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April 15, 2024

VIA EMAIL

Honorable Mary I. Yu
Supreme Court Rules Committee
c/o Clerk of the Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: Comments on Proposed Amendments to CrRLJ 4.7 – Discovery

Dear Justice Yu and Members of the Supreme Court Rules Committee:

The District and Municipal Court Judges' Association respectfully opposes the suggested changes to CrRLJ 4.7(g)(3) for the reasons discussed below:

The Proposed Amendment Does Not Address a Statewide Problem

The Supreme Court Rules Committee should not permit the statewide rulemaking process to be used to address an issue arising in a single county. The proponents' GR 9 coversheet relies only on the example from a single county. Nothing in the GR 9 coversheet establishes or demonstrates that this change is necessary or needed statewide, as is required by GR 9(a)(4). In fact, consultation with many of our member courts – especially those from smaller jurisdictions – reveal that no such issue related to redaction of police reports exists in their court. Further, this proposed statewide change to CrRLJ 4.7 would create a number of undesirable collateral consequences.

The Proposed Rule is Inefficient and Wastes Limited Resources

- **A Patchwork of Local Redaction Guidelines**

The proposed amendments would require every jurisdiction to prepare, through local rules, redaction guidelines for discovery. Leaving standards to local rule has the potential to permit wide variations in the scope of required redactions and fails to provide consistency statewide.

- Creation of Unnecessary Local Rules

As noted above, many of our member jurisdictions do not experience the issue identified in the GR 9 cover sheet. Yet the proposed changes would require every jurisdiction to engage in the lengthy and involved process to develop local rules, even when there is no problem that needs to be addressed. This requirement would especially negatively impact smaller jurisdictions with limited resources.

- Court Intervention is Rarely Needed Under the Current Rule

Discovery currently takes place outside the purview of the judge. Typically, if parties agree on the necessary redactions, the judge need not review the discovery and the discovery process is expedited. The judge remains the final arbiter of any disputes, which must be resolved after considering issues unique to each case.

Proposed Redaction Guidelines Do Not Protect Crime Victims and Witnesses

- Defense Counsel “May” Redact Discovery

The proposed rule does not require defense counsel to make redactions prior to disseminating information that should be redacted. The proposed rules states that ‘defense counsel may redact discovery consistent with the guidelines.’ This language could fairly be read to allow the dissemination of discovery with no redactions whatsoever. A rule allowing unredacted discovery to be provided to the defendant will likely violate the privacy and security of crime victims.

- Guidelines for Redactions Ignore Unique Considerations in Each Case

No two criminal cases are the same and the protections necessary for crime victims are unique to each case. It is not possible to draft a generic set of redaction guidelines that would protect crime victims in each case. The current rule’s requirement that the prosecuting attorney determine the necessary redactions allows for individualized consideration of what should be redacted in each case. The current rule allows defense to seek review of the proposed redactions if they disagree with the prosecutor’s redactions. In contrast, the proposed rule allows defense to release discovery to the defendant before the prosecutor has the opportunity to review and object to proposed redactions. This leaves crime victims with a woefully inadequate remedy in the case of inappropriate disclosure of their private information.

In sum, the DMCJA urges you to reject the proposed amendments to CrRLJ 4.7(g)(3). We thank you for consideration of our comments.

Supreme Court Rules Committee

Page 3 of 3

April 15, 2024

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey R. Smith", with a stylized flourish at the end.

Judge Jeffrey Smith

DMCJA President

cc: Judge Catherine McDowall, DMCJA Rules Committee Co-Chair
Judge Wade Samuelson, DMCJA Rules Committee Co-Chair
Evan Walker, MPA, MJur, DMCJA Rules Committee Staff