

WSR 21-17-133
RULES OF COURT
STATE SUPREME COURT
[August 12, 2021]

IN THE MATTER OF THE ) AMENDED ORDER
SUGGESTED AMENDMENT TO CR ) NO. 25700-A-1356
39—TRIAL BY JURY OR BY THE )
COURT )

The King County Superior Court Judges, having recommended the suggested amendment to CR 39—Trial by Jury or by the Court, and the Court having approved the suggested amendment for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendment as shown below is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites with a comment period ending December 29, 2021.

(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 December 29, 2021. 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 12th day of August, 2021.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 Cover Sheet for amendment to CR 39

Name of Proponent—King County Superior Court. Many judges were involved in the drafting and more were involved in creating and refining our procedures.

Spokesperson—Judge O'Donnell or Judge Rogers

Purpose—Create standard procedures, consistent with due process and existing rules, for remote civil jury trials. King County Superior Court has now successfully held many, many of these trials and we draw on our experience for this. This has been imperative for access to justice and will be helpful as we anticipate the remote jury trial continues.

Hearing—We take no position.

Expedited Consideration—As long as emergency rules remain in place, no expedited consideration is needed.

Proposed Amendments to CR 39

TRIAL BY JURY OR BY THE COURT

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

(a) - (c) [No change.]

**(d) Manner of Trials.**

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

(2) Video Conference Trials.

A. By the Court. On the court's own initiative, or on motion of the parties or their attorneys of record, a trial by the court may occur over video conference, 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.

i. Before ordering a video-conference trial by the court, 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 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 video conference trial, and any other relevant circumstances.

B. By Jury. On the court's own initiative, or on motion of the parties or their attorneys of record, a trial by jury may occur by video conference. Any jury trial occurring by video conference must allow all participants to 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. Jury trials may only be conducted by video conference:

i. When there is written agreement of the parties. 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 video conference, the court shall ensure appropriate safeguards are in place; and:

1. Shall consider the nature of the case, including the number of parties, number of trial witnesses, the type of evidence to be presented, whether the parties have significant 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 video conference trial, and any other relevant circumstances; and

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

(3) Notice. Whether on its own initiative or by motion of the parties or their attorneys of record, no video conference 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 video conference and address appropriate safeguards. The parties or their attorneys of record may agree to this hearing occurring within 30 days of trial.