

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 16, 2019 12:53 PM
To: Tracy, Mary
Subject: FW: propose court rules comments.

From: Muenster Mark [mailto:markmuen@ix.netcom.com]
Sent: Tuesday, April 16, 2019 12:50 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: propose court rules comments.

April 16, 2019

Clerk of the Washington Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: Comments on proposed court rules

Dear Members of the Rules Committee:

I have been a practicing criminal defense lawyer since 1980. I have been past president of the Washington Association of Criminal Defense Lawyers and active over the years in its Amicus Committee, and Legislative Committee. Please review my comments below concerning the proposed amendments to the Criminal Rules for both Superior and District Court. Most of these are long overdue.

CrR 3.7/ CrRLJ 3.7

The court should adopt these rules, in the interest of fairness to defendants and in the transparency of the process. Defendants in criminal cases are at a tremendous tactical disadvantage if they dispute a police officer's version of their conversation during an interrogation. Requiring recordings of interrogations will level the playing field, and also reveal the types of interrogation techniques used by the police to obtain statements. These techniques would otherwise not be seen or understood by jurors.

Increasing the information available to juries will promote fairness in trials. The technology available to make recordings and to store them digitally means the burden on law enforcement will be minimal.

CrR 3.8/ CrRLJ 3.8

The court should adopt these rules.

Problems with suggestive identification procedure have plagued the courts since the *Wade* trilogy of cases in the 1960s. The caselaw since then has not furnished adequate protection to accused person from either overt or unconscious clues given by the police conducting the procedure to the person being asked to make an identification. It is surely

not too much of a burden to ask the police to document how an out of court identification took place.

CrR 4.11/ CrRLJ 4.11

The court should adopt these rules, with the exception that paragraph (d) should be stricken.

The purpose of a witness interview is to find out what a witness will say, and to make an accurate record of what the witness said during the interview. Recording the interview, either electronically, or stenographically serves the goal of getting an accurate record, and in no way impinges upon a witness. In fact, having a record being made is likely to speed up an interview since the lawyer will not have to make as many notes as he/she goes along.

A deponent in a civil proceeding does not get to dictate the terms of a deposition. A witness in a criminal case, whether or not he/she is the complaining witness (AKA the "victim") should not be able to dictate the terms of how a record is made of the interview. In other words, the witness should not be given the right to refuse to be recorded. To include such a right in the court rule will gut the purpose of this proposed rule, lead to many more requests for depositions under CrR 4.6 and generally interfere with a defendant's constitutional right to defend himself/herself under Art. I §3 and 22.

CrR 4.7/ CrRLJ 4.7

These rules should be adopted by the court.

The changes to the prosecutor's obligations make the prosecutor's obligations under the *Brady* rule clearer and easier to enforce. The changes for identification procedures interplay with the other new proposed rules regarding identification procedures.

The changes for providing copies of discovery to clients are most welcome. The process of getting court approval for redactions was cumbersome. The rule change will protect information which needs protection and will allow accused persons to better assist their lawyers in preparing for trial.

Thank you for your consideration of my comments.

Sincerely yours,

Mark W. Muenster
Attorney at Law

THE LAW OFFICE
OF
MARK W. MUENSTER

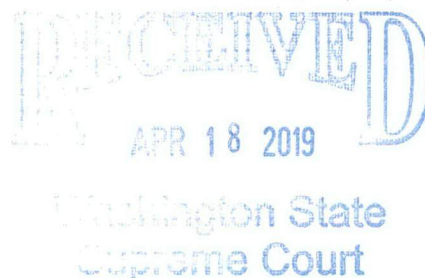
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Sincerely yours,

A handwritten signature in blue ink, appearing to read "Mark W. Muenster".

Mark W. Muenster
Attorney at Law