

## Faulk, Camilla

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**From:** WCCVA ED [ed@wccva.org]  
**Sent:** Thursday, April 28, 2011 2:17 PM  
**To:** Faulk, Camilla  
**Subject:** Proposed Court Rule CrR 4.11 - Statement of Opposition

**Importance:** High

Honorable Justices,

I am writing to express our very strong opposition to the adoption of proposed CrR 4.11. While I agree with the petition that was submitted and signed by approximately 190 individuals opposing this rule, I wanted to take a moment to highlight one particular point.

First, let's be clear: ***this rule applies only to witnesses who agree to a pre-trial interview, but who do not wish to be audio or video recorded.*** It does not apply to the many who already agree to be recorded in an interview. It does not apply to those who refuse to give an interview at all. It applies only to people who cooperate in the criminal investigation of a case but, for whatever reason he or she may deem appropriate, they do not want an audio or video recording of the interview.

At the heart of this argument, I believe, is whether a person loses his or her rights and self-determination simply because they become a victim or witness of crime. There are many benefits to recording interviews and **most witnesses readily agree to do so already.** However, there are also significant dangers – both real and perceived – to some witnesses if their interviews were to be audio or video recorded. For those who do not wish to have their interviews recorded, I question what authority the court has to impose such a requirement on cooperative witnesses.

To my understanding, witnesses are not parties to the case, and a trial court does not have personal jurisdiction over a witness except to compel their attendance and testimony at trial or a hearing. A pre-trial interview is in no way an extension of the trial – only preparation for a trial. While the State is certainly obligated to provide information to a defendant so that he or she may be prepared for his or her own defense, a third party and non-party to the case is under no obligation to assist a defendant in preparing his or her defense.

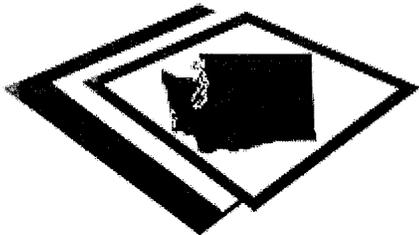
Per *State v. Wilson* 108 Wn. App. 774, “the defendant has no absolute right to interview potential State witnesses” and “the witness {is} under no obligation to talk to anyone outside of court.” In *State v. Hofstetter* 75 Wn. App. 390, 397 (1994) the court cited several cases as well as the American Bar Association *Standards for Criminal Justice* and itself admitted that a witness has no obligation to speak with anyone prior to trial or outside of court and that the prosecuting attorney may advise witnesses of the right to refuse to give an interview as well as his or her right to determine who shall be present at the interview. And, while the courts have determined that a defendant has a right to a pre-trial interview, the courts also recognize that this right to pre-trial access “exists co-equally with the witnesses’ right to refuse to say anything.” *United States v. Rice*, 550 F.2d 1364 1374 (5<sup>th</sup> Cir.) *cert denied*, 434 U.S. 954, 98 S.Ct. 479, 54 L.Ed.2d 312 (1977).

These cases and many others demonstrate the long standing precedent that exists for a witness’ self-determination in whether to give an interview at all and, if giving an interview, to determine when, where, how long, the manner, and what persons shall be present at a pre-trial interview. This rule flies in the face of these years of precedent. It also fails to acknowledge that it is not the interests of the prosecution, defense, or court which should be served by recording an interview - it is only the interests of the witness, who alone has the right to determine whether or not it is in his or her own best interests to have an interview recorded.

We urge the rejection of proposed CrR 4.11 once and for all as a violation of the rights of individual citizens and an improper extension of the authority of the court. Thank you for taking the time to take carefully consider our comments and for upholding the rights of all citizens – accused or not.

Sincerely,

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