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Washington Supreme Court
RE: 2018 WACDL Proposed Rule Changes – CrR 3.7, 3.8, 3.9, 4.7, and 4.11

Your honors,

I write in support of the proposed changes to the Washington State Criminal Court Rules. I have practiced in criminal defense since 2001, and in that time I have seen occasional injustices creep into our system despite the best efforts of all parties. The pearl clutching and doomsday prognostications of some of the comments in opposition to these rule changes do not accurately reflect the current state of technology, nor do they reflect the spirit of our justice system that enshrines the rights of the accused.

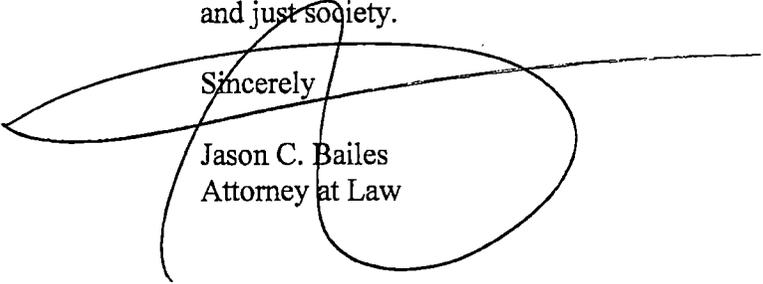
Digital recordings of interactions between the police and the accused are no longer prohibitively expensive. The ubiquitousness of digital cameras and the advent of cheap and abundant cloud storage means that “not having the technology” is a poor excuse for maintaining an anachronistic system of handwritten notes that are subsequently typed into an Electronic Police Report system, subject to the memory and conscious or unconscious bias of the investigating officers.

Defense investigations in criminal cases are occasionally hampered by recalcitrant witnesses, both lay and law enforcement, who for no reason besides stubbornness do not wish to have their interviews recorded. Court ordered deposition is currently available as a remedy, but this increases the time and cost of an investigation that could otherwise be remedied by a simple pocket digital recorder and a transcript.

Without rehashing the bounty of studies that implicate significant error in eyewitness identifications, the simple way of ensuring that these identifications are made in an accurate and uncoached manner is to record that identification process and make sure that it happens well outside the court proceedings. The notion that it is “impractical” for the police to set up a line up, or that in some way it would “intimidate” witnesses is baseless musing. Further, making these identifications more reliable should result in fewer miscarriages of justice, and help to streamline appeals that would otherwise have resulted from these errors.

Making the justice system more should be the job of all officers of the court. Despite the growing pains that may result from altering the status quo, ultimately we will see better results if we make the court rules more reflective of our common goal of a free and just society.

Sincerely



Jason C. Bailes
Attorney at Law

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 16, 2019 2:21 PM
To: Tracy, Mary
Subject: FW: comments on 2018 WACDL proposed rules CrR 3.7, 3.8, 3.9, 4.7, 4.11
Attachments: rulecomments.pdf

From: Jason Bailes [mailto:jason@clarkcountydefense.com]
Sent: Tuesday, April 16, 2019 2:21 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: comments on 2018 WACDL proposed rules CrR 3.7, 3.8, 3.9, 4.7, 4.11

Please see the attached letter of comment on the above referenced proposed rule changes.

Thank you.
-jason bailes