

Faulk, Camilla

From: Ramona Brandes [Ramona.Brandes@nwdefenders.org]
Sent: Thursday, April 28, 2011 5:15 PM
To: Faulk, Camilla
Subject: Proposed Criminal Rule 4.11

April 28, 2011

Washington Supreme Court
P.O. Box 40929
Olympia, Washington 98504-0929

To the Honorable Justices of the Supreme Court,

I am writing this letter to urge you to adopt proposed Criminal Rule 4.11. This rule will ensure a fundamental fairness in the criminal justice process by providing all parties in with a method for accurately documenting witness statements. Accurate documentation of statements is already mandated by the discovery process in all civil cases wherein depositions are conducted on all witnesses. It is time that cases involving the loss of freedom receive the same procedural protections as cases involving the loss of money. Implementing 4.11 will not only result in a more effective and economical discovery process, but it will enhance and support the truth finding function of the courts.

As you know, 4.11 provide two separate avenues for documenting statements—either by audio recording or by stenographic notes by a court reporter. The first method of audio recording is done quickly, easily and cheaply. However, understanding that some witnesses may object to making an audio recording, the rule contemplates the use of a second method—stenographic notes by a court reporter. By utilizing the stenographic notes option the desire of any witness or victim not to be recorded is facilitated while all the parties' needs to document the statement verbatim is preserved. By using this two pronged approach the rule provides an inexpensive and easy method to document a statement that can be used in most cases, but allows for the alternative of stenographic notes for more sensitive witnesses. Further, this rule provides protections against the dissemination of witnesses' statements that are not currently in play and which are appropriate.

Accurate documentation of witness statements is essential to the integrity of the investigative phase of a criminal case, and such accuracy is expected by savvy jurors in this age of technology. We should expect it as well. The absence of the ability to document witness interviews verbatim, whether by digital audio recording or court reporter, merely frustrates the fact-finder's ability to ascertain truth from fiction and erodes public confidence that the system is fair and will deliver justice.

For these reasons I encourage you to implement proposed CrR 4.11.

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