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Clerk of the Supreme Court
Temple of Justice
P.O. Box 40929
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Dear Justices of the Supreme Court,

Thank you for soliciting comments to proposed Criminal Rule 4.6 (authorizing the deposition of a witness by videotape, audiotape, digital recording or stenographic record upon a showing of "good cause"). I urge the Court to reject the proposed rule because it unnecessarily infringes upon the privacy rights of crime victims and witnesses.

The proposed rule would expand the use of formal depositions in criminal cases. It would allow a court to order a deposition for "good cause," but provides no guidance to trial courts as to what would constitute "good cause" to compel a victim or witness to be recorded. As currently formulated, CrR 4.6 allows the court to order a deposition of a witness expected to be available for trial only if three requirements are met: (1) a witness refuses to discuss the case with either counsel, (2) his or her testimony is material, and (3) it is necessary to take his or her deposition in order to prevent a failure of justice. In the State's view, if these three requirements are not met, there is no "good cause" to order that the witness be deposed. However, the amendment presumably is intended to allow the trial court to find "good cause" under any circumstances. The lack of any meaningful standard could lead to widely varying and arbitrary practices across the state.

Citizens of this State become crime victims and witnesses by unfortunate circumstance, not by choice. They are often required to devote time, energy and expense to the criminal action with no personal benefit. Under current law, an attorney in a criminal matter can record an interview with a victim or witness if the individual consents. The victim or witness, however, has the right not to be recorded. This right is grounded in fundamental privacy concerns. Recorded interviews may delve into a victim or witness's family relationships, sexual relationships, sexual preferences, political views, racial views, financial transactions, financial stability, business practices and more. Such recordings, once made, can be disseminated and shared with others, without any limitations under the proposed rule.

This State has a long-standing recognition of the privacy rights of individuals, and in particular, the right not to be recorded in private conversations without consent. As this Court has detailed:

> Our state has a long history of statutory protection of private communications and conversations. In 1909, the Legislature first penalized the opening of a sealed letter or divulging the contents of a telegram. RCW 9.73.010, 020. In 1967, the Legislature made it unlawful, with some statutory exceptions, to intercept or record by any device any

private conversation or communication transmitted by telephone, telegraph, radio, or other device without the prior consent of all participants or a court order. RCW 9.73.030.

State v. Clark, 129 Wash. 2d 211, 222, 916 P.2d 384, 391 (1996).

In addition, there are constitutional and statutory provisions recognizing the rights of crime victims and witnesses. A citizen's right to privacy should not be deemed forfeited simply because he or she has had the misfortune of becoming the victim or the witness of a crime. A rule that broadly allows victims and witnesses to be recorded without their consent and against their will is intrusive and harmful and runs contrary to the long-standing privacy protections that have been afforded to the citizens of this State.

I respectfully urge you to reject proposed CrR 4.6.

Sincerely,

Dan T Satterberg

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