

The current proposed rule does not provide for a copy of the redacted discovery to be provided to the prosecutor. There is nothing confidential in redactions of the prosecutor's discovery. There is no reason not to provide a copy.

"Motion" is a noun. "Move" is a verb.

The following is a modification of the proposal consistent with the above.

(3) *Custody of Materials.* Any materials furnished to ~~an~~ a defendant and/or attorney pursuant to these rules shall remain in the exclusive custody of the defendant and/or attorney and be used only for the purposes of conducting the party's side of the case, unless otherwise agreed by the parties or ordered by the court, and shall be subject to such other terms and conditions as the parties may agree or the court may provide. ~~Further, a defense attorney shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court.~~ Further, each Municipal, District and Superior Court shall, through the local rule-making process under CrR/CrRLJ 1.7, publish guidelines for redactions within three months of adoption of this rule. Defense counsel may redact discovery consistent with these guidelines and provide a copy of the discovery to the accused and shall provide a copy of the redacted discovery to the prosecutor. Each defense attorney shall maintain a duplicate copy of discovery furnished to the represented defendant that show the redactions made in accordance with this court rule. The duplicate copy of discovery with redactions shall be kept in the defendant's case file for the duration of the case.

(A) A prosecuting attorney may ~~motion~~ move the court for an order to modify redactions beyond the court's published guidelines by scheduling a hearing within seven days of the discovery being provided to defense counsel to address what additional redactions beyond their guidelines are required.

(B) A defense attorney may ~~motion~~ move the court for an order to modify redaction conditions.

(4)-(7) [Unchanged.]

Comment

[Unchanged.]

CrRLJ 4.7
DISCOVERY

(a)-(f) [Unchanged.]

(g) Regulation of Discovery.

(1)-(2) [Unchanged.]

(3) *Custody of Materials.* Any materials furnished to a ~~lawyer~~ defendant and/or attorney pursuant to these rules shall remain in the exclusive custody of the ~~lawyer~~ defendant and/or attorney and be used only for the purposes of conducting the party's side of the case, unless otherwise agreed by the parties or ordered by the court, and shall be subject to such other terms and conditions as the parties may agree or the court may provide. ~~Further, a defense lawyer shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court.~~ Further, each Municipal, District and Superior Court shall, through the local rule-making process under CrR/CrRLJ 1.7, publish guidelines for redactions within three months of adoption of this rule. Defense counsel may redact discovery consistent with these guidelines and provide a copy of the discovery to the accused and shall provide a copy of the redacted discovery to the prosecutor. Each defense attorney shall maintain a duplicate copy of discovery furnished to the represented defendant that show the redactions made in accordance with this court rule. The duplicate copy of discovery with redactions shall be kept in the defendant's case file for the duration of the case.

(A) A prosecutor attorney may ~~motion~~ move the court for an order to modify redactions beyond the court's published guidelines by scheduling a hearing within seven days of the discovery being provided to defense counsel to address what additional redactions beyond their guidelines are required.

(B) A defense attorney may ~~motion~~ move the court for an order to modify redaction conditions.

(4)-(7) [Unchanged.]

From: [Ward, David](#)
To: ["bjorkess@gmail.com"](mailto:bjorkess@gmail.com)
Cc: [Martinez, Jacquelynn](#)
Subject: RE:
Date: Thursday, April 18, 2024 4:21:32 PM

Thank you Judge Kessler!

From: bjorkess@gmail.com <bjorkess@gmail.com>
Sent: Thursday, April 18, 2024 4:19 PM
To: Ward, David <David.Ward@courts.wa.gov>
Cc: Martinez, Jacquelynn <Jacquelynn.Martinez@courts.wa.gov>
Subject:

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Dear Mr. Ward,

Attached is my proposal reformatted as a comment, in accordance with Justice Yu's direction. Please be sure that when the comment is published both the strikeout of the words "motion" and the heavy underline to the additions show up.

Thank you for your response.

Ronald Kessler

From: **Ward, David** <David.Ward@courts.wa.gov>
Date: Thu, Apr 18, 2024 at 3:41 PM
Subject: FW: Proposed rule per GR 9
To: bjorkess@gmail.com <bjorkess@gmail.com>
CC: Martinez, Jacquelynn <Jacquelynn.Martinez@courts.wa.gov>

Dear Judge Kessler –

Thank you for submitting these materials to the Court. I checked with Justice Yu, the chair of the Supreme Court Rules Committee, about how to handle this submission. Because this submission is directed to a [proposed rule that is currently pending with the Court to amend CrR/CrRLJ 4.7](#), this submission will be treated as a comment to that currently pending proposed rule, rather than as a proposed rule under GR 9.

Would you like to amend these materials before they are posted to the Court's website? Otherwise, we can post them as submitted, but they will be treated by the Court as a comment to the pending proposed rule to amend CrR/CrRLJ 4.7.

Sincerely,
David Ward

David Ward

Principal Legal Analyst | Office of Legal Services & Appellate Court Support

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