

April 30, 2019

Washington State Supreme Court  
[supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

Honorable Justices of the Supreme Court:

I urge you to adopt the proposed Court Rules 3.7, 3.8, 3.9, 4.7 and 4.11.

### **CrR 3.7 – Requiring Interrogations to be Recorded**

This rule would require recording interviews of persons under investigation of a crime. This rule would be of great benefit to the criminal justice system. All too often I read police reports where my clients state that officers did not accurately record the information that was given. My clients also claim that the officers are lying or misconstrued their words. Having an audio recording of interrogations would provide clarity as to what really occurred and make easier for a finder of fact to determine what occurred. All too often fact finders are placed in the position of deciding whether to believe the police officer or the defendant. An audio recording would add transparency to the investigative process and all parties would benefit.

One only has to look at how third party recordings and social media have affected recent shootings of African Americans by police officers. Before cell phones African American witnesses were rarely believed in a court of law when officers had taken a person's life. Now that cell phone technology is available, people of the global majority are more likely to believe testimony when it is backed up with audio and/or video. By recording the statements of interrogations, we can get this type of accuracy and transparency for all people involved in the criminal justice system.

### **CrR 3.8 – Recording Eyewitness Identification Procedures & CrR 3.9 – In Court Eyewitness Identification**

These rule changes are necessary to prevent miscarriages of justice. These changes would safeguard against wrongful convictions based upon misidentifications caused by mistakes, lies or faulty procedures. Tainted evidence leads to faulty convictions. Isn't one mistaken identity case – one too many?

### **CrR 4.7 Brady Fix and Redacted Discovery**

Juries and the public want transparency within the criminal justice system. All too often the government has hidden or neglected to produce all of the information resulting in wrongful convictions. Finders of fact must be provided all the information regarding the evidence in a case. Prosecutors must not be allowed to hide their heads in the sand and "say nobody told me".

The public is relying on the prosecutor to research all facts about a case and have an ongoing duty to produce favorable evidence to the defense. Prosecutors must have the obligation of providing all information about a case, especially evidence that tends to impeach a state's witness. It creates a mockery of justice for those who do not have resources to protect themselves from the government.

In addition, CrR/CrRLJ 4.7(h)(3) would permit the defense to redact discovery and then provide it to a defendant without approval of the court or prosecutor. Currently redacted discovery can sit on a prosecutor's desk for days, weeks and sometimes months without being reviewed for approval. This proposed rule would recognize that defense attorneys are officers of the court as well and can make appropriate redactions without prosecutorial oversight. This rule would ease the burden of prosecutors and is more efficient and effective for getting copies of discovery to defendants.

#### **CrR 4.11 – Recording Defense Witness Interviews**

Recording interviews makes sense and is easy to do. We have the technology to easily record statements. By recording the interview(s) the parties have a more accurate version of the conversation. It allows the witnesses to be held accountable for their statements. It allows the trier of fact to know how questions were asked and the context of the questioning. It allows the answers to speak for themselves instead of being translated by another human being that may be biased or make a mistake.

This proposed rule applies to both parties, thereby creating more transparency and accountability for all witness interviews, whether it is a state witness interview or a defense witness interview.

I urge you to adopt these proposed criminal court rules or enact a workgroup to consider revising and crafting the rules.

Thank you for your consideration of my comments.

Respectfully,



Larry Jefferson, WSBA #24783  
Defense Attorney  
Thurston County Public Defense

## Tracy, Mary

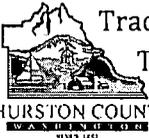
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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Tuesday, April 30, 2019 2:00 PM  
**To:** Tracy, Mary  
**Subject:** FW: Proposed Court Rule Changes  
**Attachments:** JEFFERSON COURT RULE MODIFICATION SUPPORT.PDF

**From:** Tracy Sims [mailto:tracy.sims@co.thurston.wa.us]  
**Sent:** Tuesday, April 30, 2019 1:58 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Larry Jefferson <larry.jefferson@co.thurston.wa.us>  
**Subject:** Proposed Court Rule Changes

Good afternoon. Please see the attached letter in support of the proposed rule changes.

Thank you,

 Tracy Sims, Felony Paralegal  
Thurston County Public Defense  
(360) 786-5877