

April 30, 2024
Chief Justice Steven González
P.O. Box 40929
Olympia, WA 98504-0929

Dear Chief Justice González,

Facing a criminal charge can be an enormously destabilizing and life-altering event. An individual's decision to accept a plea offer or go to trial, and how quickly that decision can be intelligently made, have enormous consequences. Timely access to the allegations and evidence supporting a criminal charge is essential for the accused. The ability for the person charged to access and review discovery materials is a central component of criminal defense. While it is of course defense counsel's responsibility to review case materials with their client, a client's access to the materials outside the limited confines of attorney-client meetings is immeasurably valuable. This is particularly important for clients incarcerated pretrial due to unaffordable bail.

However, those who wish to obtain and review discovery materials are often greatly delayed and may have to pay a steep price. For example, in King County, if an accused person seeks a copy of redacted discovery, not only must the Defense await the State's approval of the proposed redactions, "the early plea negotiator will discontinue negotiations and will have the case assigned to a trial deputy." Once their case is assigned to a trial deputy, the person loses access to the "pre-trial track" where the prosecutor may "consider reductions, alternative programs (such as Drug Diversion Court and Regional Mental Health Court), mitigation information, equitable considerations, etc." See King County Prosecuting Attorney Office's "Early Plea Negotiations Process Guidelines" at <https://kingcounty.gov/en/legacy/depts/prosecutor/criminal-overview/early-plea.aspx>. Thus, a criminally accused person who wishes to obtain and review –on their own-- the evidence against them faces the possibility of forfeiting the ability to negotiate a pretrial resolution of their case.

The proposed changes to CrR 4.7/CrRLJ 4.7 would end this coercive plea-bargaining practice by allowing defense teams to redact discovery for accused people according to protocols in yet-to-be-developed local court rules. This local court rule approach would address concerns raised about a similar proposal from 2018, in which the Washington Association of Criminal Defense Lawyers prescribed a statewide redaction protocol that parties such as the King County PAO found inadequate. Under the new proposal, local courts could adopt the protocols already in use by their local prosecutors, representing no change in discovery redaction approach in use in each jurisdiction.

The Court should adopt the proposed changes to CrR 4.7/CrRLJ 4.7, and make it easier for allow accused persons to make informed decisions about matters with life-changing impact to themselves, their families, and our community.

Sincerely,

[Add list of signatories]