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April 26, 2011

Camilla Faulk, Supreme Court Clerk
Washington State Supreme Court
PO Box 40929
Olympia, WA
98504-0929

CLERK
2011 APR 28 AM 8:08
STATE OF WASHINGTON
SUPREME COURT
COURT CLERK
CAMILLA FAULK

Re: Comment to proposed rules CrR 4.11 and CrRLJ 4.11

There remain serious concerns about proposed recording rules CrR4.11 and CrRLJ 4.11. Contrary to some proponents, the subject matter in many victim interviews is indeed private in nature. The questions in interviews often far exceed what would be deemed relevant, admissible, or material in a deposition or in trial testimony. The argument that it is not private because other people are present at the interview, ignores the fact that the victim has no real control over who is present in the interview, nor control over the subject matter to be discussed. Yet due to the very unique nature and context of these interviews, the victim may still have a reasonable and legitimate expectation of privacy regarding some of the information that is raised in an interview.

The proposed rules would *compel* a person, who is not a party to the case, to submit to being recorded in a non-testimonial setting. Informal witness interviews are not subject to any of the same protections afforded in a deposition or during testimony - where objections can be made, and rulings and orders put in place to protect or limit such information. The proposed rules fly in the face of the intended protections afforded under the State privacy statutes (RCW Chapter 9.73). Additionally the argument that recording is just a better way to document what was said, and is not any more intrusive than taking notes; would fail miserably if it were argued in any other privacy statute context. The privacy statutes specifically prohibit non-consensual audio recording of private conversations.

The rules would impinge upon the rights of victims and witnesses, for the convenience of the attorneys and investigators. The rules are not justified, nor are they necessary. Many defense and prosecution witnesses already consent to being recorded when given the choice. A smaller number agree to be interviewed, but do not wish to be audio recorded. The proposed rules will certainly push more witnesses to object to being interviewed when they are required to submit to audio recording. Because of the lack of any formal protections afforded in such an interview, prosecutors and defense attorneys have some obligation to advise witnesses who do not wish to be recorded in an informal interview, that they can refuse the interview and instead submit to a court directed deposition. This would likely slow discovery, not enhance it.

Additionally, the proposed limitations on dissemination in section (b) of the rule would not appear to override or limit the statutory obligation to release these recordings under the public records act (RCW chapter 42.56) – when requests are made to prosecutor or law enforcement offices for materials related to pending criminal cases. Most recordings would not appear to qualify for an exception to disclosure under the act (including RCW 42.56.240). The proposed rules do not, and cannot, provide adequate protections to prevent compelled recordings from becoming public.

I respectfully request that the proposed rules be rejected.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karl Sloan', with a long horizontal flourish extending to the right.

Karl Sloan
Okanogan Co. Prosecutor