

Faulk, Camilla

From: Aaron Case [acase.wa@gmail.com]
Sent: Thursday, April 28, 2011 8:02 AM
To: Faulk, Camilla
Subject: Comment to Proposed Rule 4.11-Recording Witness Interviews

Camilla Faulk
Supreme Court Clerk
Washington State Supreme Court
Temple of Justice
415 12th Avenue Southwest, Olympia,
WA 98504-0600

To Whom It May Concern,

I write in support of the proposed rule 4.11-Recording Witness Interviews. I agree with much of the commentary submitted by the Board on the cover sheet published on the Washington State Courts website. I have a few observations to share in addition to the well reasoned comments of the Board.

Recording interviews enhances the truth finding function of our criminal justice system. With a recorded interview, the likelihood of a dispute as to what was said during an interview disappears. As such, the distortion that could arise between the State and a defendant over what was said is no longer fodder for prolonged litigation. Instead, recording informs the parties of the nature of a witnesses' testimony. It memorializes the content of such testimony. This is consistent with the purpose of the discovery process. The ability of any party to hide behind competing recollections of what was said during a witness interview is not conducive to our truth seeking function. A recording relieves the process and the parties from the pitfalls of such distortions.

Our justice system and our State and Federal Constitutions require defense counsel to adequately investigate a case on behalf of our clients. The recording itself is evidence of such an investigation. The recording also relieves a possible dispute between defense counsel and the client. With a recording there is no second guessing what evidence the witness is prepared to offer. On many occasions a recorded witness interview is a benefit to the prosecution. Recording also requires the parties to conduct themselves in a professional manner while testing the truth under the crucible of cross examination prior to trial. To this end, recording interviews, has in my experience, more often promoted the resolution of a case than continued litigation. As such, I believe recording interviews helps to relieve crowded dockets.

The measures put into place in the proposed rule and under rule 4.7(h) and 4.6 provide significant and adequate protection for witnesses. For most witnesses and in most cases there is no need to turn to such protections. In extreme cases where witness intimidation is a real concern, the rules provide for protective orders in addition to other methods of protecting witnesses, such as no contact orders, victim witness advocates, jail house phone recordings, additional charges are some the resources available. In my experience, witness intimidation is not the norm, it is a rare circumstance, for which the law has many resources to prohibit such conduct. Accordingly, the overall benefits of a recorded interview in our criminal justice system substantially outweigh the rare circumstances that others cite as a basis for rejecting the proposed rule.

Finally, adoption of the proposed rule will remove the cost of litigating and re-litigating this issue again and again. It will provide the parties with adequate notice for which they can act accordingly without having to second guess the issue of recording interviews in every case. This proposed rule promotes efficiency, removes

the potential for distortion and unnecessary litigation while enhancing the truth finding process. I ask the Court to adopt this proposed rule.

Sincerely,

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