From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Proposed Amendment to CrR 4.7 (h)(3) and CrRLJ 4.7 (h)(3)
Date: Monday, April 29, 2024 3:46:04 PM

From: Terry Bloor <Terry.Bloor@co.benton.wa.us>
Sent: Monday, April 29, 2024 3:35 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Amendment to CrR 4.7 (h)(3) and CrRLJ 4.7 (h)(3)

To the Justices of the Washington State Supreme Court:

I write to oppose the proposed amendments to CrR 4.7 (h) and CrRLJ 4.7 (h)(3).

I have been a prosecutor since 1997. Before that I was a criminal defense attorney for 18 years and I never found that giving the defendant the discovery helped the defendant's understanding of the charges against him. Likewise, I never found that giving the defendant the discovery helped my representation of him.

I found that a defendant may not read the discovery or may miss salient points. Instead I would go over in detail the discovery materials with the defendant. If the defendant wanted to read the materials for himself, I would allow the defendant to read the entire file, which may take several days, in my office and my office staff would collect the file from him after he was through or at the end of the day. If the defendant was in jail I would allow him to read the discovery in a conference room while I met with other jailed defendants and collect the discovery from him after my visit was over. In short, my experience was that keeping the discovery within my possession did not lower the defendant's understanding of the evidence or affected the effectiveness of my representation.

On the other hand, I have seen defendants try to use information gleaned from discovery, even redacted discovery, to harass witnesses or victims. After all, defendants and their attorneys do not owe a duty to keep embarrassing, damaging or hurtful information about crime victims or witnesses from members of the public. Nor do they have a duty to protect personal data like full names, social security numbers, addresses or telephone numbers from being released.

Criminal defense attorneys have been successful in whittling away CrR 4.7 (h)(3) since I left defense work in 1997. There is no need to change the rule as presently constituted. It would not aid defendants with understanding what evidence may be used against them; to understand what is admissible, inadmissible or what may be challenged a consultation between the defendant and the defense attorney is necessary.

There are some problems with the way the proposed amendments are drafted. First, it will set up inconsistent systems throughout the State by having each Municipal, District and Superior Court

develop guidelines for redactions. Second, the rule provides that the prosecutor may motion 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…". Defense counsel may have already handed a redacted version of the discovery to the defendant by that time. Third, for this reason the prosecutor may delay in providing discovery to the defense attorney so the State can file a motion to modify the redaction guidelines.

The proposed amendment would ease the workload of defense attorneys by allowing them to provide defendants with a redacted copy of the discovery without approval from the Court or prosecutor. But that is not a reason to change the rule.

Terry J. Bloor (Mr./He/Him)
Deputy Prosecutor
Benton County Prosecutor's Office
7122 West Okanogan Pl., Suite A230
Kennewick, WA 99336
terry.bloor@co.benton.wa.us / (509) 735-3591