

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
Subject: FW: Proposed amendment to CrR 4.7 and CrRLJ 4.7
Date: Thursday, April 25, 2024 8:10:22 AM

From: Wise, Donna <Donna.Wise@kingcounty.gov>
Sent: Wednesday, April 24, 2024 8:27 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed amendment to CrR 4.7 and CrRLJ 4.7

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To: Supreme Court

Re: Proposed amendment to CrR 4.7 and CrRLJ 4.7

I write to oppose the amendment to the criminal discovery rules that would permit defense counsel to provide discovery to defendants without appropriate redactions.

There are many problems with the amendments.

There is no doubt that some courts will adopt rules that are not as extensive as those the local prosecutor believes are necessary. (The proponent of this rule change notes that the King County Prosecutor's Office has redaction guidelines that are much more comprehensive than those proposed by the defense bar in previous proposed amendments to this rule.) Several problems will arise if the court's and the prosecutor's guidelines are not consistent.

The prosecutor may be forced to delay providing discovery so that they have an opportunity to file a motion to modify redaction requirements before discovery is provided to the defendant. The rule does not require defense counsel delay providing discovery to the defendant.

Under the rule, defense counsel may provide discovery to the defendant before the court acts on a motion to modify redaction requirements.

The prosecutor will have to set a hearing in every case in which the difference between its guidelines and the court's will affect redactions made, causing a substantial increased workload for the parties and the court. The request to modify the guidelines may have to address anticipated discovery (e.g. autopsy photos) or the prosecutor may have to file multiple motions to modify as additional material is received and

provided as discovery. (If defense counsel were required to notify the prosecutor if discovery was going to be provided to the defendant, the prosecutor could limit the motions to modify redaction guidelines to those cases.)

The proposed amendments will create a logjam of motions that will have the effect of delaying discovery being provided to defense counsel.

Requiring defense counsel to retain a copy of the redacted discovery provided is no assurance of compliance with the redaction guidelines. No one will ever see the redactions unless the defendant shares the copy provided, for example by posting it on social media, or the prosecutor learns that the defendant has acted upon information that should have been redacted (e.g. contact information for victims or witnesses). Then it is too late. The prosecutor must be given the opportunity to review the redacted copy before it is provided to the defendant, both to detect unintentional oversights and to identify disagreements with how the redaction rules have been applied. The risks to the safety, privacy, and financial information of victims and witnesses are significant. With every superior court, municipal, and district court adopting its own redaction guidelines, errors in compliance with the applicable local rule will be inevitable.

Finally, the proposed rule does not address how redaction of discovery should be handled in the period before the local court publishes guidelines for redaction. Under the terms of the rule, that may be three months after adoption of the rule, but it may well be longer before each municipal, district, and superior court develops, adopts, and publishes guidelines. Perhaps defense counsel will not be permitted to provide discovery to the defendant before those guidelines are published, or perhaps defense counsel will conclude that an absence of guidelines means no redactions are required.

Care must be taken in providing copies of discovery to defendants. Defense counsel is not tasked with protecting victims and witnesses and that is not their priority. The prosecutor must be given the opportunity to review copies of discovery that will be provided to defendants to ensure appropriate redactions are made, and to litigate the necessity of redactions before the discovery is provided to the defendant. The proposed amendments should be rejected.

Respectfully,

Donna Wise

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