



Promoting Dignity, Equality
and Self-Determination

September 11, 2006

Clerk of the Supreme Court
PO Box 40929
Olympia, Washington 98504-0929

To the Clerk of the Supreme Court:

We are writing to express our strong opposition to the proposed new rule, CrR 4.11 (recording of witness and victim interviews), and the proposed amendment to CrR 4.6(a) (depositions for those refusing to be recorded), and to the corresponding proposed changes to the Criminal Rules for Courts of Limited Jurisdiction.

Washington Protection and Advocacy System is the state designated, federally-mandated protection and advocacy system for Washington State. We frequently provide advocacy for persons with disabilities in cases involving abuse, neglect, and discrimination.

People with disabilities who are victims and witnesses to crime are not always treated fairly by the criminal justice system. People with developmental and psychiatric disabilities, the Deaf, and others with disabilities are particularly vulnerable to the coercive potential of the criminal justice system. Some people with disabilities are susceptible to re-traumatization by this intimidating and confusing system. The proposed rules not only do nothing to reduce these barriers to justice, they actually make the situation worse.

While the proposed rule changes don't require that victims and witnesses allow the taping of their interviews, we believe that most of them won't realize that they have the right to refuse to be taped. There is no requirement that the interviewee be informed that they can refuse to consent. People with cognitive disabilities who have been schooled to be "compliant" with authority figures (like lawyers and police) will be at a particular disadvantage.

Interviews of people with disabilities who are victims or witnesses to crime will be

Washington Protection & Advocacy System

*A member of the National Association of Protection & Advocacy Systems
A substantial portion of the WPAS budget is federally funded.*

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CLERK

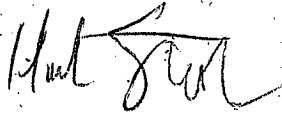
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BY C. J. HERBERT

less likely to re-traumatize – and more likely to serve the ends of justice – if the interview is conducted at a date, time, and location, agreed to by the interviewee. In order for the interview to be successful, the person with a disability should be consulted to ensure that there will be adequate breaks, and that the individual can have someone there of his or her own choosing. In 2005, the legislature responded to testimony from people with disabilities regarding the intimidating and even coercive potential of these interviews by enacting RCW 7.69B. This chapter appropriately recognizes that “sensitivity, courtesy, and special care” should be shown for these individuals in this context. We believe that this consideration should extend to the decision of whether or not to allow an interview to be taped. This decision should rest with the victim or witness – who should know that this is a choice, and that the tape may be replayed by the perpetrator and others.

Current rules allow attorneys to ask permission to record pre-trial interviews. If the attorney believes the victim or witness is not reasonably available for the interview, the attorney can ask for a deposition. Victims and witnesses have some ability to protect their privacy and dignity. The trial court judge is in the position to strike a balance between the rights of the victim and the needs of justice. We see no reason to change this balance – particularly in a direction of undermining the control and dignity of the crime victim or witness.

We have not been aware of, nor have we participated in, a discussion of these rules, the reason they have been proposed, or what their anticipated impact will be on victims and witnesses – and what could be done to ameliorate the impact. We urge the Court to go no further with this process until there has been a close examination of what the effect on access to justice for people with disabilities who have been victims of crime.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark Stroh". The signature is written in a cursive, somewhat stylized font.

Mark Stroh
Executive Director