

WSR 21-18-044
RULES OF COURT
STATE SUPREME COURT
[August 25, 2021]

IN THE MATTER OF THE) SECOND
SUGGESTED NEW GENERAL RULE) AMENDED
[41]—JURY SELECTION BY VIDEO) ORDER
CONFERENCE) NO. 25700-A-1354

The King County Superior Court Judges, having recommended the suggested new General Rule [41]—Jury Selection by Video Conference, and the Court having approved the suggested new rule for publication; Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested new rule 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 25th day of August, 2021.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 Cover Sheet for new General Rule:
Jury Selection by Video Conference

Name of Proponent—King County Superior Court. Our committee for drafting this rule: Judges Sean O'Donnell, Josephine Wiggs-Martin, Andrea Robertson, Brian McDonald, Melinda Young, Tanya Thorp, Sam Chung, Sandy Widlan and Jim Rogers

Spokesperson—Judge O'Donnell or Judge Rogers

Purpose—Remote voir dire has become a standard business practice for King County Superior Court during the pandemic. Jurors prefer it. Their time is better used. In the old, in-person system, jurors have experienced long "wait" times, missed work, and expenses for childcare and parking in order to travel to court in person, assemble, and await instructions and directions. This new virtual method promises to improve the process and provide a more accessible, affordable, and efficient means for citizens from all walks of life to perform, their civic duty and add their voices to this crucial process.

We believe that lawyers get better information as questionnaires are always given out. Our anecdotal experience is that jurors are more diverse in all aspects, racial, ethnic, economic. There is less "speechifying" by lawyers and more information gathering.

The proposed rule does not conflict with any known statute, case law or court rules. The proposed rule is intended to be harmonious with existing CrR 3.4(d), which currently allows video proceedings to be ordered in preliminary appearances, bail hearings and arraignments, and allows plea hearings by agreement. As the Court knows, a current emergency order allows for remote voir dire.

Hearing—We do not believe that a public hearing is necessary.

Expedited Consideration—As long as the emergency order remains in effect, expedited consideration is not necessary.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Proposed New General Rule 41

Jury Selection by Video Conference

(a) Scope of rule. This rule addresses the procedures for conducting jury selection by video conference.

(b) Jury selection by video conference. In all cases, jury selection may be conducted by 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.

(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. The court shall confirm with prospective jurors that they can participate in jury selection by video conference. The court shall not excuse potential jurors from jury service who cannot participate in jury selection by video conference due to lack of resources or access and shall arrange for alternative methods, including but not limited to in person voir dire, for such potential jurors.

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

a. Confirm that all potential jurors can see and hear the court and parties;

b. Inform potential jurors that their cameras must remain on and that they must remain in camera view throughout jury selection;

c. Instruct potential jurors that (i) their full care and attention must be on 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 which the court finds sufficient to allow the juror's participation;

d. Inform the parties and potential jurors that any visual, video, or audio recording, other than the official record, of the hearing is prohibited absent court permission; and

e. 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 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 a plain, blurred, or otherwise non-distracting.

(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.