

Faulk, Camilla

From: zach@wagnildlaw.com
Sent: Thursday, April 28, 2011 4:23 PM
To: Faulk, Camilla
Subject: Support for CrR 4.11

As a former prosecutor and a recent addition to the defense bar, I am writing this email in support of proposed CrR 4.11 permitting defense counsel to record witness interviews during their investigation of a criminal case. I'm in support for several reasons:

First, tape recorded interviews are the most accurate and reliable manner of taking a witness statement. That is the reason why law enforcement and prosecutors all over the state elect to record interviews any time they can. In fact, as a prosecutor I would encourage witnesses to permit tape recording of interviews since I knew that their answers could not be misconstrued or misstated by a sloppy or unethical defense attorney or defense investigator. Furthermore, recorded interviews capture things that written notes do not or that can be left out (intentionally or unintentionally). Specifically, they can capture voice inflection, changes in tone or mood, sarcasm, etc. Many times, such evidence can be as or more valuable than the actual contents of the statements.

Second, as police investigations get more complex and sophisticated, the costs of investigating and litigating criminal matters from both sides continues to climb. When witnesses refuse to be tape recorded defense attorneys are forced to bring an investigator along to all interviews to take notes in order to ensure that they have a witness who can testify if the witness being interviewed changes his/her story at trial. Permitting defense attorneys to record the interviews will save the public and private defense bars (and, therefore, the government) thousands, if not hundreds of thousands, of dollars every year since investigators will not be needed on all interviews. Why not implement a rule that is both more accurate and cost effective?

Third, claims by prosecutors and law enforcement that the recordings will be traumatic to crime victims are disingenuous. After all, prosecutors and law enforcement are the first ones to take tape recorded interviews of crime victims. This includes video-taping state interviews of child victims of physical and sexual abuse and taking recorded statements from adult sexual assault victims. Furthermore, once at trial there is no doubt that the witness will be required to provide a recorded statements since every courtroom is required to have some type of setup to capture everything that is said in court. Finally, interviews may end up being less traumatic to crime victims if recorded since many interviews will be done without the presence of an investigator resulting in fewer people being present during the interview itself.

Last, permitting defense attorneys to take tape recorded interviews will result in increased fairness to defendants and efficiency of the entire system. As any public defender will you, there are many instances in which they are not trusted by their own clients. In these circumstances, it can be invaluable for the attorney to be able to let the client hear the testimony for themselves in order to quell the distrust of the client and move towards resolving the case.

Thank you for considering my input.

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