From: Ramona Brandes
To: Martinez, Jacquelynn
Subject: Comment for proposed rule change - CrR 4.7 and CrRLJ 4.7
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Redaction of discovery has long been an issue of contention between prosecutors and defense counsel. Criminal defendants have a constitutional right to understand and know the evidence against them under the due process clauses of the Sixth Amendment and Article 1, Sect 22 of the Washington Constitution. In my 26 years of public defender practice I have long been frustrated with the redaction situation because of the prosecutor's unwillingness to comply with reviewing redactions. Criminal defendants have a compelling need to have a copy of the discovery to review—it is difficult for most to process the the discovery in a case when the only access is during meetings with attorneys. Criminal cases have become exceedingly complex as technology advances which makes it difficult to understand, and public defenders, in particular, are hard-pressed for time to repeat review of materials with the clients -- particularly in felony cases where discovery may encompass thousands of pages. Further discovery doesn't come chronologically in neat, understandable packages which interferes with defendants' abilities to comprehend and retain the information from attorney reviews. Discovery jumps around chronologically, it often doesn't make sense when read/reviewed from start to finish, and often sometimes important parts are not available until well into a case. For example, in a double homicide I determined there were seventy-six missing witness interviews that were not provided in discovery until nearly four years after the offense. When defendants don't have a copy of discovery they struggle to assimilate and provide assistance to counsel on the evidence—sometimes this is due to factors relating to the client (comprehension issues, etc), and sometimes this is due to factors relating the the specifics of the discovery (lack of chronology, missing reports, etc). Some prosecutor offices, to include the King County prosecutors specifically, claim they are too overloaded to review redactions so when a request to review redactions for distribution to a defendant is made, the prosecutor terminates negotiations. This abhorrent and lazy practice punishes the defendant for merely seeking a true opportunity to review the evidence against him. I have long believed that such manipulative tactics by prosecutors is entirely unethical, yet it remains the reality of standard practice to date. To combat the efforts of the prosecutors to punish defendants for wanting to exercise their constitutional rights to due process, I implemented the practice of submitting a thorough public disclosure request to every police department in every criminal case I was assigned as a public defender, and then provided copies of the police reports to the defendants from those public disclosure responses if they came in during the course of the case. This is very inefficient for defense counsel and the police agencies both, it is time-consuming for the police agencies to do in every single criminal case, and there was no

guarantee I would receive the materials in a timely matter. It would be much worse if this was a common defense tactic as the backlogs would skyrocket. Further the PDR requests expose the agencies to significant liability for non-compliance --some of the smaller jurisdictions without strong integrated digital storage systems struggle to locate all the reports, particularly supplemental reports, and some larger jurisdictions have months-long backlogs that make public disclosures as a means for client access to discovery far less than ideal. Further, I have had occasion when the police agency I submitted the public disclosure request to has reported the public disclosure request to the prosecutor, who has then tried in court -- unsuccessfully --to block my receipt of the public disclosure request because of their claim that I will/or have received the same material in discovery. These suppression efforts expose the prosecutors' attempts to control redaction as a design to prevent defendants entirely from having access to their own police reports and to gate-keep that information in a power move. Public disclosure requests are redacted by government agencies so there is no other logical basis for prosecutorial opposition to compliance. The current state of CrR 4.7/CrRLJ 4.7 allows and arm prosecutors to gate keep discovery in an abusive power dynamic that exploit against by establishing policies against plea negotiations for defendants who seek access. I understand that some prosecutors have submitted comments complaining that the proposed rule change removes their oversight from redactions. The reality is that prosecutors do not truly want to do the oversight of the redactions --if they did want oversight of redactions they would have been doing the redaction reviews all along and this change would not be needed. The need for change to the rule is a direct result of the obstinate failure of the prosecutors to comport with the rule of redaction review. They brush it off as too time-consuming and terminate plea negotiations for those who insist. The opposition of the changes to the rule indicate that prosecutor offices plan to continue refusing to review redactions and continue the status quo of denying defendants meaningful access to discovery, and to continue to strong-arm defendants into pleas where they've have no meaningful access to their own discovery. I have not heard of a single jurisdiction where the prosecutors readily and willingly review redacted discovery in all my years of practice. Defense counsel are officers of the court and are the defenders of the Constitution. The supposition that defense counsel can not be trusted to follow redaction policies is offensive and without merit. Time and time again our courts have found that juries are presumed to follow the law . If juries are presumed to follow the law, most certainly defense counsel as officers of the court subject to contempt sanctions must also be presumed to do so. CrR 4/7/CrRLJ 4.7 do not function as intended in relation to discovery because of the obstruction of the prosecutors and this change is needed to protect the due process rights of defendants to a fair and just proceeding.

Most Sincerely,
Ramona Brandes