

Faulk, Camilla

From: Law Office of Reed Speir [reedspeirlaw@seanet.com]
Sent: Wednesday, April 27, 2011 5:46 PM
To: Faulk, Camilla
Subject: Proposed CrR 4.11

I am writing regarding the adoption of proposed Criminal Court Rule 4.11. I strongly support adoption of this court rule. Police officers refusing to be interviewed is a significant problem for defense attorneys attempting to prepare to represent an individual accused of a crime. Police officers frequently change and modify their in-trial testimony from what is written in their police reports. I am currently handling an appeal where the lead detective in the case had a terrible habit of changing her investigation notes and supplementing her reports in the middle of trial. Her reports were supplemented with new information not disclosed anywhere else in discovery and the new information was tailored to be favorable to the State regarding issues which had developed at trial. Ultimately, this detective's behavior resulted in a mistrial and a judge being recused from the case. If defense counsel were guaranteed the ability to fully interview police officers pre-trial, police officers would be unable to change their testimony at trial and would be encouraged to write accurate and complete reports.

Defense counsel must be provided with adequate opportunity to conduct proper discovery to defend their clients. It is a terrible waste of judicial resources to require a defense attorney to essentially conduct discovery by cross-examining an officer for the first time at trial.

Requiring police to be interviewed by defense counsel would streamline trial since defense counsel would already know exactly what the officer would testify to and defense counsel would not have to waste time examining the officer on irrelevant areas simply for purposes of confirming that no exculpatory evidence was being hidden or held back by the police.

Concern for victims' privacy right, especially for victims of sex crimes, is addressed in the language of section (b) the proposed rule.

Simply put, nothing will be disseminated that isn't already required to be disseminated. Comments from police and prosecutorial agencies about how adoption of the rule will violate the privacy rights of witnesses and victims are straw arguments. The real reason police and prosecutors oppose this rule is that it would require police to cooperate with defense counsel instead of being able to ambush defense counsel at trial with "newly remembered" facts or memories different from what is contained in the police reports.

Concerns for the privacy and feelings of victims and witnesses should not trump the constitutional right of all citizens to a fair trial which includes adequately prepared counsel. Witnesses who wish to exercise their first or fifth amendment rights to remain silent may do so. If concerns remain about the sensitivities and privacy rights of victims, then the rule perhaps should be modified to give further protections.

however, with regards to the interviewing of police officers and other State personnel, the rule should not be modified. This rule is a good and fair attempt to combat the obstructionist tactics engaged in by police officers and prosecutors hoping to win trials by minimizing a defendant's ability to conduct full discovery.

Thank you for considering my comment. I strongly encourage you to adopt this rule and attempt to level the playing field when it comes to preparing for a criminal trial.

Reed Speir
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