

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, April 18, 2019 3:34 PM
To: Tracy, Mary
Subject: FW: Comment to Proposed Rule Change to 4.7

From: Alex Frix [mailto:alex.frix@co.thurston.wa.us]
Sent: Thursday, April 18, 2019 3:33 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment to Proposed Rule Change to 4.7

Good Afternoon:

I enthusiastically endorse the proposed rule change to 4.7(h)(3).

I am a public defender in Olympia, having served 13 years in that capacity, first in Pierce County and then in Thurston County. Until recently, I served as the Misdemeanor Unit Lead Attorney. I currently handle Adult Felony cases in Superior Court. I have handled cases ranging from Driving While License Suspended to Homicides.

Requiring defense attorneys to have redactions approved by the prosecutor creates several issues.

1) Prosecutors are busy, understandably. Many times, prosecutors have taken weeks or months to approve submitted redactions. The only remedy in the current rule is to seek an order from The Court approving redactions. This means the prosecutors and judges are burdened with reading proposed redactions, sometimes involving hundreds of pages of discovery, which the prosecutor has already reviewed before.

2) "Appropriate redactions" is undefined in the current rule. My understanding is that very few Prosecuting Attorney's Offices have actual written policies directing their deputy prosecutors on what is considered "appropriate." In my experience, this creates inconsistency and unpredictability. There are in fact as many policies and definitions of what is appropriate as there are prosecutors. Some prosecutors require the redaction to initials of the names of all non-law enforcement witnesses, even if they are adults and/or the complaining witnesses. Some prosecutors require the redaction of license plate numbers. Some require the redaction of police officer's badge ID numbers. In one case, my client was accused of running away from the police on foot through a residential neighborhood. The officer described which streets the client was running down, turning on to, etc. The prosecutor assigned to the case required me to redact the names of all of the streets, something no other prosecutor has required before or since.

3) Required redactions as defined in the proposed goes far further than what law enforcement agencies redact when clients, attorneys, or the general public make a public record request. When making a public record request to police departments, I am often struck by how they do not redact at all the following items: dates of birth, home addresses, phone numbers, and driver's licenses. While making a public records request to the police is often another option for defense attorneys, I have had the experience where the police agency refuses to provide the requested documents if they consider the matter an "ongoing investigation," despite charges already having been filed.

4) I have personally had a prosecutor refuse to approve my redactions, saying that my client must merely want discovery in order to ascertain the identity of a confidential informant. My client was threatened with school zone enhancements and the retraction of the offer if he sought his own (redacted) copy of discovery. While prosecutorial discretion is a

central part of the criminal courts system, this power to prevent defendants from having their own copy of the evidence against them is too great a weapon for any to wield.

In short, the proposed changes to 4.6(h)(3) are necessary to expedite the delivery of discovery to those charged with crimes, create a uniform standard on what should be redacted, avoid absurd and excessive redactions far beyond what is required under the Public Records Act, and protect the community from excessive prosecutorial control.

Thank You,

Alex

Alexander Frix

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