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The Hon. Chief Justice Barbara A. Madsen
Associate Justices
Washington Supreme Court
Olympia, Washington
Via email

Re: Proposed Rule CrR 4.11

Dear Justice Madsen and Associate Justices:

I write in support of the adoption of proposed rule CrR 4.11. A number of well-thought out reasons for the rule's adoption precede my comments and there is little need to re-hash them. The intrinsic truth of the need for such a rule is demonstrated by the vigor with which WAPA, *et al* opposes adoption of the rule.

What I find most troubling with the comments from WAPA, its members and so-called victim advocates is their willingness to disregard one of the cornerstones of our system of justice; the presumption of innocence. Throughout their comments they refer to "victims" as if it is a forgone conclusion that those people are in fact crime victims.

In this age of political correctness we forget that under our federal and state constitutions *there can be no victims* with respect to a specific defendant until such time as the crime is proved or a plea entered. Until then such persons should be identified as "*alleged* victims." I don't make that statement lightly nor do I mean to engage in a game of semantics; of my 22 years of practice (all in the trenches) I served half as a deputy prosecutor; I've seen the bodies, dead, broken or battered and the evidence of unspeakable acts done to children. Unfortunately, I also have several close friends that have been victims of violent crimes. I have also seen many serious cases dismissed once a proper defense investigation is completed (thank you for *ANJ*) and it becomes apparent the so called "victim" has been abusing the system for their own nefarious purposes. There is no hope for our system if we simply skip to the guilt phase without first testing the strength of the State's case. CrR 4.11 only serves to improve the chances for a "just" outcome.

WAPA, *et al's* position makes little sense for other reasons as well. They complain that witnesses/alleged victims will be intimidated by a recording or that it deprives these people of their right to say no. Rubbish! If a witness or alleged victim refuses to cooperate, defense counsel may resort to a deposition pursuant to CrR 4.6 I won't speak for others but it seems to

me a deposition is a much more intimidating process than a simple recorded interview.

... After the summons and a copy of the complaint are served, or the complaint is filed, whichever shall first occur, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under rule...

The quote above is from CR 30. In essence, in Washington State if one has a dispute over money or some other such thing one has a right to a deposition. Contrast that with a person who's liberty or even life is at stake:

*... Upon a showing that a prospective witness may be unable to attend or prevented from attending a trial or hearing or if a witness refuses to discuss the case with either counsel **and that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment or information may upon motion of a party and notice to the parties order that his testimony be taken by deposition...** CrR 4.6.*

Stated another way:

Civil/Money	Criminal/Liberty
A party to a civil case has nearly unfettered access to depositions	To obtain a deposition in a criminal case the defendant must show: <ol style="list-style-type: none">1. Witness must be unable to attend/prevented from attending trial, or2. Refuses to cooperate and3. Testimony is material and4. Deposition is needed to prevent a failure of justice and5. Requires a motion with notice and6. Requires a court order7. Even then it is discretionary on whether a deposition will be ordered

The disparate standards for criminal cases and civil cases is no doubt based on a lack of financial resources. Washington State is nearly bankrupt. Depositions at public expense would only exacerbate our current fiscal problems. The defense bar would undoubtedly acknowledge that criminal defendants will never have the access to depositions in their cases that parties to civil litigation enjoy. That said, I submit that as a society our liberty interests are far more

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important than our pecuniary interests and the disparate rules between civil and criminal cases carry the stain of hypocrisy. Proposed rule CrR 4.11 makes a small but important step in correcting that deficiency.

Very truly yours,

HAAS & RAMIREZ, P.S.

By: */sent without signature to expedite/*
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