**From:** OFFICE RECEPTIONIST, CLERK
**To:** Martinez, Jacquelynn
**Subject:** FW: Comment on CrR 4.7 and CrRLJ 4.7 rules for redaction of discovery
**Date:** Friday, March 29, 2024 3:14:19 PM

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**From:** Thomas Paynter <tpaynter@co.okanogan.wa.us>
**Sent:** Friday, March 29, 2024 3:14 PM
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
**Subject:** Comment on CrR 4.7 and CrRLJ 4.7 rules for redaction of discovery



I am writing to say that the existing rules for redaction of discovery make no sense, and simply impose a burden on counsel for no benefit. The existing rule states, "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."

A basic duty of defense counsel, however, is to review discovery with the client. Therefore, it would seem that defense counsel is permitted to read the full, unredacted discovery to the client, including witness names, etc., but is not permitted to give the client an unredacted copy. The attorney may also, I believe, hand the client an unredacted copy of the discovery to the client to review in the attorney's presence, as long as the client doesn't keep the discovery. (What the attorney is supposed to do if the client refuses to give the discovery back to counsel is not clear—call a guard and accuse the client of stealing it?)

Therefore, the redaction rule does not prevent the client from learning the names, and even addresses and so forth, of witnesses. But the absurdities multiply. Suppose that the attorney works with the State to redact names, etc. The attorney may then sit with the client while the client reviews the redacted discovery, and when the client says "Whose name is blacked out here," the attorney can tell the client the witness's name. If the client wishes to write the name in next to the redaction, the client may do so. The attorney may hand the client a pencil in order that the client may do so. To facilitate the process the attorney could set an unredacted copy of the discovery down so that the client can review it side by side with the redacted copy, and write in the names that the attorney blacked out.

The existing rule imposes a burden on counsel to spend potentially hours redacting lengthy reports and going back and forth with the State over the redactions, but fails to actually keep any sensitive information from a client who wants to know it.

The only practical benefit I can see is that the rule does prevent the client from having a copy of the unredacted discovery to show others. The client can show the redacted discovery to others, and tell them—or interlineate—the witness names, but cannot show them the unredacted original. Perhaps there is some marginal benefit there. But the cost is that, I believe, many clients who would like to have their discovery to review do not receive it, because of the burden on the time of overworked defense counsel. The rule does function to keep discovery out of the clients' hands, not in a principled or reasoned way, but simply by creating friction in the process. Clients with attorneys who are more diligent or less busy will receive their discovery, while others do not.

This opinion is based on my experience as a defense attorney and should not be taken as the view of the Okanogan County Prosecutor's Office.

Thomas Paynter
Okanogan County Prosecuting Attorney's Office
Deputy Prosecutor – Appeals Division
P.O. Box 1130/237 4th Ave. N.
Okanogan, WA 98840 ◆ Tel. 509-422-7280