

Faulk, Camilla

From: Brad Meryhew [brad@rhodesmeryhew.com]
Sent: Wednesday, April 27, 2011 4:19 PM
To: Faulk, Camilla
Subject: Comment on CrR 4.11

Supreme Court of Washington,

I am writing to comment on proposed CrR 4.11 which would allow the audio recording of witness interviews by criminal defense attorneys. I am a criminal defense attorney, and my practice focuses almost exclusively on the defense of those accused of sex crimes. I am one of the attorneys who regularly records witness interviews and I would like to share my experiences.

When I first began to practice witness interviews were generally not recorded and were instead memorialized in the notes of the persons attending only. I would bring an investigator to the interview who would take notes, and then at trial that investigator would testify as to the statements made during the interview. Often my investigator would disagree with what the Prosecutor thought was said, and it would become a contest between the Prosecutor's witness, or the Prosecutor themselves even though they are not eligible to be witnesses, and it was generally more traumatic and confusing for the witness and all concerned. The interviews themselves took considerably longer as I would wait for my investigator to write down virtually every word that was said in order to avoid this problem. Witnesses were subjected to longer interviews, and more interruptions to get them to repeat statements. Finally most Prosecutors realized that not tape recording these interviews was creating problems for all involved, and the practice changed.

In the last several years I have been able to tape record virtually every witness interview I have done is scores of cases. I have not had a request to record a witness interview refused in many years except by law enforcement officers. The only real resistance I find to tape recording interviews is from law enforcement officers, and even that is becoming rare. A recorded interview is quicker, less traumatic for the person being interviewed, and less likely to lead to confusing side shows about what was really said at these interviews.

The said irony is that when the stakes are money, our courts are quick to insure that all depositions are carefully recorded and the contents carefully confirmed. But when the stakes are liberty, and the integrity of the criminal justice system itself, the rights of the accused to have witnesses held accountable for their answers is somehow less important. The fact is that getting accurate records of witness interviews will mean less trauma for witnesses, and a clearer understanding of the evidence in the case. This in turn encourages resolution of cases prior to trial, and insures that the trials that do happen are comported with dignity and respect to all involved. I urge you to adopt this rule.

Sincerely,

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