

Faulk, Camilla

From: Dillon R. Johnson [Dillon.Johnson@nwdefenders.org]
Sent: Friday, January 14, 2011 11:11 AM
To: Faulk, Camilla
Subject: Proposed CrR 4.11

Dear Members of the Court:

I am writing to respectfully urge the Rules Committee to adopt Proposed Criminal Rule 4.11.

Recorded interviews are the best way to preserve witness statements, promote judicial economy, conserve scarce prosecutorial and defense resources, and ensure that an accurate record is available for review by the trier of fact.

In my experience as a public defender in King County, I have not seen recorded interviews become abusive towards witnesses. It is true that some witnesses are initially uncomfortable with the recording process. But once the interview gets underway, the discomfort generally dissipates and the witness forgets he or she is being recorded at all.

If CrR 4.11 is adopted, there will be effective safeguards against abusive interviewing. Opposing counsel may be present during the interview. Attorneys are subject to the Rules of Professional Conduct when conducting witness interviews. The rule itself places limits on the dissemination of recordings and transcripts. Finally, few attorneys will want to make an audio recording of him or herself abusing a potential witness or behaving unethically.

Some opponents to the proposed rule mistakenly argue there should be parity between the rights of the accused and the rights of witnesses. This argument overlooks the unique protections that our state and federal constitutions afford to the accused.

The best protection for crime victims and the wrongly accused is a judicial system that accurately preserves witness statements for consideration by the trier of fact. Proposed CrR 4.11 would be an important step towards that goal.

Thank you for your consideration.

Sincerely,

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