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May 6, 2011

Honorable Charles Johnson
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

RE: Draft Criminal Rule 4.11

Dear Justice Johnson,

As president of the Superior Court Judges' Association (SCJA) I am writing to comment on draft criminal rule (CrR) 4.11. The rule applies to recording witness statements by lawyers in criminal cases. The SCJA appreciates the additional opportunity to discuss the merits of the rule, and carefully discussed the draft over the period of three Board of Trustees meetings. The SCJA Board favors the concept and understands that the intent is to facilitate preparation in criminal trials, however there were dissenting opinions. Therefore, this letter will highlight areas of concern with the draft rule, but take no formal position beyond support for the concept.

The most significant concern is that the rule is drafted for the traditional lawyer involved process, and does not articulate a process for pro se defendants. The rule should have protections for victims and witnesses which address the situation where there is a pro se defendant. Concern was expressed that the rule would be extended to pro se defendants, despite the apparent restriction to "counsel."

The SCJA Board representatives expressed differing opinions on the impact of a taped interview on potential victims, particularly in the instance when the potential victim is a child. Some thought the formality of having a recorded interview would in some instances be seen as less intrusive while others thought it would be more intrusive.

Thank you for the opportunity to comment on the proposed rule that has practical implications for how courts business is managed. We are committed to the administration of justice, including timeliness and preparation for trial. The concept of the bill addresses these elements and we applaud the truth finding functionality of the rule, but the positions of our membership are too diverse to endorse the draft court rule.

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Letter to Justice Johnson
CrR 4.11

As always, the SCJA stands ready to provide input and amendment on draft rules as they make their way through the rule making process.

Sincerely,

Laura Inveen
SCJA President Judge

cc: Board of Trustees
Ms. Nan Sullins

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