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July 25, 2018

The Supreme Court, State of Washington  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504-0929

Re: Proposed amendments to discovery rules as proposed by WACDL

This letter is to provide comment and express concerns regarding the WACDL proposed amendments to the criminal discovery rules. The proposed rule amendments are unnecessary, have unintended consequences and impermissibly reach beyond the purview of this Court's rule making authority by reaching beyond the scope of pre-trial exchange of information into the executive functions of investigative agencies. As proposed, these rules weaponize discovery rules, violate the constitutional rights of victims and consequently undermine the intent and purpose of discovery rules. I therefore oppose the proposed discovery rule amendments submitted by WACDL as published by this Court for comment.

To require recordings of all custodial and noncustodial interrogations pursuant to proposed rule CrR 3.7, for example, assumes investigators will know at any given juncture of an investigation, who is or isn't a suspect when they reach out to talk to witnesses during an investigation; an investigation which may or may not ever reach the inside of a courtroom. The encroachment of these proposed amendments into executive branch functions reflect these amendments go beyond the purview of this Court's rule making authority. Similar concerns are reflected in proposed amendments to rules CrR 3.8, 3.9, 4.7, 4.11, CrRLJ 4.7, CrRLJ 3.7, 3.8, 3.9, 4.11. The proposal to limit required redactions before discovery is provided to defendants pursuant to CrR 4.7 and CrRLJ 4.7, for example, provides no protective provisions for child pornography,

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medical records of victims or similarly sensitive documents or photos. Requiring victims to be recorded or to pay for the cost of obtaining a copy of an interview pursuant to CrR 4.11 and CrRLJ 4.11, additionally violates the victims' rights pursuant to Wash. Con. Art. I, sec 35.


The purpose of discovery rules is to provide a mechanism for making relevant information fully available to litigants to ensure fairness in litigation. *Washington State Physicians Ins. Exchange v. Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 858 P.2d 1054 (1993). Discovery rules are procedural in nature and not intended to be inflexible and punitive but rather to prevent surprise, narrow the issues and promote efficient and early resolution of cases. *Cedell v. Farmers Ins. Co. of Washington*, 176 Wn.2d 686, 698, 295 P.3d 239 (2013). In the context of a criminal case, discovery rules:

Provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, effective justice, and the elimination of unjustifiable expense and delay.

*CrR 1.2*. The discovery rules should carefully be drafted "to balance competing interests and to ensure uniform enforcement of the rules." *State v. Yates*, 111 Wn.2d 793, 765 P.2d 291 (1988). The proposed amendments would contravene the limited purpose of the discovery rules by arming advocates with weaponized procedures instead of providing mechanisms to support fair disclosure of facts, to reveal issues and promote the efficient and meaningful resolution of criminal cases. The proposed amended discovery rules do not support this purpose.

Thank you for your time and consideration of my comments and objections to the proposed discovery rule amendments submitted by WACDL.

Sincerely,



Kimberly Thulin

WSBA No. 21210

Appellate Deputy Prosecutor for Whatcom County

Tracy, Mary

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Wednesday, July 25, 2018 12:51 PM  
**To:** Tracy, Mary  
**Subject:** FW: Proposed Amendments to Discovery Rules  
**Attachments:** Propd Rule Ltr to SC 072518.pdf

Forwarding

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**From:** Tara Adrian [mailto:TAdrian@co.whatcom.wa.us]  
**Sent:** Wednesday, July 25, 2018 11:47 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Proposed Amendments to Discovery Rules

Please see attached correspondence from Whatcom County Appellate Deputy Kimberly Thulin.

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*Please be advised that these communications may be subject to disclosure under RCW 42.56, the Washington State Public Records Act.*