**From:** OFFICE RECEPTIONIST, CLERK
**To:** Martinez, Jacquelynn
**Subject:** FW: Comments to CrR/CrRlJ 4.7
**Date:** Thursday, April 18, 2024 8:44:00 AM

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**From:** City Attorney <CityAttorney@kentwa.gov>
**Sent:** Thursday, April 18, 2024 8:35 AM
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
**Subject:** Comments to CrR/CrRlJ 4.7



## Re: CrR/CrRLJ 4.7(h)(3)

The current requirement of CR/CrRLJ 4.7(h)(3) of prosecutor approval of redactions before discovery is provided to a defendant does not interfere with "meaningful discussions about necessary investigation, negotiations, and trial preparation." Adoption of the proposed changes to this rule will not result in defendants having expedited access to discovery as proponents claim. The suggested change is more likely to have the opposite effect as prosecutors will need to determine whether a request for a hearing would be needed in each case before sending discovery to defense counsel. This additional delay would be necessary in order to prevent disclosure of private or sensitive information that is not useful for a defendant to have to consult with counsel or prepare for trial. Although each prosecutors' office responds differently to defense counsel requests for redacted discovery, there is nothing about the current process that results in what is hinted as being unnecessary delay. The proposed rule change will not result in a defendant having faster or better access to discovery.

Discovery redaction guidelines that are distinct from court to court will result in inconsistencies and create the likelihood that private information not material to or useful for trial preparation will be disclosed. There is also no articulated benefit of having different guidelines for discovery redactions for each Washington court. If this Court is inclined to grant any revision to the rule, it must also draft and include minimum statewide standards to prevent private, immaterial information from being revealed at any stage of a case. It could also require proponents and opponents to draft agreed minimum standards that could be included in the rule before granting any revision. Another alternative, and one suggested in other comments, is to include as part of any change to CrR/CrRLJ 4.7(h)(3) the adoption of the county prosecutor redaction guidelines as the minimum standard for all courts within the same county. Adoption of minimum redaction guidelines should also include language that any court would be allowed to augment these as it deems appropriate.

The Washington Constitution acknowledges crime victims at Art. I § 35, the first

sentence of which reads: "Effective law enforcement depends on cooperation from victims of crime." Fear of reprisal from defendants and/or their associates is a real concern of members of our communities who report crimes and intend to cooperate with prosecution. The increased possibility of a defendant's access to their private or sensitive information would impact some witnesses' willingness to cooperate. As the rule stands, prosecutors are able to address those concerns to some degree due to the rule requiring their approval of redactions. If the changes as proposed are granted, prosecutors will no longer be able to rely upon such safeguards.

There is simply no value in increasing the risk that defendants will have access to any witness' private or sensitive information at all stages of a proceeding. However, there is value in a prosecutor's ability to protect this kind of information for witnesses who cooperate in criminal cases. Efforts by prosecutors to do this are labeled as "prosecutorial threats" and "coercive plea-bargaining practices" by proponents of the change who fail to appreciate a prosecutors' role and responsibilities. The current version of CR/CrRLJ 4.7(h)(3) must be maintained, or if revised, include a minimum standard for redactions that would apply in all Washington courts. While it is essential defendants have access to discovery to review without any unnecessary delay, it is also important to ensure private and sensitive information of witnesses' remains undisclosed in criminal cases.

**City of Kent Law Department, Criminal Division**