

No. 44712-6-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

V.

RAYNARD S. CHARGUALAF, APPELLANT

Appeal from the Superior Court of Mason County
The Honorable Amber L. Finlay

No. 11-1-00396-5

BRIEF OF RESPONDENT

MICHAEL DORCY
Mason County Prosecuting Attorney

By
TIM HIGGS
Deputy Prosecuting Attorney
WSBA #25919

521 N. Fourth Street
PO Box 639
Shelton, WA 98584
PH: (360) 427-9670 ext. 417

TABLE OF CONTENTS

	Page
A. <u>Appellant’s Assignments of Error</u>	1
B. <u>State’s Restatement of Issues Pertaining to Appellant’s Assignment’s of Error</u>	1
C. <u>Facts</u>	1
D. <u>Argument</u>	2
1) The State is not a party to disputes between Mr. Chargualaf and his attorney regarding retention of his file. But in regard to Chargualaf’s attorney’s refusal to release discovery to him, no error occurred because CrR 4.7(h)(3) prohibits the attorney from releasing discovery unless approved by the prosecutor or the court.....	2
2) CrR 4.7(h)(3) provides that “a defense attorney shall be permitted to provide a copy of [discovery] materials to the defendant after making appropriate redactions....” Therefore, the trial court should permit Chargualaf’s attorney to provide to Chargualaf appropriately redacted copies of discovery, if the redacted copies are first approved by the trial court or the prosecutor.....	4
E. <u>Conclusion</u>	6

State’s Response Brief (Amended)
Case No. 43502-1-II

Mason County Prosecutor
PO Box 639
Shelton, WA 98584
360-427-9670 ext. 417

TABLE OF AUTHORITIES

	Page
<u>Rules and Regulations</u>	
CrR 4.7(h)(3).....	1, 2, 3, 4, 5, 6
RAP 10.3(b).....	1
RPC 1.16(d).....	1, 2
<u>Ethics Opinion</u>	
WSBA Advisory Opinion No. 181.....	2
WSBA Advisory Opinion No. 1305.....	3
WSBA Advisory Opinion No. 2117.....	2

State’s Response Brief (Amended)
Case No. 43502-1-II

Mason County Prosecutor
PO Box 639
Shelton, WA 98584
360-427-9670 ext. 417

A. Appellant's Assignments of Error

- 1) The trial court erred by refusing to order Mr. Chargualaf's attorney to provide his client a copy of his file pursuant to RPC 1.16(d).
- 2) The trial court erred by refusing to order Mr. Chargualaf's attorney to provide his client a copy of appropriately redacted discovery, pursuant to CrR 4.7(h)(3).

B. State's Restatement of Issues Pertaining to Appellant's Assignments of Error

- 1) The State is not a party to disputes between Mr. Chargualaf and his attorney regarding retention of his file. But in regard to Chargualaf's attorney's refusal to release discovery to him, no error occurred because CrR 4.7(h)(3) prohibits the attorney from releasing discovery unless approved by the prosecutor or the court.
- 2) CrR 4.7(h)(3) provides that "a defense attorney shall be permitted to provide a copy of [discovery] materials to the defendant after making appropriate redactions...." Therefore, the trial court should permit Chargualaf's attorney to provide to Chargualaf appropriately redacted copies of discovery, if the redacted copies are first approved by the trial court or the prosecutor.

C. Facts.

For the purposes of the issue presented in this appeal, the State accepts Chargualaf's statement of facts. RAP 10.3(b).

D. Argument

- 1) The State is not a party to disputes between Mr. Chargualaf and his attorney regarding retention of his file. But in regard to Chargualaf's attorney's refusal to release discovery to him, no error occurred because CrR 4.7(h)(3) prohibits the attorney from releasing discovery unless approved by the prosecutor or the court.

Chargualaf contends that upon termination of the representation his attorney was required to give him a copy of his entire file. Appellant's Opening Brief at 3-4. To support this contention, Chargualaf cites Washington State Bar Association (WSBA) Advisory Opinion 181 and RPC 1.16(d). But WSBA Advisory Opinion 181 does not address facts that are helpful to consideration of the instant case, because Advisory Opinion 181 does not discuss CrR 4.7(h)(3), and it involves an attorney's lien on a retained client's file, rather than a court-appointed attorney's court-rule based retention of an indigent defendant's file.

WSBA Advisory Opinion 2117 is more on point with the facts of the instant case. This Advisory Opinion opines that "[a]t the conclusion of the representation... the obligation of the attorney is [to] turn the file over to the client." *Id.* at 3. But the opinion clarifies an exception to the general rule, with the following question and answer:

State's Response Brief
Case No. 44712-6-II

Mason County Prosecutor
PO Box 639
Shelton, WA 98584
360-427-9670 ext. 417

May a lawyer decline a request from the client or a former client to produce a copy of the file regardless of the cost?

The answer would be “no” subject only to the restrictions of the Criminal Rules, including Cr 4.7 h (3)....

Id. Additionally, Advisory Opinion 1305 opines that “the Rules of Professional Conduct do not require disclosure of what a statute prohibits be disclosed.”

The Criminal Rules provide as follows:

(3) *Custody of Materials.* Any materials furnished to an attorney pursuant to these rules shall remain in the exclusive custody of the attorney and be used only for the purposes of conducting the party's side of the case, unless otherwise agreed by the parties or ordered by the court, and shall be subject to such other terms and conditions as the parties may agree or the court may provide. Further, a defense attorney shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court.

CrR 4.7(h)(3).

The State does not have an attorney-client relationship with the defendant, and the State should not be made a party to any dispute between Chargualaf and his client. Thus, with the exception of discovery provided to Chargualaf’s attorney, the State has no position in regard to any part of Chargualaf’s file that is retained by his attorney. In regard to discovery, however, CrR 4.7(h)(3) clearly provides that “a defense

State’s Response Brief
Case No. 44712-6-II

Mason County Prosecutor
PO Box 639
Shelton, WA 98584
360-427-9670 ext. 417

attorney shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court.”

But, notwithstanding the rule’s conditional authorization for release of redacted discovery, CrR 4.7(h)(3) prohibits Chargualaf’s counsel from providing the discovery, unless agreed by the parties or ordered by the court. In the instant case, the parties did not agree to release of the discovery, and the court did not order release of the discovery. RP 1-6. Thus, Chargualaf’s trial counsel was ethically and legally prohibited from releasing the discovery.

- 2) CrR 4.7(h)(3) provides that “a defense attorney shall be permitted to provide a copy of [discovery] materials to the defendant after making appropriate redactions....” Therefore, the trial court should permit Chargualaf’s attorney to provide to Chargualaf appropriately redacted copies of discovery, if the redacted copies are first approved by the trial court or the prosecutor.

Chargualaf made a motion to the court for an order requiring that he be provided “all discovery and case-related files” in this case. CP 7.

As argued above, CrR 4.7(h)(3) provides that defense counsel “shall be

permitted to provide a copy of [discovery] materials to the defendant after making appropriate redactions....”

In the instant case, however, the trial court’s written order stated only as follows: “Court denies defendant’s motion for release of discovery.” CP 6. In its oral ruling, however, the trial court explained as follows:

... at this point the Court will deny your motion. The Court - it’s not Mr. Sergi’s property to give to you; therefore, the Court will deny your motion. You can seek the advice of your appellate attorney, and you can also file a motion for a public records request.

RP 4.

No authority was located that would provide an answer to the question of when, if ever, a court-appointed attorney’s duty, if any, to provide a copy of discovery, would expire. Nor was any authority located to support a contention that discovery retained by counsel is not the property of the attorney and that it also is not the property of the client.

But, CrR 4.7(h)(3) does mandate that “a defense attorney shall be permitted to provide a copy of [discovery] materials to the defendant after making appropriate redactions....” Therefore, irrespective of the trial court’s reasoning that the discovery retained by the attorney is not the property of the attorney, the court is required to permit the attorney to

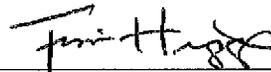
provided redacted copies, approved by the court or the prosecutor, to the client. CrR 4.7(h)(3).

E. Conclusion

The State should not be made a party to any dispute between Chargualaf and his attorney in regard to parts of his file that are not discovery provided by the State. However, in regard to discovery provided by the State, the case should be returned to the trial court for Chargualaf's attorney to provide appropriately redacted copies of discovery to the court or the prosecutor for approval, and if approved, those redacted copies should be provided Chargualaf.

DATED: October 7, 2013.

MICHAEL DORCY
Mason County
Prosecuting Attorney



Tim Higgs
Deputy Prosecuting Attorney
WSBA #25919

State's Response Brief
Case No. 44712-6-II

Mason County Prosecutor
PO Box 639
Shelton, WA 98584
360-427-9670 ext. 417

MASON COUNTY PROSECUTOR

October 07, 2013 - 5:01 PM

Transmittal Letter

Document Uploaded: 447126-Respondent's Brief.pdf

Case Name: State v. Raynard Chargualaf

Court of Appeals Case Number: 44712-6

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Tim J Higgs - Email: **timh@co.mason.wa.us**

A copy of this document has been emailed to the following addresses:
backlundmistry@gmail.com