

Faulk, Camilla

From: David Allen [david@ahmlawyers.com]
Sent: Monday, April 18, 2011 12:47 PM
To: Faulk, Camilla
Subject: NEW CrR 4.11

I would urge the court to adopt the proposed CrR 4.11.

This rule would greatly enhance the search for truth at trial and bring criminal practice more up to the standards of civil practice, where depositions are common.

Not allowing either a tape or court reporter to memorialize an interview greatly complicates the use of witness interviews. I can't tell you how many times I would attempt to impeach a witness with a prior inconsistent statement at an interview by calling an investigator, and having the investigator witness effectively undercut by the prosecutor because the interview record was not verbatim. The fact that it wasn't verbatim was because the witness refused to permit it (often at the behest of the victim advocate who advised the witness to decline permission to record). Sometimes the judge wouldn't even let me bring out that the witness refused permission to record and therefore prosecutor's position was like a circular argument. It was a very awkward and inefficient process to use the interviews to impeach or to rehabilitate.

I have mostly used court reporters in the past several years because judges have ruled in my favor on motions (I can send you representative orders, if you wish, which I've collected over the past decade or more) and my private clients can afford them. The same rationale applies with tape recordings which are more often used by public defenders.

Using a court reporter, where witness is not under oath, is not a deposition. It is the same as any other interview, except with a good record. In the old days, there were court reporters who were "short hand writers" (i.e., without machines). Using a court reporter with a transcribing machine is no different, except the "writing" is done more efficiently by a machine than shorthand. Tape recordings are similarly effective.

There is no good reason why a witness should not be recorded or transcribed. Police utilize video and audio tape interviews of witnesses for this very reason. Since the witness is not sworn, these are not depositions.

I strongly urge the court to adopt this rule.

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