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Superior Court Judges' Association

April 15, 2019

TO: Supreme Court Clerk

FROM: Judge Roger Rogoff, Chair
SCJA Criminal Law and Rules Committee

RE: Proposed Rule Changes CrR 3.7, CrR 3.8, CrR 3.9, CrR 4.7,
& CrR 4.11

On behalf of the Superior Court Judges' Association, I urge caution in reviewing the proposed changes to Criminal Rules 3.7, 3.8, 3.9, 4.7, and 4.11. These proposed rules seek to address the prosecutor's production of, and the judicial admission of, certain types of evidence in criminal trials. While the goals of these proposals may be laudable, they have been presented directly to you without the typical collaboration of other judicial and executive stakeholders. This sets an unnecessary precedent moving forward.

These rules would alter the exercise of judicial discretion on admission of evidence in criminal cases. Given this narrowing of discretion, they are likely to have unintended consequences regarding the admissibility of proposed evidence.

Because of this lack of multi-disciplinary collaboration, many of the rules include undefined, vague terms that are likely to lead to extensive litigation. It has also led to awkwardness in drafting and uncertainty in application.

The superior court judges, who would be required to enforce these rules, urge the Supreme Court not to pass them without further work and collaboration. They unnecessarily take away judicial discretion related to the most important function judges have—evidentiary gatekeepers—by creating mandatory bright line rules. These rules seek to solve problems that individual judges, if given thoughtfully guided discretion, are capable of solving every day through sound, reasonable evidentiary rulings.

Thank you for your consideration.

cc: SCJA Board of Trustees
Ms. Crissy Anderson
Ms. Shannon Hinchcliffe

Tracy, Mary

From: Hinchcliffe, Shannon
Sent: Friday, April 26, 2019 8:41 AM
To: Tracy, Mary
Cc: Hahn, Sondra
Subject: SCJA letter re: WACDL rules
Attachments: CrR- SC ltr 4.15.19.pdf

Mary,

Do you mind processing the attached comment? Thanks.

Shannon Hinchcliffe | Office of Legal Services and Appellate Court Support
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