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Sheila Rieff, Clerk
Wisconsin Supreme Court
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Re: April 7, 2021 Public Hearing on Supreme Court Rule Petition 20-09

Dear Honorable Justices of the Supreme Court:

I would like to briefly address Supreme Court Rule Petition 20-09, regarding videoconferencing in the Wisconsin state courts.

I have been practicing law in Wisconsin since 1994. I spent over 13 years as a staff public defender, and I am now in private practice. I practice in municipal, state and federal courts, primarily in southeastern Wisconsin.

In general, the availability of video conferencing has been a valuable asset for the courts during the past year in light of the COVID-19 public health crisis. It has protected the health and welfare of attorneys, judges, court staff and parties to litigation. My hope is that in appropriate circumstances going forward the courts will continue to avail themselves of the advantages this technology offers, while also balancing important rights that litigants have, particularly in the context of criminal prosecutions. As we all know, those accused of crimes have federal and state constitutional rights to due process, to confront witnesses, to have public trials, and to effective assistance of counsel.

In general, my concerns relate to the modifications proposed to chapter 885, Stats., relating to video conferencing, and related modifications to sec. 971.04, Stats. I believe that it is crucial that any modification of these rules preserves the right of a defendant in a criminal case to "opt out" of video conferencing as a substitute for critical in-person hearings. I believe that the Sixth and Fourteenth Amendments to the United States Constitution require that criminal defendants be allowed to appear in person for any critical hearing, especially (but not limited to) hearings which will involve witness testimony and the presentation of evidence. Witnesses likewise should be required to appear in person with limited exceptions. The personal appearance of witnesses is crucial to preserve the right of an accused person to confront witnesses against him or her. This should include preliminary examinations under sec. 970.03, Stats. Sentencing hearings likewise must allow in-person options. The concern with video hearings is that defendants and their counsel cannot adequately hear, see, and critically review testimony and exhibits when they are presented remotely. In addition, when counsel and their clients

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(defendants) are not in the same location, which often happens with video hearings, they cannot communicate effectively about strategy and tactics that are crucial to the effective confrontation of witnesses and assistance of counsel. This is a particular problem for in-custody defendants. I also believe that a criminal defendant's due process rights require in-person appearances at any critical stage in the prosecution. To amend the statutes to vitiate or limit this right invites confusion and, likely, costly appeals.

I would invite you to keep these concerns in mind in evaluating this petition and any statutory changes to accommodate expanded video conferencing. Thank you.

Very truly yours,

SWEET & ASSOCIATES, LLC

/s/ Craig R. Johnson

CRJ:dcj