Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, March 26, 2019 10:59 AM
To: Tracy, Mary
Subject: FW: Comments on the July 2018 - Proposed Rules

From: Torres, Hugo [mailto:Hugo.Torres@kingcounty.gov]
Sent: Tuesday, March 26, 2019 10:49 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on the July 2018 - Proposed Rules

I am a prosecutor who is fluent in Spanish. As such, I regularly handle cases with victims/witnesses who speak Spanish but have limited English skills. Given this experience, I have significant concerns about the July 2018 proposed rules.

Proposed CrR 3.7 would significantly inhibit our ability to conduct investigations involving victims/witnesses from immigrant communities, as immigrants who do not speak English well (or at all) carry understandable concerns about interactions with the government. This concern is even more pronounced when it comes to undocumented immigrants who are extremely wary of interacting with any government officials, and of giving statements. In many cases, it takes repeated conversations to gain their trust and assure them we will be investigating the alleged crime they have been victim to, and not their status. Asking such individuals to be recorded will likely be taken as intimidation, a sign of the government threatening them into not cooperating and/or pocketing information for later use against them. Some immigrants also come from countries where there is much distrust of government—again, asking these individuals to be recorded will have a chilling effect on our ability to secure justice for them.

These concerns are not limited to immigrants. I shudder to think of the impact this could have on a wide range of cases—for example, a domestic violence case where a victim might normally, if reluctantly, give a statement to the police, but would rightfully reconsider when told the statement needs to be recorded, and therefore will be made available to the abuser that they live with. The list goes on: what will a witness to a gang shooting think when asked to be recorded? Or a child victimized by their parents? Or a victim of sex-trafficking?

Proposed CrR 3.8 urges video-recording in regards to identification procedures, and I have the same concerns as above about the chilling effect this will have. I am also concerned about the privacy rights of individuals—Washington is a state that gives its residents a great deal of privacy protections, yet when it comes to victims of crime we are going to strip away these rights and treat victims as somehow less deserving of the rights otherwise accorded to us as residents of this state?

Jumping ahead to Proposed CrR 4.11, it carries the same concerns as above by making audio recording the default of attorney interviews. It also clashes with the privacy protections accorded under Washington law, by shifting the burden on recording away from asking for consent to instead making it a presumption that has to be affirmatively rejected. And it makes the simple exercise of this privacy right into a suspicious behavior by then imposing a jury instruction about the refusal!

Proposed CrR 3.9 makes no sense. It prevents in-court identifications where the "perpetrator is unknown to the witness..." How is a witness making an in court identification of someone they do not know? I am guessing that the rule is trying to prevent identification where a suspect is not *personally* known by the witness, but in this case the current rules of evidence should ensure that the testimony will lay out the basis for the identification, and the direct plus cross-examination should lay out any weaknesses to that testimony. As proposed, this rule creates unnecessary ambiguity that

will result in disparate implementation across court rooms, a poor outcome for a rule that should instead be creating standards we can follow consistently.

Proposed CrR 4.7(h) will cause further harm to victims by removing the safeguard of having a prosecutor review redactions. I have great admiration and respect for the defense attorneys I have encountered in my career, particularly public defenders who have an enormous and difficult task placed upon them. However, the reason that prosecutors are the ones who typically approve redactions on discovery provided to defendants is because prosecutors are the ones tasked with protecting victims and society from those who would break the law. As well intentioned as a defense attorney might be, it is simply the case that their incentives will be quite different than those of a prosecutor when it comes to the effort and focus placed on redacting discovery. It has been my experience that in King County, the relationship between the prosecutor's office and the defense bar is an amicable one—it is rare to see protective orders filed pre-emptively. If this rule is adopted, that will have to change in order to protect victims. I deal with complex financial fraud cases, and the discovery on these cases typically runs into the tens of thousands of pages and contains sensitive financial/personal/identifying information. Prior to doing fraud cases, I had cases where even in 30 pages of discovery a defense attorney would miss things that should have been redacted—what are the chances then that they will miss things when asked to redact over 10,000 pages with no one to double check it?

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