

Faulk, Camilla

From: William Michelman [wmichelman@gmail.com]
Sent: Thursday, April 28, 2011 10:21 AM
To: Faulk, Camilla; michelman@wa.net
Subject: Proposed Rule CrR 4.11

Dear Ms. Faulk,

I am contacting you to add my support to proposed Rule CrR 4.11, which would specifically authorize the tape recording or use of a court reporter at witness interviews by defense counsel. I have been a criminal defense attorney in Washington since 1976. Over those many years I have found that few things are as useful in the investigation of a criminal case as the ability to interview witnesses. A defense attorney has a duty to investigate the charges against his/her client, and that includes interviewing key witnesses. Under the law, a witness is neither the "property" of the State or of the defense. A defense attorney always has the right to approach a witness informally for an interview, but it is more common to arrange a formal interview through the prosecutor's office. The prosecutor and defense attorney both attend such an interview. The ability to record the interview, either on audio or video tape, or to record the interview by a court reporter, is invaluable to both sides, because recording removes or substantially reduces controversy over what the witness said at the interview. In many cases, witness interviews lead to a resolution of the case without a trial, which saves court time and resources. While I understand that a witness interview may be difficult on the witness, particularly if the witness is an alleged victim, it may save the witness from having to testify at trial (if the case settles), and if the case goes to trial it helps to prepare the witness for trial. The rules of conduct at such an interview should be the same as would apply in the courtroom. A defendant has a constitutional right to the effective assistance of counsel, which includes the ability of counsel to investigate the case, and that includes having the ability to effectively interview witnesses. The proposed rule is entirely consistent with that constitutional mandate. The worst thing that can happen in our system of justice is to convict an innocent defendant. With the advent of DNA technology we have seen far too much proof that the miscarriage of justice is not only possible, but that it happens all too frequently. Anything that makes the system more reliable is a welcome addition.

WR MICHELMAN, WSBA #6803