

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 30, 2019 9:58 AM
To: Tracy, Mary
Subject: FW: Comments re: Proposed Rule changes

From: Diane Hehir [mailto:hehirlaw@gmail.com]
Sent: Tuesday, April 30, 2019 9:57 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments re: Proposed Rule changes

- CrR 4.7 - Discovery
- CrR 3.7 - Recording Interrogations
- CrR 3.8 - Recording Eyewitness Identification Procedure
- CrR 3.9 - In-Court Eyewitness Identification
- CrR 4.11 - Recording Witness Interviews

Good Morning,

I write to urge the court to adopt the proposed rule changes listed above.

I write because I practice criminal law in Yakima County. I represent indigent defendants. I have engaged in such practice for over 15 years. Since 2015 I have done so as conflict counsel for Yakima County.

I must rely upon the state to comply with its Brady obligations. Rules make it easier to review and request court ordered compliance.

Recordings make it possible to avoid becoming a witness in accordance with the Professional Rules of Responsibility. Local law enforcement officers are increasingly resisting being recorded, particularly when they are attached to a federal agency task force. There is no legitimate reason why they don't record a witness identification, or their own interview. Refusal to record causes delay, and additional expense: the need to expend additional public funds to hire an investigator to be present at the interview of the officer requires a motion, an order, review by the local department of assigned counsel. This delay prejudices my clients: they are routinely incarcerated pending trial on their felony charges; the majority of my clients cannot afford the bail ordered in their cases. Delay results in increased incarceration, which has significant cost to the county, the state, and the families of the incarcerated.

Asking a witness who was unable to identify the perpetrator of the charged offense in court whether they now recognize the defendant sitting at counsel table is an affront to due process and our justice system. We must stop this blatant play upon the implicit bias that witnesses and jurors and judges want to believe that the right person was arrested by the police.

We have to do better moving forward, because we know better now how our brains work due to decades of research.

Recording the identification itself, and recording the interrogation of suspects and witnesses, would further reduce expense and the burden on the court system that a trial represents. Being able to play a recorded statement from my client is the quickest way I can show them that the state has sufficient evidence to prove their case. The recording of the witnesses would also help ensure that they are careful when they make statements: it adds a layer of certainty

and formality. Again, showing my client's the recordings eliminates their belief in a witness's subsequent claims that they never said such a thing to the police.

These proposed rule changes are designed to provide redress for existing problems, and to ensure the fundamental fairness that our criminal justice system is designed to provide. They will also increase the efficiency of the process and reduce expense and delay.

Thank you.

Very Truly Yours,

Diane E. Hehir
Contract Provider of Indigent Defense Services for Yakima County Department of Assigned Counsel

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