

From: Clerk of the Supreme Court and Court of Appeals
Sent: Tuesday, February 2, 2021 12:52 PM
To: Susan (Susie) Stephens; Carrie Janto
Subject: FW: "April 7, 2021, public hearing on Rule Petition 20-09."

From: Benjamin (Ben) Lane <Benjamin.Lane@WICOURTS.GOV>
Sent: Tuesday, February 2, 2021 12:46 PM
To: Clerk of the Supreme Court and Court of Appeals <Clerk@Wlcourts.gov>
Subject: "April 7, 2021, public hearing on Rule Petition 20-09."

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This comment is in regards to proposed Rule Petition 20-09:

**CLERK OF SUPREME COURT
OF WISCONSIN**

I am generally in support of this petition, except for the following:

1. Wis. Stat. § 754.14. The proposal indicates that the 'court may utilize electronic means to allow the public the ability to hear and see all proceedings....' The problem is that multiple non-parties call in for these hearings and the court spends time determining who is a necessary or interested person for the hearing. This requires identifying all phone numbers or screen names prior to going on the record, so the court has information on the relevant parties. In high profile cases, this could be time consuming due to public interest or victims, especially when virtual participants are unmuted for purposes of identification. Requiring individuals to pre-register only adds to the workload of the clerk or judicial assistant. To avoid this issue, all courts would likely need to simulcast using Zoom for necessary and interested parties, and YouTube for non-parties and members of the public. This should be accomplished without providing additional input from judicial assistants or deputy clerks.
2. Wis. Stat. § 885.54(2). The proposal indicates that the "circuit court shall ensure that the videoconferencing technology is in compliance with the requirements of sub. (1)." Allowing parties to participate virtually should not involve greater expectations of the court. Ensuring that documents can be shared, litigants can be placed in breakout rooms, and notifying parties regarding virtual hearings should be on the party requesting virtual appearances. The court is able to host the Zoom meeting, but any physical evidence, documents, or exhibits should be pre-filed as proposed exhibits with electronic filing to prevent scanning and sharing documents. Additionally, any party requesting virtual hearings should be responsible for notifying all other parties. The court has the capability to host breakout rooms for parties with Zoom, but this should not be a supplement to preparation, negotiation, and discussion prior to the hearing without court participation. Use of videoconferencing technology should be a privilege to litigants and not an added burden to the court. Courts should be focused on the present case and not serving as switchboard operators for parties who have not prepared.

Otherwise, I support changes to the criminal statutes allowing virtual appearances. Although virtual appearances may be abused by individuals subject to warrants or tactically delaying their cases, most cases are handled efficiently. However, the defendant should be able to see exhibits during preliminary hearings. If a defendant appears virtually, it should not compromise the State's ability to hold a preliminary hearing when the defendant cannot fully review an exhibit. Additionally, the defendant should be able to see any plea questionnaire/waiver of rights during plea hearings. Otherwise, this may open the door to challenges after convictions.

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