

WSR 24-16-096
RULES OF COURT
STATE SUPREME COURT
[June 7, 2024]

IN THE MATTER OF THE PROPOSED) ORDER
AMENDMENTS TO SUPERIOR) NO. 25700-A-1570
COURT AND COURT OF LIMITED)
JURISDICTION RULES BY THE BJA)
REMOTE PROCEEDINGS WORK)
GROUP)

The BJA Remote Proceedings Work Group, having recommended the adoption of the proposed amendments to Superior Court and Court of Limited Jurisdiction Rules, and the Court having considered the proposed amendments, and having determined unanimously that the proposed amendments attached hereto will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the proposed amendments as shown below are adopted.

(b) That pursuant to the emergency provisions of GR 9 (j)(1), the proposed amendments will be expeditiously published in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 7th day of June, 2024.

Johnson, J.
Madsen, J.
Owens, J.
Stephens, J.
Gonzalez, C.J.
Gordon McCloud, J.
Yu, J.
Montoya-Lewis, J.
Whitener, J.

ARLJ 3
DEFINITION OF TERMS

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

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

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

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

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

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

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

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

(8) "Oaths" include affirmations.

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

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

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

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

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

(14) "Remote technology" means technology that permits all participants to see and hear each other during the proceedings, speak as permitted by the judge, and allows confidential communications between counsel and client. The remote connection shall be of sufficient quality to ensure that participants are clearly visible and that the audio connection permits the making of the official court record of the proceedings.

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

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

ARLJ 11

MISDEMEANANT PROBATION DEPARTMENT

RULE 11.1

DEFINITION

[Unchanged.]

RULE 11.2 QUALIFICATIONS AND CORE SERVICES OF PROBATION DEPARTMENT PERSONNEL

(a) Probation Officer Qualifications.

(1)-(2) [Unchanged.]

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

(4) [Unchanged.]

(b) Probation Officer—Core Services.

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

(2) For offenders referred to the misdemeanor probation department, determine their risk to the community using a standardized clas-

sification system with a minimum of monthly ~~face-to-face~~ interviews for offenders classified at the highest level.

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

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

(5)-(6) [Unchanged.]

(c)-(d) [Unchanged.]

RULE 11.3

STATUTORY PROBATION SERVICE FEES TO BE USED FOR PROBATION SERVICES

[Unchanged.]

CRLJ 7

PLEADINGS ALLOWED: FORM OF MOTIONS

(a) [Unchanged.]

(b) Motions and Other Papers.

(1)-(3) [Unchanged.]

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

(c) [Unchanged.]

CRLJ 26

DISCOVERY

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

(a)-(b) [Unchanged.]

(c) Depositions.

(1) [Unchanged.]

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

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

(d)-(g) [Unchanged.]

CRLJ 38

JURY TRIAL

(a)-(h) [Unchanged.]

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

CRLJ 43

TAKING OF TESTIMONY

(a) Testimony.

(1) *Generally.* In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise directed by the court or provided by rule or statute. ~~For good cause in compelling circumstan-~~

~~ees and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.~~

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

(b)-(c) [Unchanged.]

(d) Oaths of Witnesses.

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

(i) shall be administered by the judge; and

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

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

(2)-(3) [Unchanged.]

(e) [Unchanged.]

(f) Adverse Party as Witness.

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

(2) [Unchanged.]

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

(i) [Unchanged.]

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

(iii) [Unchanged.]

(g)-(k) [Unchanged.]

CRLJ 45
SUBPOENA

(a) Form; Issuance.

(1) Every subpoena shall:

(A)-(B) [Unchanged.]

(C) command each person to whom it is directed to attend appear and give testimony or to produce and permit inspection and copying of designated books, documents, or tangible things in the possession,

custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) [Unchanged.]

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

(3)-(4) [Unchanged.]

(b)-(d) [Unchanged.]

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

(1) [Unchanged.]

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

(3) [Unchanged.]

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

(f) Subpoena ~~F~~or Hearing or Trial.

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

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

(g) Contempt.

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

(h) [Unchanged.]

CRLJ 77.04

ADMINISTRATION OF OATH

The oaths or affirmations of all witnesses

(1) Shall be administered by the judge; and

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

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

CrRLJ 2.2

WARRANT OF ARREST OR SUMMONS UPON COMPLAINT

(a)-(b) [Unchanged.]

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

(d)-(g) [Unchanged.]

CrRLJ 2.5

PROCEDURE ON FAILURE TO OBEY CITATION AND NOTICE

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

CrRLJ 3.2

RELEASE OF ACCUSED

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

(a)-(b) [Unchanged.]

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

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

(2)-(9) [Unchanged.]

(d)-(m) [Unchanged.]

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

(o)-(q) [Unchanged.]

CrRLJ 3.2.1

PROCEDURE FOLLOWING WARRANTLESS ARREST—PRELIMINARY HEARING

(a)-(c) [Unchanged.]

(d) Preliminary Appearance.

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

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

(3) [Unchanged.]

(e)-(f) [Unchanged.]

(g) Preliminary Hearing on Felony Complaint.

(1)-(3) [Unchanged.]

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

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

(ii)-(iv) [Unchanged.]

(5)-(6) [Unchanged.]

CrRLJ 3.3

TIME FOR TRIAL

(a) General Provisions.

(1)-(2) [Unchanged.]

(3) *Definitions*. For purposes of this rule:

(i)-(ii) [Unchanged.]

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

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

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

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

(4)-(6) [Unchanged.]

(b) [Unchanged.]

(c) Commencement date.

(1) [Unchanged.]

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

(i) [Unchanged.]

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

(iii)-(viii) [Unchanged.]

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

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

(2)-(4) [Unchanged.]

(e) [Unchanged.]

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

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

(2) [Unchanged.]

(g)-(h) [Unchanged.]

CrRLJ 3.4

APPEARANCE OF THE DEFENDANT

(a) [Unchanged.]

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

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

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

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

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

(c)-(d) [Unchanged.]

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

CrRLJ 4.1

ARRAIGNMENT

(a) Time.

(1) [Unchanged.]

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

(b) - (g) [Unchanged.]

CrRLJ 4.6

DEPOSITIONS

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

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

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

(d) - (e) [Unchanged.]

CrRLJ 4.8

SUBPOENAS

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

(1) *Form; Issuance.*

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

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

(C) [Unchanged.]

(2)-(3) [Unchanged.]

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

(b)-(c) [Unchanged.]

CrRLJ 6.12

WITNESSES

(a) [Unchanged.]

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

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

(d) [Unchanged.]

CrRLJ 7.3

JUDGMENT

A judgment of conviction shall set forth whether the defendant was represented by a lawyer or waived representation by a lawyer, the

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

(a)-(g) [Unchanged.]

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

(i)-(l) [Unchanged.]

CrRLJ 7.6

PROBATION

(a)-(b) [Unchanged.]

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

(d) [Unchanged.]

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

(f)-(g) [Unchanged.]

IRLJ 3.3

PROCEDURE AT CONTESTED HEARING

(a) [Unchanged.]

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

(c)-(e) [Unchanged.]

IRLJ 3.4

HEARING ON MITIGATING CIRCUMSTANCES

(a) [Unchanged.]

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

(c) [Unchanged.]

IRLJ 3.5

LOCAL RULE OPTIONS

~~**(a) Decisions on Written Statements.**~~

~~(1)-(5)~~ [Unchanged.]

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

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

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

IRLJ 6.7

IDENTITY CHALLENGES AND RELIEF FROM JUDGMENT

(a) [Unchanged.]

(b) Identity Challenge.

(1)-(4) [Unchanged.]

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

(6) [Unchanged.]

CR 1

SCOPE OF RULES

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

CR 7

PLEADINGS ALLOWED; FORM OF MOTIONS

(a) [Unchanged.]

(b) Motions and Other Papers.

(1)-(4) [Unchanged.]

(5) *Telephonic Oral Argument by Remote Means.* Oral argument on civil motions, including family law motions, may be heard by remote means conference telephone call in the discretion of the court. The

~~expense of the call shall be shared equally by the parties~~ Parties shall bear their own costs of participation by conference call or other remote means unless the court directs otherwise in the ruling or decision on the motion.

(c)-(d) [Unchanged.]

CR 26

GENERAL PROVISIONS GOVERNING DISCOVERY

(a)-(e) [Unchanged.]

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

(1)-(5) [Unchanged.]

(g)-(h) [Unchanged.]

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

(j) [Unchanged.]

CR 39

TRIAL BY JURY OR BY THE COURT

(-)-(c) [Unchanged.]

(d) **Trials by Remote Means.**

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

(2) If any party proposes to hold a trial by remote means, a hearing shall be scheduled at least 30 days before trial, with at least 7 days' notice to the court and parties. The parties may agree to this hearing occurring fewer than 30 days before trial. Alternatively, the parties may present an agreement or stipulation that the trial be held by remote means. If all parties do not agree, the trial shall be held in person; provided, however, the court may allow a party or counsel to appear by remote means at an in-person trial. This rule does not address voir dire or pretrial matters. CR 43 governs whether any witness can be called remotely at a trial held in person.

CR 45

SUBPOENA

(a) Form; Issuance.

(1) Every subpoena shall:

(A)-(B) [Unchanged.]

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

(D) [Unchanged.]

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

(3)-(4) [Unchanged.]

(b)-(g) [Unchanged.]

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

Issued by the

SUPERIOR COURT FOR THE STATE OF WASHINGTON

_____ COUNTY

No. __

SUBPOENA IN A CIVIL CASE

_____ V. _____

TO:

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

PLACE OF TESTIMONY OR REMOTE MEANS LINK	COURTROOM
	DATE AND TIME

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

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

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

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

PLACE	DATE AND TIME
-------	---------------

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

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

PREMISES

DATE AND TIME

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

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

Executed on _____

DATE/PLACE

SIGNATURE OF SERVER

ADDRESS OF SERVER

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

(c) Protection of Persons Subject to Subpoenas.

(1)-(2) [Unchanged.]

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

(3) (A)-(B) [Unchanged.]

(d) [Unchanged.]

CrR 3.4

PRESENCE OF THE DEFENDANT

(a)-(d) [Unchanged.]

(e) Videoconference Remote Proceedings.

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

(2) *Agreement.* Other trial court proceedings including the entry of a Statement of Defendant on Plea of Guilty as provided for by CrR 4.2 may be conducted by ~~video conference~~ remote technology only by

agreement of the parties, either in writing or on the record, and upon the approval of the trial court judge pursuant to local court rule.

(3) *Standards for ~~Videconferenee~~ Proceedings Held Remotely*. The judge, counsel, all parties, and the public must be able to see and hear each other during proceedings, and speak as permitted by the judge. The video and audio should be of sufficient quality to ensure participants are easily seen and understood. ~~Videconferenee~~ facilities Remote technology must provide for confidential communications between attorney and client, including a means during the hearing for the attorney and the client to read and review all documents executed therein, and security sufficient to protect the safety of all participants and observers. For purposes of ~~videconferenee~~ proceedings by remote technology, the electronic or facsimile signatures of the defendant, counsel, interested parties, and the court shall be treated as if they were original signatures. This includes all orders on judgment and sentence, no contact orders, statements of the defendant on pleas of guilty, and other documents or pleadings as the court shall determine are appropriate or necessary. ~~In interpreted proceedings, the interpreter must be located next to the defendant and t~~The proceeding must be conducted to assure that the interpreter can hear and speak with the defendant and hear all participants.

(f) Videconferenee Proceedings by Remote Technology under Chapter 10.77 RCW.

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

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

Comment

[Unchanged.]

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