WACDL Washington Association of Criminal Defense Lawyers

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February 9, 2011

TO: Court Rules Committee,
Washington State Supreme Court

FROM: Robert M. Quillian, President

RE: Proposed Changes to Criminal Rule 4.11

As President of the Washington Association of Criminal Defense Lawyers, I wish to reiterate to you our organization's position with regard to an important proposed change to the Court Rules currently under consideration by the Court Rules Committee. Specifically, the WACDL Board of Governors unanimously voted to support the proposed changes to CrR 4.11. A more detailed explanation of WACDL's position follows.

WACDL strongly supports the proposed changes to Criminal Rule 4.11 concerning the recording of witness interviews. Simply put, the ability to record an interview of a witness in a criminal case protects the interests of all of the parties involved in the interview process. It affords the witness, as well as the parties, a complete and accurate record of what was said during the interview. While it is possible to try to rely on written notes or recollections taken during an interview, such notes and recollections are no substitute for an accurate and complete recording or transcript of exactly what was said. All too often, in the absence of such a recording or transcript, there are disagreements about what was said, and a trial can quickly degenerate into a swearing contest, rather than a "search for the truth," a mantra frequently uttered by prosecuting attorneys to a criminal jury. There is no better way to "seek the truth" than to provide for a full and accurate recording of witness interviews.

The arguments against this proposal carry little or no weight and are difficult to reconcile with the search for the truth. It has been suggested that the recording of a witness interview may be a violation of Washington's Privacy Act. The Privacy Act only prohibits the recording of *private* conversations without two-party consent. In no way can it be seriously argued that a pre-trial interview by attorneys for the parties in preparation for a criminal trial that is constitutionally mandated to be public, is a *private* conversation so as to bring it within the ambit of the Privacy Act.

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It has also been argued that the recording of a witness interview might be too traumatic for the witness, or would impose unnecessary stress on the witness. It is certainly understandable that certain witnesses may be reluctant, for a variety of reasons, to be interviewed under such circumstances. However, it is submitted that any stress is created by the fact of the interview itself, not by the presence of a small recording device or a court reporter. Witness interviews are an integral part of pre-trial preparation in criminal cases, and they must and will occur, even if stressful to a witness. Indeed, one can imagine that in a great number of interviews, the fact that the interview is being recorded could actually reduce the stress level of a witness, knowing that his or her words will be memorialized as spoken, and not subject to interpretation or dispute. An added protection is the prohibition on dissemination of the recorded interview outside of the needs of the parties to conduct their respective cases.

There is simply no valid reason to oppose the recording of witness interviews. Civil practitioners have, for years, had the ability to accurately preserve witnesses' pretrial statements through the deposition process. Given that the stakes in a criminal case are considerably higher than those in civil litigation, it is critical that witness statements be able to be recorded and preserved over time, and the recording of such interviews and statements is, by far, the most effective, and the fairest, method of so doing. This change is long overdue and only makes sense.

Thank you for your attention to this matter.