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WASHINGTON STATE COALITION

WSCADV

AGAINST DOMESTIC VIOLENCE

April 28, 2011

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

Re: Proposed Criminal Rule 4.11-Recording of Witness Interviews

Dear Ms. Caulk

Thank you for the opportunity to provide comments on proposed CrR 4.11, relating to recording of witness interviews. As you may be aware, WSCADV is a private non-profit membership organization comprised of sixty-five domestic violence shelter and advocacy organizations in Washington State committed to ending domestic violence.

The Washington State Coalition Against Domestic Violence (WSCADV) submits these comments expressing our concerns regarding the proposed rule as drafted and its impact on justice for survivors of domestic violence. Our primary objections to the proposed rule are:

- 1) The proposed rule places the burden of objecting to recording on witnesses;
- 2) The proposed language in the rule does not realistically prevent the dissemination of the recordings; and
- 3) The individual being recorded is not entitled to a free copy of the recording.

Our first and foremost concern is that domestic violence victims should have the right to decide whether or not they want to be recorded. The default should remain that recording of interviews is permitted, with the informed consent of the individual being recorded.

It is not unusual for domestic violence abusers to utilize the litigation and court process as a means of intimidation and control over their victims, over and beyond the incidents of physical abuse that they are being prosecuted for. The fact that a victim will be required to be recorded, discussing possibly years or even decades of humiliating and terrifying abuse, *unless* he or she is able to obtain the assistance in filing a court proceeding to prevent the recording, may be enough to discourage a victim from

participating in an interview, much less the rest of the criminal proceeding, at all. While certainly many victims may feel it is in their interest for their interviews to be recorded, and may welcome it, the choice to have the interview recorded should lie with the individual witness, *not* with the attorneys involved (either defense *or* prosecution).

In addition, we strongly object to the lack of meaningful protection against the dissemination of recordings, either by a defendant or by the government as a result of a public disclosure request. The current public disclosure case law and statutes do very little to prevent the release of personal, embarrassing victim information in situations where the requester already knows identifying information about the victim. Furthermore, the sanctions against someone convicted for serious crimes for sharing such information are meaningless in the face of the harm and embarrassment that would be faced by a victim who has been recorded and rebroadcast.

It is further objectionable that the person being recorded, especially if against his or her wishes, is not entitled to a free copy of the recording. Many victims may be indigent and will not be able to pay for copies.

Our experience in working with domestic violence victims, both within, and outside of the criminal legal system, is that they know what they need in order to be as safe as they can be. In providing *justice*, the state has a responsibility to both allow for the expression of their needs and to honor their decisions.

I hope this information has been useful and will be carefully considered by the Supreme Court. If you have any further questions you can contact me. Thank you for your consideration of our comments.

Sincerely,
WASHINGTON STATE COALITION
AGAINST DOMESTIC VIOLENCE



GRACE HUANG
Public Policy Program Coordinator