From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Proposed Changes to CrR/CrRLJ 4.7(h)(3)
Date: Monday, April 29, 2024 2:53:04 PM
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From: Landino, Gina T <Gina.Landino@seattle.gov>
Sent: Monday, April 29, 2024 12:23 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Changes to CrR/CrRLJ 4.7(h)(3)

Good afternoon,

I am sending the below comment in regard to proposed changes to CrR/CrRLJ 4.7(h)(3) on behalf of Seattle City Attorney Ann Davison.

Thank you.

Gina T. Landino
Executive Assistant
she / her / hers

I am writing to express my opposition to the proposed changes to CrR/CrRLJ 4.7(h)(3). I agree that any person accused of a crime must be allowed to review the evidence against them. In many cases, this discovery will contain sensitive information (such as personal identifiers and financial information) that must be redacted before it is turned over to the defendant. I join the other comments opposing these changes, and wish to further highlight four problems with this proposal:

1. Under the current rule, the prosecuting attorney has the opportunity to review and approve of the redactions before the discovery goes out. This process helps ensure that redactions are accurately applied by providing the prosecuting attorney with the chance to review the defense redactions and make sure nothing was missed. In our experience, it is not uncommon to receive "redacted" discovery from the defense that includes some

(or much) sensitive information that was mistakenly not redacted. We are of course all human and overworked, and so "busy" administrative-type mistakes are inevitable. Including the prosecuting attorney in the redaction process helps reduce the overall error caused by inadvertent oversight.

2. The current proposal does not provide visibility to the prosecuting attorney of the redactions made. At a bare minimum, and as recommended by Judge Kessler in his comment, the prosecuting attorney should receive a copy of the redacted discovery at (or before) the time that it is provided to the accused. There are no attorney-client privilege or RPC 1.6 concerns raised by the adding that requirement. This will allow prosecutors to have access to the information that is disclosed and then attempt to take appropriate remedial steps when unredacted sensitive information is inadvertently disclosed. Otherwise, in practice, the only way a prosecutor will learn of the missed redaction is after the harm caused by the disclosure comes to light (i.e., identity theft or stalking).
3. Municipal, district, and superior courts should not be individually tasked with developing separate redaction guidelines through local rulemaking. On top of the additional administrative burden created for smaller courts, the inconsistency between redaction rules will almost certainly lead to confusion and mistakes by defense attorneys who practice in the diverse jurisdiction spread across the state. Any redaction guidelines should be handled at the state or, at worst, the county level. Cities like Elma or Sunnyside or Forks should not be forced into the position of crafting their own unique redaction standards.
4. Much of the proposal seems to be in response to the negotiation policy published by one county prosecuting attorney. While my office does not endorse a policy that ends negotiations simply because the accused requests a copy of the discovery, I also do not support changing a statewide court rule to address a single prosecuting attorney's negotiation policy regarding redacted discovery.

Ann Davison
Seattle City Attorney

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