

Faulk, Camilla

From: Garvin, Steve [SGarvin@spokanecounty.org]
Sent: Monday, April 25, 2011 4:10 PM
To: Faulk, Camilla
Subject: Proposed Rule 4.11

Dear Ms. Faulk:

I am writing because the proposed changes to Rule 4.11 poses a risk of creating more problems than the alleged problem that the rule is trying to solve. Which is what exactly? In 15 years as a prosecutor in both Washington and California I can only remember one case where there was a dispute about what was or was not said during a victim interview.

That said, the vast majority of the time there are no issues presented by the recording of crime victims during interviews. However, when dealing with cases that involve organized groups of criminals such as criminal street gangs and outlaw motorcycle gangs the existence of recordings can pose significant dangers. As currently formulated the proposed Rule 4.11(b) clause that allows the dissemination of audio recordings and transcripts "as reasonably necessary to conduct a party's case" presents a significant risk to victims, witnesses, and the administration of justice. I have recently handled cases where it was known that defendants, family members of the defendant, and other witnesses obtained access to all the discovery materials on a case and were actively sharing and reviewing it with an expressed purpose of manufacturing testimony and a defense. In the circumstance of a criminal street gang case the dissemination of these materials "on the street" would put witnesses and victims under a significant and real threat of violence. In the current criminal gang subculture there is an active "stop snitching" movement aimed at intimidating and silencing those that seek to cooperate with the administration of justice. One only needs to google "stop snitching" or look at "whosarat.com" or "stopsnitching.info" to see the types of coordinated efforts being made to intimidate and threaten those that cooperate with investigations.

As currently formulated, this rule not only allows this type of intimidation and obstruction of justice but almost encourages it. The safer and more prudent course would be to simply prohibit dissemination unless there is a court order allowing it. Thus, where necessary, the Court can fashion an order allowing dissemination and structuring case specific limitations. This proposed rule is a solution in search of a problem but if a rule must be passed then the last sentence in proposed Rule 4.11(b) should be struck for the reasons explained here.

Very truly yours,

Stephen W. Garvin
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