

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, April 24, 2019 4:43 PM
To: Tracy, Mary
Subject: FW: comments to proposed changes to court rules

From: Stine, John [mailto:JSTINE@spokanecounty.org]
Sent: Wednesday, April 24, 2019 4:42 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: comments to proposed changes to court rules

I wanted to leave my thoughts regarding some of the changes being considered to the criminal court rules. As background on myself, I was admitted to the Bar in 1996. I have practiced criminal defense that entire time, mostly in public defense, with the exception of eight years in private practice. I hope my experiences add to your consideration of the court rule changes.

The criminal justice system only works properly, and dispenses justice accurately and fairly, when the parties and trier of fact have accurate information to work with. A large majority of my time spent investigating and preparing cases is spent trying to establish accurate facts; most commonly, the fact of who said what. To this end, recording statements is the only way to assure the system is working with accurate facts. Statements attributed to witnesses and suspects in police reports may generally be accurate, but not necessarily so. I have personally had many cases where statements claimed in a report turned out to not be accurate when a later recording of the statement was located. In one case, a detective claimed a suspect made admissions about molesting a young boy. The interrogation was recorded, and the recording showed no such admissions were ever made. The discrepancy was so egregious, the prosecutor declined to use any of the defendant's alleged statements against him in court. The defendant was acquitted. Had that recording not been made, the detective would have testified that the defendant had essentially confessed to the crimes and he would have ended up spending most or all of the rest of his life in prison.

The city police in Spokane have now been outfitted with body cameras. During the initial several months the cameras were worn, numerous cases were discovered where written police reports did not match what was seen and heard on the body camera footage. Several cases were dismissed or greatly reduced once these discrepancies were pointed out to the prosecutors. On the other side of the coin, criminal defendants often do not relate an accurate version of events to their attorneys. Having recordings of statements makes quick work of these discussions with defendants, rather than expending numerous hours investigating who said what.

The proposed rules regarding recording witness interviews, interrogations, and eyewitness identifications will greatly improve the efficiency and accuracy of the criminal justice system. The rules are easy to understand and follow, they allow for some discretion in unusual or unexpected circumstances, and provide the courts, parties, and triers of fact with the most accurate information possible. If a person has nothing to hide, then making a recording should not give them anything to fear. Claims that recording interviews with police officers will somehow diminish them in the eyes of the public are simply nonsense. If events involving police officers in the last few years teach us anything, it is that the public expects police officers to be held accountable and for their actions to be above board. The public fully supports the transparency that recording police interviews provides. I have seen arguments made that recording victim interviews will somehow re-victimize them. I do not see how recording an interview would cause anymore trauma than the interview itself would cause. The recordings are protected from dissemination by other discovery rules, and a witness can still refuse to be recorded. The proposed rule then simply allows the jury to be told about the refusal in the event of

a dispute about the contents of the statement at trial. Again, recording these statements provides the most accurate evidence possible. This is, and should always be, the goal of the criminal courts.

In addition to the rules promoting recording evidence for accuracy, I support the proposed changes to rule 4.7 regarding discovery. Specifically, the rule allowing defense attorneys to provide redacted discovery to clients. Not that many clients request discovery in my practice, though that may vary with other attorneys. However, when they do, I usually run into delays getting the redactions approved by the State. The problem is not that the redactions are incomplete, but that the prosecutors have no incentive to review the redactions in a timely manner. I have waited weeks, and occasionally months, to hear back from a prosecutor that the redactions are approved. The clients requesting redacted discovery are almost always inmates, so any delays have a detrimental effect on processing the case. I am usually forced to continue the trial date, or wait on plea negotiations, until the client has been able to review the discovery. The proposed rule sets out exactly what is to be redacted, so there is no dispute about what gets blacked out. The rule change will speed up the resolution of cases and allow defendants access to the evidence against them in a more timely manner.

The changes proposed in these rules are very sensible, easy to implement in practice, and provide more accurate information. This all leads to a more efficient and just criminal justice system. This should be the goal of every participant in the system. I urge the Court to adopt the proposed rules as quickly as possible. Thank you for your time.

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