

Washington State Supreme Court Justices

We the undersigned strongly opposes the adoption of the proposed amendments to Criminal Court Rule 4.6 regarding depositions. As is made plain from the coversheet included in this proposed rule change, this proposed change seeks the same end as previously proposed criminal rule 4.11, which your honors declined only a few months ago.

The ability to require a deposition of a witness in Washington State is already equal to if not significantly more liberal than in most other jurisdictions. The intent in changing this rule is to use the deposition process as a means of forced pretrial discovery of non-parties in a criminal case. Such a use of the deposition process is quite rare in the United States. In fact, many states, including Alabama, Arizona, California, Idaho, Louisiana, Massachusetts, Oregon, Tennessee, and Wisconsin specifically give witness the right to refuse a pretrial interview. In some jurisdictions including Arizona, California, Oregon, Wisconsin and the federal government, the ability to take a pretrial deposition of victims in criminal cases is explicitly disallowed as a means of pretrial discovery.

Per *State v. Wilson* 108 Wn. App. 774, a _the defendant has no absolute right to interview potential State witnesses_ and _the witness {is} under no obligation to talk to anyone outside of court._ In *State v. Hofstetter* 75 Wn. App. 390, 397 (1994) the court cited several cases as well as the American Bar Association Standards for Criminal Justice and itself admitted that a witness has no obligation to speak with anyone prior to trial or outside of court and that the prosecuting attorney may advise witnesses of the right to refuse to give an interview as well as his or her right to determine who shall be present at the interview. And, while the courts have determined that a defendant has a right to a pretrial interview, the courts also recognize that this right to pretrial access exists co-equally with the witnesses right to refuse to say anything. *United States v. Rice*, 550 F.2d 1364 1374 (5th Cir.) cert denied, 434 U.S. 954, 98 S.Ct. 479, 54 L.Ed.2d 312 (1977).

These cases and many others demonstrate the long standing precedent that exists for a witness's self-determination in whether to give an interview at all and, if giving an interview, to determine when, where, how long, the manner, and what persons shall be present at a pretrial interview. The proposed changes to this rule fly are contrary not only to years of precedent in Washington but throughout the country. They also fail to acknowledge that it is not the interests of the prosecution, defense, or court which should be served by recording an interview - it is only the interests of the witness, who alone has the right to determine whether or not it is in his or her own best interests to have an interview recorded.

The proposed amendments erode the integrity of not only the deposition rule but the criminal justice system and rights of victims and witnesses as well. The imposition of depositions has rightly been strictly limited in criminal cases as courts generally do not have the authority to order a non-party in a criminal case to do anything except to appear at trial. As such, a deposition is ordinarily utilized only when a witness is expected to be unavailable to testify at

trial. The proposed amended language lowers the requirements to obtain a deposition to such a degree that it would very likely jeopardize the rights of non-parties who, furthermore, do not have attorneys to represent their interests.

Of particular concern is the elimination of the requirement that the witness must be material and that a failure of justice would result from not taking a deposition. The change would mean that the witness need not even be material if a judge believes there is a good reason for a deposition (for proponents of the change, this equates with refusing to have an interview recorded.) For states that do allow pretrial depositions of some kind, most include the language that the witness must be material and that a failure of justice would occur should the deposition not be taken. This language is critical to insuring that the imposition of a deposition does not violate the rights of private, non-party citizens.

Beyond the lowered standard required for ordering a deposition, the manner of recording or taking depositions is also of grave concern. The language proposes that depositions be allowed to be recorded via means other than a stenographer. It is self-evident from the multitude of audio and video recordings that the quality of these recordings often lack consistency and many words and whole phrases can be inaudible. As a deposition is testimony and can be used at trial, it is critical and in the best interests of both parties and the witness that every word be accurately recorded.

We appreciate you taking our concerns into consideration and we urge you to reject the proposed changes to Criminal Court Rule 4.6.

	Name	From	Comments
1.	bharathi Amma	Skln, India	
2.	Shayna Burmeister	Olympia, WA	
3.	Rose Torgerson	Tumwater, WA	
4.	Graca Tilson	St Albans, United Kingdom	
5.	Karla Salp	Tenino, WA	
6.	michael earley	Belfast, United Kingdom	
7.	Evelyn Mero	Cheboygan, MI	
8.	Duane Baker	Powell, OH	
9.	Nikki Watkins	kelso, WA	
10.	Stanley Phillips	Olympia, WA	Proposed CrR 4.6 is yet another attempt to circumvent the Court's decision denying the adoption of CrR 4.11 and forcing victims and witnesses against their will to be audio <i>(continues on next page)</i>

	Name	From	Comments
10.	Stanley Phillips	Olympia, WA	(continued from previous page) recorded. Victim Advocates stand united against this continuing assault on victim rights and ask you to do the same.
11.	Cydne Cochran	Entiat, WA	
12.	Michael Kirkby	Toronto, Canada	
13.	Susan Hinger	Okanogan, WA	
14.	Linda Owen	Nampa, ID	
15.	Lew Cox	Tacoma, WA	
16.	Laur Gravell	Ocean View, DE	
17.	Yonks Care	--, Hong Kong	
18.	Nancy Black	St Charles, MO	
19.	Marilynn LaBerge	Port Orchard, WA	
20.	Deb Kobres	North Fort Myers, FL	Adoption of this rule would only serve as a way for defendants to harass victims who are often already scared to testify. Washington should follow the federal rules.
21.	Zee Kallah	Phoenix, AZ	
22.	Joseph Derrig	Seattle, WA	
23.	Sue Harrington	Piedmont, CA	
24.	Christine Col	Maple Ridge, Canada	
25.	Linda Rich	North Vancouver, Canada	
26.	Ashley Nickelson	Broken Arrow, OK	
27.	Vicynthia Tjahjadi	Bandung, Indonesia	
28.	Ellen McCabe	Seattle, WA	
29.	Milena K	Serbia, Serbia And Montenegro	
30.	sarah smith	1, United Kingdom	
31.	LM Sunshine	Tucson, AZ	
32.	jennifer curtis	Moss Point, MS	
33.	Joan Mcallister	Vancouver, Canada	
34.	Dragan Dan	Constanta,mi hail Kogalniceanu, Romania	
35.	Roger Lee Kegley	Abingdon, MD	
36.	Ed Vieira	Staten Island, NY	
37.	Anita Ketel	Uden, Netherlands	
38.	Evan Roman	San Diego, CA	
39.	Teresa Cowley	Kingsville, TX	

	Name	From	Comments
40.	Bill C	Kempton, Germany	
41.	Donna Hamilton	Great Yarmouth, United Kingdom	
42.	Carole Sarcinello	Greeneville, TN	
43.	Tina Carmona	Pasco, WA	
44.	Kaia Scott	Arlington, WA	
45.	Leah Godfrey	Ephrata, WA	
46.	Mary Schoenfelder	Port Townsend, WA	Help keep witnesses from being revictimized and help keep them safe.
47.	Annette Ingham	Spokane, WA	
48.	N LaMusga	Olympia, WA	Please end the retraumatization of victims/survivors of violence and allow the healing process to happen.
49.	Anna Rosentrater	Everett, WA	
50.	Renee Kollman	Everett, WA	Victims need to have rights. Every time we turn around, Defendants have more rights, and victims rights seem to be challenged. Victims should not have be deposed unless it is a criminal case, and only when absolutely necessary.
51.	Diane Crim	Okanogan, WA	
52.	Claudia Ioannidou	Pafos, Cyprus	
53.	Kay Brick	Redmond, WA	Protect victims & witnesses from harassment
54.	Christina Ruchert	Walla Walla, WA	
55.	Rachelle Jager	Republic, WA	
56.	Heidi Wehde	spokane, WA	I strongly support victim and witness rights and oppose rule 4.6
57.	Glenda Freel	Omak, WA	
58.	Ed Laurson	Denver, CO	
59.	mindy johnston	Vancouver, WA	
60.	Pam Boland	Grovetown, GA	
61.	Holly Bachman	Bechtelsville, PA	
62.	Elizabeth Derrig	Everett, WA	
63.	John Juhl	Everett, WA	The proposed rule change erodes both the integrity of the current deposition rule and rights of the witness. In addition to infringing on the rights of the witness, treating depositions as pre-trial interviews will greatly increase both the time and the cost of prosecuting and defending criminal cases.
64.	Elzbieta Gotkowska	Lodz, Poland	
65.	Debby Warner	Selah, WA	
66.	Erin Carden	Spokane, WA	

	Name	From	Comments
67.	Molly Lynch	OLYMPIA, WA	I am the victim of a violent crime which has changed my life forever. I am so grateful for the crime victim advocates who supported and kept me safe when I was so vulnerable. God bless them. Victim rights should be stronger than the rights of the criminals which is stark contrast to the reality of the system. Thanks to all of you.
68.	Bette Lackmanblakedweller@yahoo	Angeles, WA	
69.	Adam Lynch	OLYMPIA, WA	
70.	Maureen Day	Rochester, WA	
71.	WA coalition of sexual as WCSAP	Olympia, WA	A pre-trial interview should be enough - adding a requirement subjecting the victim to a deposition will only discourage victims from coming forward and will hamper the ability of prosecutors to try these cases.
72.	Joan Cavagnaro	Everett, WA	
73.	Connie Jackson	Kettle Falls, WA	
74.	Michelle Hull	Bellingham, WA	
75.	John Troberg	Sequim, WA	This rule will be used as another tool by the criminal to subject the victim/witness to further harassment and abuse!
76.	Mary Ann Brady	Spokane, WA	
77.	Dana Little	Everett, WA	
78.	Anna Oos	Stanwood, WA	
79.	Kathy Jo Blake	Everett, WA	
80.	Karen Himes	Mount Vernon, WA	
81.	John Hillman	Brier, WA	
82.	Carmen Grodzki	Bingen, WA	
83.	Connie Crawley	Everett, WA	
84.	Martin Rollins	Everett, WA	
85.	Linda Olsen	Olympia, WA	
86.	John Grasso	Spokane, WA	
87.	Kim Foley	EAST SELAH, WA	
88.	Mark Laiminger	Spokane, WA	
89.	keri wallace	Everett, WA	
90.	Steven Kinn	Spokane, WA	
91.	jennifer sciarrino	COTTAGE LAKE, WA	
92.	April King	Dayton, WA	

	Name	From	Comments
93.	Kathy Owens	Spokane, WA	As a victim, why are my Constitutional Rights less important than the person who actually committed a crime? The defendant already has the right to confront the witnesses/victim in court. Why should I be re-victimized by having a recorded statement played over and over and over again? Why is a defendant's rights any more sacred than my rights? A defendant has more protections-the person who actually committed the crime and was seen committing the crime, has more rights than the LAW ABIDING CITIZEN WHO HAS NO CRIMINAL RECORD. Why does the victim have to be re-victimized by being forced to give a deposition (which is recorded on paper) when they don't want to have their interview recorded (on a tape). What is the difference? Do NOT fall into the defendants illusions where they claim to be the victim just because they were caught!
94.	Lory Miller	Spokane, WA	Victims and witnesses should retain the right to object to having their interview recorded. Please DO NOT allow this change to the criminal court rule.
95.	Lisa Larrabee	Ellensburg, WA	please protect the rights of victims of violence and keep their integrity.
96.	Shelly David	Auburn, WA	
97.	Kim Kremer	Pasco, WA	Victims and witnesses have the right to refuse to have their interviews recorded. That right should remain in place.
98.	Charles Blackman	Everett, WA	I am a deputy prosecuting attorney for Snohomish County, Wash'n, and oppose this change.
99.	William Dickinson	Cle Elum, WA	It seems to me that this proposed rule would allow witnesses and victims to be examined by attorneys in private, rather than under the public scrutiny of a courtroom, under the auspices and control of a judge, and in the presence of attorneys from both sides. Anything else is to allow badgering and/or influencing of victims and witnesses.
100.	Stephen Garvin	Spokane, WA	This appears to be another effort to harass crime victims by creating more procedural barriers to effective prosecution. A victim should not have to "jump through hoops" to see a case be prosecuted, they did not ask or seek to be victimized.
101.	Terry Bloor	Kennewick, WA	This proposed rule has been proposed (in one version or another) several times by the Bar Association. Repeatedly it has been opposed by the victim advocacy community. We are the only voice victims have. You, the Supreme seem to be the only entity listening and I urge you to deny this rule change again.
102.	Kathryn Meyers	Seattle, WA	
103.	Ellen Hanegan-Cruse	Olympia, WA	

	Name	From	Comments
104.	Miriam Cuevas	Kelso, WA	Please give our crime victims a chance! They have been put through so much already! Help the victim!
105.	pamela cameron	sequim, WA	
106.	William Wakefield	Sultan, WA	
107.	Evangeline Simmons	Seattle, WA	
108.	Jeri Costa	Marysville, WA	There is no reason to change the court rule. Courts do not have jurisdiction over non-defendants; only the ability to compel witnesses to testify in court. Defendants are not entitled to have witnesses deposed just because they want to intimidate them. Do not allow this far reaching change in the court rules.
109.	Teresa Guajardo	Olympia, WA	
110.	Deborah Moroz	Bonney Lake, WA	
111.	Monika Grupp	Bonney Lake, WA	
112.	Teresa Cox	Everett, WA	As a mental health therapist who specializes in treating victims of crime, this rule change could add to the trauma they experience.
113.	cecelia williams	Suquamish, WA	
114.	Bridget McLeman	Vancouver, WA	
115.	Marybeth Markham	Cheney, WA	We work with victims of crimes including sexual abuse. It is hard enough for victims to be ready to tell their story without the additional intimidation of an even more challenging court process. Please do not change the criminal court rules.
116.	Leonard Jenkins	Spokane, WA	
117.	Rosanna Herrera	Kennewick, WA	
118.	Shannon Monahan	Oak Harbor, WA	
119.	Mark Kloehn	Spokane, WA	
120.	Kari Hill	Vancouver, WA	
121.	Marvin Eckfeldt	Kent, WA	
122.	Lou Ann Carter	Arlington, WA	
123.	Seth Kirby	Tacoma, WA	