

Faulk, Camilla

From: Tom McBride [tmcbride@waprosecutors.org]
Sent: Friday, March 11, 2011 4:17 PM
To: Faulk, Camilla; Art Lachman
Cc: Don Curran; Paula Littlewood
Subject: Proposed RPC 3.8

Art - thank you for including me in your follow up. I understand the protection that the Governors believe is included within the phrase "...knows of evidence establishing that a defendant...is innocent". You express in your letter that RPC 1.0(f) defines this as "actual knowledge of the fact in question" which coupled with the safe harbor provision will avoid unfounded complaints being actionable.

My concern still exists in that I believe a recantation by a victim years later - possibly, an express denial that any criminal act occurred - will certainly be considered clear and convincing evidence of innocence. I don't believe a prosecutor denying that he or she has "knowledge" of this evidence because he or she does not believe the recantation is true, will be given the interpretation that the Governors are proposing.

Yet recantations are often found to be unreliable or coerced.

This leaves us solely with the protection of the safe harbor language i.e. responsive and defensive to complaints filed. Complaints which we do not believe should trigger an ethics review if we have disclosed the evidence to the Court and the Defendant.

The history and actions of Washington State Prosecuting Attorneys to act to correct wrongful convictions are documented in our earlier submitted letters and are commendable. The Ethics Rule should respect our right to decide whether we believe a convicted person is innocent; of course after mandatory disclosure of the new evidence. Thank you for your consideration.
Tom McBride