

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, March 19, 2019 3:08 PM
To: Tracy, Mary
Subject: FW: Proposed Changes to Criminal Rule

More rule stuff.

From: Michael Brodsky [mailto:mpbrodsky@brodskylawfirm.com]
Sent: Tuesday, March 19, 2019 3:06 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Changes to Criminal Rule

Dear Justices of the Washington Supreme Court:

I am writing in support of the July 2018 proposed criminal rule changes. They reflect a modernization of the rules that will serve to protect the rights of defendant, promote confidence in the criminal justice system and eliminate the uncertainty and imprecision of having law enforcement paraphrase the words of defendants and witnesses.

CrR 3.7 and CrRLJ 3.7 – Recording Interviews. Many of the comments of prosecutors emphasize the additional burden the proposed changes will place on law enforcement and the fear that they engender distrust among jurors. The idea that assuring accuracy in confessions and interviews is burdensome in an age of easily available, inexpensive digital recording devices is burdensome would seem to give short shrift to the concepts of due process and fundamental fairness. If nothing else, the proliferation of such devices among the public make clear that the police don't always get it right and, unfortunately, aren't always truthful. As I tell every officer or witness I interview, creating a recording means we don't have to argue about what was actually said because we'll have a recording to rely upon.

CrR 3.8 and CrRLJ 3.8 – Recording of Eyewitness Identification Procedure. Study after study show that one of the most common reasons for wrongful convictions are flawed eye-witness identifications often a result of improper or poorly designed identification procedures. This is particularly true in cross-racial identification. Recording those procedures would seem to be a small price to pay to make certain that the procedures are carefully followed and that no undue influence, intentional or not, impacts the identification.

CrR 3.9, CrRLJ 3.9, CrR 4.1 and CrRLJ 4.1 - The same principles apply to the proposed rules regarding In-Court Eyewitness Identification and Recording of Witness Interviews. Nothing but greater accuracy, clarity and fairness can come of requiring law enforcement to better document and improve their investigative procedures by recording them. I urge the Court to adopt each of these rules.

Sincerely,
Michael P. Brodsky, Attorney at Law
120 Prospect Street
Bellingham, WA 98225
Phone: [360-756-5120](tel:360-756-5120)
FAX: [360-671-1285](tel:360-671-1285)
Mobile: [360-815-7418](tel:360-815-7418)
Website: www.brodskylawfirm.com/

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