upon a motion for vacation of judgment that the court “enter an order fixing the time and place of the hearing thereof.” This language could be amended to account for remote hearings.

CR 65: Injunctions

This rule governs preliminary injunctions and TROs. CR 65(b) provides that if a TRO is granted, a hearing must be set for the motion for a preliminary injunction. The rule could be amended to expressly allow remote hearings.

CR 71: Withdrawal by Attorney

This rule governs procedures related to an attorney’s withdrawal. CR 71(b) provides that the client of a withdrawing court-appointed attorney must be given notice of the motion to withdraw and “the date and place the motion will be heard.” This language could be amended to account for remote hearings.

CR 77: Superior Courts and Judicial Officers

- CR 77(8)(B) governs visiting judges and provides that “whenever a visiting judge has heard or tried any case or matter and has departed from the county, the visiting judge may require the argument on any posttrial motion . . . at any such place within the state as the visiting judge may designate” This language could be amended to allow remote hearings.
- CR 77(f) governs regular and special sessions: “The superior court shall hold regular and special session at the county seats of the several counties at such times as the judges may determine and at such other places within the county as” the judge may designate. This language could be amended to allow remote hearings.
- CR 77(j) requires that “all trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom . . . but no hearing, other than one ex parte, shall be conducted outside the county in which the cause or proceedings are pending without the consent of all parties affected thereby.” This rule could be amended to allow remote hearings.

Criminal Rules Affected by Remote Proceedings

CrR 3.2(b), (c): Release of the Accused

These provisions govern court determinations of the likelihood accused individuals will appear if released. Factors such as the accused's access to technology and etiquette during virtual proceedings could be considered.

CrR 3.4(e): Presence of the Defendant

This provision contains language outlining videoconference proceedings and should be reviewed to avoid conflict.

CrR 4.2(d): Pleas

This provision requires the court to ensure the defendant enters into a plea deal voluntarily and the defendant understands the nature of the charge. While sound and connection problems may not be impactful in other areas of these rules, in this case interruptions may impact a defendant's ability to fully engage with the court and satisfy the requirements of this provision.

CrR 4.3.1: Consolidation for Trial

This rule governs consolidation of defendants for trial. Language regarding how to organize consolidated defendants during virtual proceedings may be helpful.

CrR 4.5(c)(iii): Omnibus Hearing

This provision give the court authority to determine if any procedural issues need to be considered. As the structure of virtual proceedings becomes more developed, providing guidance for the court to resolve virtual issues will be important if this provision is asserted.

CrR 4.6(c): Depositions

This provision refers criminal deposition proceedings to the civil rules. This should be kept in mind when examining virtual civil deposition proceedings.

CrR 4.10(b) Material Witness

This provision governs hearings after warranted arrests. It contains language requiring that the hearing be held in the county from which the warrant was issued.

It should be considered how virtual proceedings could affect this, as it does not define whether presence must be physical or if it can be virtual.

CrR 6.1(c): Trial by Jury or By the Court

This provision governs what the options are available if a juror is unable to continue their duty. Language addressing whether or not a juror who is experiencing technical difficulties (such as a computer crash) constitutes being unable to continue may be helpful.

CrR 6.2 Jurors' Orientation

This rule governs materials given to jurors when they report for duty. For virtual proceedings, it would be pertinent to decide whether materials should be provided physically or electronically.

CrR 6.3: Selecting the Jury

This rule governs selection of jury members. Language guiding courts on how to conduct this process virtually may be helpful.

CrR 6.4(b): Challenges

This provision governs *voir dire*. It should be examined in conjunction with GR 37 as the virtual setting may provide new issues determining the ability of jurors to serve.

CrR 6.5: Alternate Jurors

This rule governs alternate jurors. Issues could arise from protecting jurors who are temporarily excused from influence in a virtual setting.

CrR 6.7: Custody of Jury

This rule governs the restriction of the jury. Restricting or sequestering jury in virtual setting may present new issues protecting them from outside influence or bias.

CrR 6.8: Note-Taking by Jurors

This rule governs how jurors may take notes during proceedings. Language specifying whether jurors can take digital or physical notes would be helpful. Issues may arise regarding confidentiality if jurors are in separate spaces and their

notes are visible to others. Destruction of digital notes should also be addressed if those are allowed.

CrR 6.12(c): Witnesses

This provision outlines who is incompetent to testify. Issues may arise from trying to determine if a witness is intoxicated. While they will most likely demonstrate visible characteristics of intoxication, it may still be difficult to be certain over a virtual conference.

CrR 6.15(f): Instructions and Argument

This provision covers the process of juries submitting written questions to the court during deliberation. Language covering submission of questions during virtual proceedings would be helpful.

CrR 7.8(b): Relief from Judgement or Order

This provision provides examples of when the court may relieve a party from final judgement. It would be worth considering if there are any issues that could arise from virtual proceedings that would merit relief from final judgement. If not, perhaps language specifying why certain aspects of virtual proceedings are not eligible for relief.

CrR 8.10 Electronic Recording Log

This rule governs the recording of proceedings that are electronically recorded. It should be considered during further considerations of virtual proceedings.

Criminal Rules for Court of Limited Jurisdiction Affect by Remote Proceedings

CrRLJ 2.1(b)(iv): Complaint – Citation and Notice

This provision requires that a Notice to Appear include details about when the person must appear before the court (date, time, place, etc.). If the proceedings take place virtually, the person will need to know of any details regarding how to connect to the virtual court room and the proper procedure for connecting.

CrRLJ 2.2(b)(4): Warrant of Arrest or Summons Upon Complaint

This provision outlines the proper procedure for issuing a summons to appear before the court. Part of this provision requires that the time and place of appearance be included in the summons. Again, information regarding how to connect to the virtual courtroom may be necessary if the proceedings will be virtual.

CrRLJ 3.2(b): Release of Accused

This provision gives the court authority to release accused individuals from custody and place conditions on said release depending on the likelihood the accused will appear before the court at a later date. It may be worth discussing in future rulemaking what impact an accused's access to technology has on the likelihood they will appear. It could perhaps be an addition to the next provision (CrRLJ 3.2(c): Relevant Factors-Future Appearance).

CrRLJ 3.2.1(d): Procedure Following Warrantless Arrest – Preliminary Hearing

This provision discusses bringing the accused before the court for preliminary hearings and could use language about virtual appearances.

CrRLJ 3.4(e), (f): Presence of the Defendant

These provisions give guidelines for remote proceedings. They appear to only apply to remote proceedings for preliminary appearances, arraignments, bail hearings, trials, and proceedings for the criminally insane. This provision should be kept in mind.

CrRLJ 3.5: Confession Procedure

This rule governs the responsibilities of the court and rights of the defendant regarding confessions. It may be worth including language about virtual proceedings here for clarity.

CrRLJ 3.6: Suppression Procedure

This rule governs motions to suppress. It mentions that the court may determine if an evidentiary hearing is appropriate. Language allowing evidentiary hearings to be remote may be helpful and give clarity.

CrRLJ 4.5: Pretrial Hearing

This rule governs pretrial hearings. Language allowing pretrial hearings to be virtual would provide clarity.

CrRLJ 4.6(b), (c): Depositions

These provisions govern giving notice of a deposition and the method of conducting them. Information needed to connect to a virtual deposition should be added in the notice document. It also states that depositions will be conducted in accord with the civil rules, which is something that should be kept in mind.

CrRLJ 5.2(c): Change of Venue

This provision governs the procedure when transferring to another venue. It may be worth including language that specifies the court must provide appropriate virtual court details upon transfer.

CrRLJ 6.1.1(d): Trial by Jury

This provision governs the procedure for jurors unable to continue. It would be worth considering if any technological issues may prevent a juror from being able to continue and including some language addressing those issues.

CrRLJ 6.1.3(f): Order of Trial

This provision requires that instructions shall be given to the jury prior to closing argument. It would be helpful for courts to know how to provide jury copies of their instructions in a virtual setting.

CrRLJ 6.2: Jurors' Orientation

This rule governs the orientation of jurors and requires that a copy of the Juror's Handbook to Washington Courts be provided to them. Language discussing how to provide that book virtually would be helpful.

CrRLJ 6.3: Selecting the Jury

This rule governs jury selection. It could be useful for courts to have an outline of how to conduct jury selection virtually.

CrRLJ 6.4(b): Challenges

This provision governs voir dire. It should be examined in conjunction with CrR 6.4(b) and GR 37 for new problems determining jury bias virtually.

CrRLJ 6.7: Custody of the Jury

This rule governs the restriction and separation of the jury. Issues may arise from the problem of protecting jurors from influence in a virtual setting.

CrRLJ 6.8: Note-Taking by Jurors

This rule governs the how jurors may take written notes. Language discussing whether digital notes are allowed in virtual proceedings would be prudent. Additionally, the procedure for destroying notes after virtual proceedings should be considered and included here.

CrRLJ 6.12(b): Witnesses:

This provision governs the dismissal or excuse of witnesses. It allows either party to request that a witness remain in attendance. It could be beneficial to include language regarding how to keep a witness in attendance in a virtual setting.

CrRLJ 6.15(e): Instructions and Argument

This provision governs the submission of questions from the jury to the court. It should be considered how jurors may submit questions virtually.

CrRLJ 7.2(b), (c): Sentencing

These provisions govern the procedure at the time of sentencing and the responsibility of the court to create a sentencing record. Towards the end of section 7.2(b) it mentions that the proceedings discussed in this section should be made part of the record, and section 7.2(c) provides that a record may be preserved

electronically. It may be beneficial to include language that requires the submission of virtual proceeding transcripts or recordings into the record for clarity.

CrRLJ 7.8(b): Relief from Judgement or Order

This provision covers scenarios where a party may be relieved from judgement. It may be worth considering if there are any ways a party may be relieved stemming from virtual proceedings.

Mandatory Arbitration Rules Affected by Remote Proceedings

MAR 4: Procedures after Assignment

This section governs communications restrictions, discovery, and subpoenas. It may be helpful to include a new rule here that discusses the organization of virtual arbitration proceedings.

MAR 4.3: Subpoena

This rule governs the ability of arbitrators to issue subpoenas. A portion of this rule provides that witnesses may be subpoenaed. It may be beneficial to include language about virtual proceedings here.

MAR 5.1: Notice of Hearing

This rule governs the duty of the arbitrator to organize the hearing. Language requiring the arbitrator to provide connection details for virtual proceedings could be added.

MAR 5.2: Prehearing Statement of Proof

This rule governs the responsibility of each party to provide other parties with a list of witnesses, exhibits, and evidence. Part of this rule requires that a party disclose whether they will have a witness provide testimony in writing, in person, or by telephone. For clarity, distinction should be made between physically in-person and virtually in-person.

MAR 5.3(b): Conduct of Hearing-Witnesses-Rules of Evidence

This provision allows hearings to be recorded. It would be prudent to determine if a recording of virtual proceedings would be included under this provision, and if so any limitations.

MAR 6.4(c): Costs and Attorney Fees

This provision grants the arbitrator authority to hold a hearing on costs and attorney fees. A brief sentence or clause allowing these hearings to be held virtually would be helpful.

Juvenile Court Rules Affected by Remote Proceedings

JuCR 1.6 (a) Physical Restraints in the Courtroom

This rule governs when the use of restraints on juvenile respondents is necessary for certain situations. Language regarding the use of restraints on juvenile respondents during virtual proceedings may be helpful.

JuCR 2.3 Right to and Notice of Shelter Care Hearing

This provision governs the rules regarding the right to and notice of shelter care hearing under RCW 13.34.060, RCW 13.34.070(10), and 25 U.S.C. 1912.

- JuCR 2.3 (a) governs the right to request a shelter care hearing shall be given to the child, his or her parents, guardian, or custodian as soon as possible and in no event longer than 24 hours of the taking into custody of the child. This could be amended to allow notice of a virtual hearing.
- JuCR 2.3 (b) provides that the court is required to hold a shelter care hearing within 72 hours after the child is taken into custody. Language regarding how to conduct remote shelter care hearing proceedings may be helpful.
- JuCR 2.3 (c) provides that the court is required to give the notice of shelter care hearing to the parents, guardian, or custodian. It might be helpful to provide guidance on how to provide the notice in remote proceedings.
- JuCR 2.3 (d) governs that if the juvenile is an Indian child as defined by the federal Indian Child Welfare Act, the petition shall notify the child's tribe. Languages regarding how to provide the notice in remote proceedings may be helpful.

JuCR 3.4 Notice and Summons – Scheduling of Factfinding Hearing

This provision governs the notice and summons. Rule 3.4 (a) provides that the court shall issue and serve the notice and summons under RCW 13.34.070. Languages regarding how to serve the notice and summons for virtual proceedings may be helpful.

JuCR 3.7 (a) Factfinding Hearing

This rule governs the procedure of conducting a factfinding hearing under RCW 13.34.110. This could be amended to allow a virtual factfinding hearing.

JuCR 3.8 (a) Disposition Hearing

This provision governs that if a juvenile has been found to be dependent, the court shall hold a disposition hearing. If the disposition hearing does not immediately follow the factfinding hearing, notice of the continued hearing shall be given to all parties under RCW 13.34.110. Language regarding how to conduct a remote disposition hearing and serve electronic notice may be helpful.

JuCR 3.9 Review Hearing

This rule governs that the status of all juveniles found to be dependent shall be reviewed by the court at least every 6 months. The parties shall be given notice of the review hearing and shall have the right to be present at the review hearing and to be heard. This could be amended to allow a virtual notice and virtual review hearing.

JuCR 3.10 Modification of Order

This provision governs how the parties move to change, modify or set aside an order under RCW 13.34.150. “No order shall be changed, modified, or set aside except after notice to all parties and a hearing for good cause shown unless the court waves the hearing.” This rule could be amended to allow a virtual hearing on modification of orders.

JuCR 3.11(b) Scheduling and Notice: Guardianship in Juvenile Court

This rule provides guidance on scheduling and sending notice of a guardianship hearing. “Notice of the time and place of the guardianship hearing may be given in open court.” This could be amended to allow notice of a virtual guardianship hearing.

JuCR 4.2 Pleadings for Terminate Parent-Child Relationship

This section outlines the rules on how to petition to terminate a parent-child relationship, how to amend the petition, and how a party may answer the petition. It may be helpful to provide guidance on electronic filing of a petition, amendment of a petition, and answering a petition.

JuCR 4.3 Notice to Termination Hearing

- JuCR 4.3 (a) provides the court shall serve a notice of the termination hearing and copy of the petition to all parties under RCW 13.34.070(8) or published in the manner under RCW 13.34.080. Languages regarding how to serve the notice remotely may be helpful.
- JuCR 4.3 (b) governs that if the juvenile is an Indian child as defined by the federal Indian Child Welfare Act, the petition shall notify the child's tribe. Languages regarding how to provide the notice remotely may be helpful.

JuCR 5.2 Pleadings for Alternative Residential Placement

This section outlines the rules on how to petition an out-of-home placement, how to amend the petition, and how a party may answer the petition. It may be helpful to provide guidance on electronic filing of a petition, amendment of a petition, and answering a petition.

JuCR 5.3 Scheduling of Fact-Finding Hearing

This rule governs that under RCW 13.32A.160, the court shall schedule a factfinding hearing upon the question of out-of-home placement when a proper petition has been filed. It may be helpful to include languages in scheduling a virtual fact-finding hearing.

JuCR 5.4 Notice of Fact-Finding Hearing

This provision governs the notice of factfinding hearing. Under RCW 13.32A.160, the right to a lawyer, the consequences of petition approval and disapproval, and the right to present evidence shall be given to the parties. Languages regarding how to serve electronic notice for virtual proceedings may be helpful.

JuCR 5.6 Disposition Hearing

This provision governs that if a disposition hearing shall be held within 14 days after the approval of a temporary out-of-home placement. Notice of the disposition hearing shall be given to all parties under RCW 13.32A.179(1). Language regarding how to conduct a remote disposition hearing and serve electronic notice may be helpful.

JuCR 5.7 Review Hearing

This rule governs that the court shall schedule a review of a dispositional order of an out-of-home placement within 3 months of the placement. This could be amended to allow a virtual review hearing.

JuCR 5A.2 Scheduling of Fact-Finding Hearing for At-Risk Youth

This rule governs that under RCW 13.32A.192, the court shall schedule a factfinding hearing. It may be helpful to include languages in scheduling a virtual fact-finding hearing.

JuCR 5A.3 Notice of Fact-Finding Hearing

This provision governs the notice of a factfinding hearing. Under RCW 13.32A.192, the right to lawyer, the consequences of petition approval, and right to present evidence shall be given to the parties. Languages regarding how to serve electronic notice for virtual proceedings may be helpful.

JuCR 5A.5 Disposition Hearing

This provision governs that if a disposition hearing shall be held within 14 days after the fact-finding hearing of an at-risk youth petition. Notice of the disposition hearing shall be given to all parties under RCW 13.32A.194. Language regarding how to conduct a remote disposition hearing and serve electronic notice may be helpful.

JuCR 5A.6 Review Hearing

This rule governs that the court shall schedule the matter for review with 3 months upon making a disposition regarding an at-risk youth. This could be amended to allow a virtual review hearing.

JuCR 6.2 Right to Consult with a Lawyer

This section outlines the juvenile's right to consult with a lawyer in the diversion process. This could be amended to allow virtual consultation between the juvenile and counsel.

JuCR 6.3 Waiver of Right to Lawyer

This provision provides the direction and proper form for a juvenile to waive the right to consult with a lawyer. Language regarding how to transmit the electronic waiver may be helpful.

JuCR 6.4 Advice About Diversion Process

This provision outlines the advice to juveniles on the diversion process. The rule explains that when confinement is possible or not possible, the juvenile shall be given a copy of the statement of Advice about Diversion, and “the statement shall also be read by, or read to, the juvenile before the juvenile signs the statement.” Language regarding a virtual reading session and how to electronically transmit the statement may be helpful.

JuCR 6.6 Termination of Diversion Agreement

This provision governs the guidance on how to terminate a diversion agreement.

- JuCR 6.6 (a) provides the procedure to file a petition to terminate the diversion agreement. Language regarding how to file a petition electronically may be helpful.
- JuCR 6.6 (b) governs that a preliminary hearing shall be held within 72 hours on the petition for termination if a juvenile alleged to have violated a diversion agreement. This could be amended to allow virtual preliminary hearings.
- JuCR 6.6 (c) provides that the court shall schedule a hearing on the allegations in the petition, and a copy of the petition and written notice shall be given to the juvenile. Languages regarding how to transmit the notice and petition electronically may be helpful.
- JuCR 6.6 (d) governs that “the evidence to be offered against the juvenile shall be disclosed to the juvenile a reasonable time prior to the hearing.” This could be amended to allow virtual disclosure of the evidence to the juvenile.
- JuCR 6.6 (e) governs that “the juvenile shall have the opportunity to be heard in person, to present evidence, and to confront and cross-examine all adverse witnesses during the hearing.” Language regarding to how to conduct remote hearing may be helpful.
- JuCR 6.6 (g) governs the procedure on consolidation of termination hearing with adjudication of offense. This could be amended to allow the court to hold a virtual hearing.

JuCR 7.3 Detention and Release

This is a comprehensive rule governing juvenile detention and release.

- JuCR 7.3 (c) and JuCR 7.3 (d) provides that no matter if there is information filed before custody or nor, “If a juvenile alleged to have committed a juvenile offense is taken into custody before an information is filed, the court shall make every reasonable effort to conduct a hearing on the issue of detention.” This could be amended to allow the court to conduct a virtue hearing.
- JuCR 7.3 (d) provides that “if a juvenile alleged to have violated a diversion agreement a conditional release order, a disposition order, or a deferred adjudication or deferred disposition order is taken into custody and held in detention, after filling the motion, the juvenile shall be given a hearing to determine whether continued detention is necessary.” This could be amended to allow the court to conduct a virtue hearing.
- JuCR 7.3 (f) provides that “if a juvenile alleged to have violated a diversion agreement, a conditional release order, a disposition order, or a deferred adjudication or deferred disposition order is taken into custody, held in detention, and if petition or motion filed before custody, the juvenile shall be given a hearing within 72 hours.” This could be amended to allow the court to conduct a virtue hearing.

JuCR 7.4 Detention Hearing

This is a comprehensive rule governing detention hearing.

- JuCR 7.4 (a) provides the notice of detention hearing. Language regarding to how to transmit electronic notice may be helpful.
- JuCR 7.4 (b) explains that “all parties shall have an opportunity to present evidence and to be heard on the issue of continued detention.” This could be amended to allow all parties the opportunity to present evidence virtually.

JuCR 7.5 Issuance of Summons or Warrant

This is a comprehensive rule governing the issuance of summons or warrant.

- JuCR 7.5(a) provides the general guidance on how the court issues a summons or warrant. This rule could be amended to allow the court to issue electronic summons or warrant.

- JuCR 7.5(d) provides guidance on service and return of summons. Language regarding to summons and return to virtue proceedings may be helpful.

JuCR 7.6 Arraignment and Pleas

- JuCR 7.6(d) provides that “if a decline hearing is requested or required, then the juvenile court has no jurisdiction to accept a plea until a decline hearing is held.” This could be amended to allow the court to conduct a virtue decline hearing.
- JuCR 7.6(e) provides that “When a determination of capacity is required pursuant to RCW 9A.04.050, a hearing to determine the juvenile’s capacity shall be held within 14 days.” This could be amended to allow the court to conduct a virtue hearing.

JuCR 7.8 (a) General Provision on Time for Adjudicatory Hearing

This provision provides some general meaning for the purpose of this rule. JuCR 7.8(a)(iii): ““Appearance” means the juvenile’s physical presence in the court where the pending charge was filed.” This could be amended to allow the juvenile’s virtue presence.

JuCR 7.11(a) Adjudicatory Hearing Burden of Proof

This section provides that “the court shall hold an adjudicatory hearing on the allegations in the information.” Language regarding to remote adjudicatory hearing may be helpful.

JuCR 7.12 (a) Time of the Disposition Hearing

This provision outlines that “a disposition hearing shall be held if the juvenile has pleaded guilty or has been found guilty by the court.” This could be amended to allow a court to conduct a remote disposition hearing.

JuCR 7.14 (d) Preliminary Hearing if Juvenile Is in Detention

This rule provides that “If a juvenile alleged to have violated the terms of a disposition order is held in detention, a preliminary hearing shall be held.” This could be amended to allow a virtue preliminary hearing.

JuCR 7.15 Waiver of Right to Counsel

This provision provides that a juvenile may waive his or her right to counsel only after a hearing is held on the record where the advising lawyer appears in court with the juvenile to prove the juvenile voluntarily made the decision to waive the right to counsel. This could be amended to allow the advising lawyer and the juvenile to appear in remote proceedings.

JuCR 8.1 Time for Decline Hearing

This section outlines the general rule in scheduling a decline hearing. Languages regarding scheduling remote decline hearing may be helpful.

JuCR 9.2 (d) Juvenile Offense Proceedings

This section provides that “before appointing a lawyer for an indigent person or at the first appearance of the lawyer in the case, the court shall require the lawyer to certify to the court that he or she complies with the applicable Standards for Indigent Defense Services to be approved by the Supreme Court.” Language regarding remote certification may be helpful.

JuCR 11.2 Notice of Proceeding

This provision gives the general guidance on issuing a notice of the proceeding. Specifically, 11.2 (c) provides “notice may be given by any means reasonably certain of notifying the party, including, but not limited to, notice in open court, mail, personal service, telephone, and telegraph.” Language regarding how to serve electronic notice may be helpful.

**Court Recovery Task Force
Juvenile Criminal Civil Committee Report
October 18, 2021**

Progress on Goals and Activities

(Attach work products and recommendations for the Task Force to consider)

Long Term Goals

Identify practices, community services, and statutes and court rules that may need to be addressed to achieve goals.

Activities

Met to address court rules project.

Juvenile Criminal Civil Committee issues identified:

- a) Extended juvenile jurisdiction – Committee submitted a RCW change proposal to the BJA legislative Committee who is moving this forward.
- b) Juvenile bench warrants – there is another group addressing this issue
- c) Remote juvenile justice proceedings – there is another group addressing this issue for Superior Courts. If there are any issues identified that are different for juvenile courts then the committee will meet to discuss those.
- d) Juvenile fingerprinting Committee - submitted a RCW change proposal to the BJA legislative Committee who is moving this forward.

Challenges

Data Collection Efforts

**Court Recovery Task Force
Therapeutic Courts Subcommittee Report
October 18, 2021**

Given the work of the committee thus far, existing association therapeutic court workgroups, and the legislative funding received last session, the therapeutic courts subcommittee is sunsetting.

As part of the committee ending, we will highlight the committee's work, other efforts that are focusing on the issues, and share our work with those groups.

The Committees Short Term Goals that we worked on:

Addressed immediate impacts of COVID on courts and court users and identified what changes should move forward.

Activities

- 1) Actively reminded public defenders/private bar and prosecutors that therapeutic courts were open and available for hearings and services.
 - a. The Committee distributed [materials](#) (talking points, article template, strategies document) through listservs and the CRTF website.
- 2) Identified community services that can be utilized during COVID-19 restrictions to engage participants in their court plan and help increase success rates. This occurred more at the local level.
- 3) Identified remote technology access and local resources. Shared information on community hotspots and internet availability.

Current efforts that can address ongoing therapeutic court needs:

- 1) Funding received for court of limited jurisdiction therapeutic courts
- 2) Funding received for AOC to develop a behavioral health services response team
- 3) DMCJA and SCJA association work groups actively involved in therapeutic court issues.

The committee will share the survey report and recommendations for other groups to consider:

- 1) Explore funding for substance abuse testing and treatment.
- 2) Explore options for courts to share information about what is working and not working, resources, etc. such as a drop box or similar format.

**Court Recovery Task Force
Family Law Subcommittee Report
October 18, 2021**

Progress on Goals and Activities

(Attach work products and recommendations for the Task Force to consider)

Short Term Goals

Activities

Remote appearances—“necessary evil” in family law. Yes, witnesses can be coached, but the courts are accustomed to that.

Personal service for restraining orders—HB 1320 is changing this landscape.

Long Term Goals

Activities

GR 40, Informal Domestic Relations Trial Rule, comment period closed, monitoring progress towards adoption

Digital signatures—appears to have been bigger issue at beginning of pandemic, now self-represented litigants without computer access have more access to the courts, will continue to be a big issue as new e-filing technology is implemented

Challenges

Implementation of new e-filing systems that create barriers for self-represented litigants

Data Collection Efforts

Local orders, statewide court orders, and/or RCW’s that need to be addressed before the emergency orders end

**Court Recovery Task Force
Child Welfare Committee Report
October 21, 2021**

Progress on Goals and Activities

(Attach work products and recommendations for the Task Force to consider)

No work product attached at this time for Task Force consideration.

Short Term Goals

Activities

Committee members reviewed the child welfare related information for the CRTF Court Rules Project and submitted the completed grid September 1, 2021. Two workgroups have been formed to address the action items related to child welfare:

1. Court rule issues regarding remote appearances and remote testimony
2. Promote use of electronic records and electronic signatures.

Long Term Goals

Activities

Updating the Guidance for [Resuming Dependency and Fact Finding and Termination of Parental Rights Trials in Washington State](#) will occur once the court rules and electronic records/signatures issues have been addressed, in order to incorporate that information in the updated guidance.

Challenges

Scheduling challenges with our volunteer committee members and crisis fatigue at all levels.

Data Collection Efforts

Updated presentation at the September Committee meeting by Matt Orme, Washington State Center for Court Research, who provided child welfare data collection efforts for the previous 6 months. Statewide, there continues to be a reduction in the number of dependency petitions and compliance metrics are beginning to normalize. However, some counties are struggling with compliance and a backlog of dependency cases, and we are looking at resources to assist these courts.

Local orders, statewide court orders, and/or RCW's that need to be addressed before the emergency orders end

Nothing at this time.