



Item 03-02e
(111819)

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October 16, 2019

VIA EMAIL

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Superior Court Operations
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Attorney Del Ciampo,

Thank you for the opportunity to provide comment on proposed rulemaking. The Connecticut Criminal Defense Lawyers Association is a not-for-profit organization of approximately three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, the CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, the CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

With respect to the proposal from the **Office of the Victim Advocate (OVA)** to modify the Rules of Professional Responsibility for prosecutors and Practice Book provisions concerning juvenile matters¹, the proposals appear to be redundant of other provisions and a codification of practices that are already in place. Further, CCDLA's position is and has always been that a criminal case is a proceeding between the people and the defendant, and the prosecutor represents the interests of the people, not any individual. To create an ethical obligation for a prosecutor that runs directly to a victim has the potential to make the prosecution more about redressing individual rights, than asserting the interests of the State -- which are not always the same. That is not our system of

¹ The letter from the OVA references a change to the Code of Judicial Conduct but the substance of the letter does not propose any change.

justice in Connecticut and CCDLA feels it is a dangerous path to start down. Individual rights may be pursued in other venues.

Our substantive objection pertains to the proposal to modify the Practice Book sections related to Juvenile and Criminal Matters that would require a continuance of a matter if a victim has not been notified or is not present, which would, in the case of a detained defendant affect the due process rights of that defendant and improperly prolong detention or otherwise delay resolution of his or her case without any fault of his own.

With respect to the proposals from **Senators Looney and Winfield and Representative Stafstrom** to modify Practice Book provisions regarding Discovery, CCDLA supports any effort to reform or standardize criminal discovery and any measures that will ensure that a defendant has received all discovery that the defendant is entitled to well in advance of trial.

CCDLA would suggest the following in lieu of Proposal 2, pertaining to completion of discovery before accepting a plea: “Before a plea deal is approved, the court shall inquire and ensure that the defendant is satisfied with the disclosures made and with the prosecutorial official’s compliance with the provisions of this section.” Rarely, but sometimes, favorable plea offers are premised on a prosecutor’s understanding that there are problems with the case and a defendant’s willingness to forgo things like suppression motions, Franks Hearings and occasionally even completed discovery. In such rare occurrences, we would like the ability for counsel to indicate satisfaction with the discovery, even though it may not be technically complete.

With respect to Item 3, pertaining to continuances for late discovery, we would like to see the addition of a provision that would permit the court to exclude evidence because of late discovery as an alternative to continuing the case. It is often not possible for defense counsel to obtain an expert to analyze evidence or refute expert testimony in 35 days. The provision as written may result in the court just extending the deadline in response to late discovery in a way that would still prejudice the defendant. We would like to see the trial court retain the ability to exclude evidence.

With respect to Item 4, pertaining to the disclosure of witness lists, some trial lawyers were concerned that the proposed rule would require simultaneous disclosure of witness lists. The concern is that such a requirement would be impractical because defense witnesses may depend on the state’s declared witnesses and that late appearing defense witnesses are often unavoidable. CCDLA would prefer disclosure by the State 30 days before trial and subsequent disclosure by the defense.

With respect to Item 5, pertaining to a list of disclosed materials, CCDLA suggests the following language: “The prosecutorial official shall provide to the defendant an itemized list of information or material disclosed pursuant to this section. The listing of

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such information or material shall be in the order in which the prosecutorial official disclosed such information or material. The defendant and the prosecutorial official shall acknowledge, in writing or otherwise on the record in open court, the disclosure of all information or material provided to the defendant under this section.” We think it a better practice for both sides to acknowledge on the record the provision and receipt of itemized discovery.

Thank you again for this opportunity to participate in the process of rulemaking. Please feel free to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Morgan P. Rueckert', with a stylized, flowing script.

Morgan P. Rueckert, President
Connecticut Criminal Defense Lawyers Association