

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, August 20, 2018 11:58 AM
To: Tracy, Mary
Subject: FW: Comment on proposed rules CrR 4.11 and CrRLJ 4.11
Attachments: CrRLJ 4.11-suggested.pdf; CrR 4.11-suggested.pdf

From: Terry Bloor [mailto:Terry.Bloor@co.benton.wa.us]
Sent: Monday, August 20, 2018 11:57 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on proposed rules CrR 4.11 and CrRLJ 4.11

The purpose of the proposed rule is “to improve the reliability of evidence by permitting the recording of pretrial interviews thereby creating a more accurate record of the interview.” That is not the purpose of the proposed rule. The defense already can audio record a witness’s interview and the witness may refuse to be recorded. The proposed rule doesn’t change that.

The only change is that the proposed rule provides that if a witness refuses to be recorded, and there is a dispute regarding any statement made, “the jury should be instructed to examine the statement carefully in the light of any reasons for the refusal and other circumstances relevant to that witness’s testimony, including, but not limited to, bias and motive.” With all due respect to WACDL, they do not want a more accurate record of the interview, they want to have a jury instruction saying that the testimony of a witness who refuses to be recorded in a pre-trial interview should be viewed with care and a jury should examine the witness’s bias and motive.

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1 **SUGGESTED NEW CRIMINAL RULE CrRLJ 4.11**

2 **CrRLJ 4.11 RECORDING WITNESS INTERVIEWS**

3 (a) Recording of Witness Interviews. Counsel for any party, or an employee or
4 agent of counsel's office, may conduct witness interviews by openly using an audio
5 recording device or other means of verbatim audio recording, including a court reporter.
6 Such interviews are subject to the court's regulation of discovery under CrRLJ 4.7(g). Any
7 disputes about an interview or manner of recording shall be resolved in accordance with
8 CrRLJ 4.6(b) and (c) and CrRLJ 4.7(g). This rule shall not affect any other legal rights of
9 witnesses.

10 (b) Providing Copies. Copies of recordings and transcripts, if made, shall be
11 provided to all other parties in accordance with the requirements of CrRLJ 4.7. If an
12 interview is recorded by a court reporter, and is discoverable under CrRLJ 4.7, any party or
13 the witness may order a transcript thereof at the party's or witness's expense.
14 Dissemination of audio recordings or transcripts of witness interviews obtained under this
15 rule is prohibited except where required to satisfy the discovery obligations of CrRLJ 4.7,
16 pursuant to court order after a showing of good cause relating solely to the criminal case at
17 issue, or as reasonably necessary to conduct a party's case.

18 (c) Preliminary Statement. At the commencement of any recorded witness
19 interview, the person conducting the interview shall confirm on the audiotape or recording
20 that the witness has been provided the following information: (1) the name, address, and
21 telephone number of the person conducting the interview; (2) the identity of the party
22 represented by the person conducting the interview; and (3) that the witness may obtain a
23 copy of the recording and transcript, if made.

24 (d) Witness Consent. A witness may refuse to be recorded. In the event that a
25 witness refuses to be recorded, and there is a dispute regarding any statement made by the

1 witness, the jury should be instructed to examine the statement carefully in the light of any
2 reasons for the refusal and other circumstances relevant to that witness's testimony,
3 including, but not limited to, bias and motive.
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1 **SUGGESTED NEW CRIMINAL RULE CrR 4.11**

2 **CrR 4.11 RECORDING WITNESS INTERVIEWS**

3 **(a) Recording of Witness Interviews.** Counsel for any party, or an employee or
4 agent of counsel's office, may conduct witness interviews by openly using an audio
5 recording device or other means of verbatim audio recording, including a court reporter.
6 Such interviews are subject to the court's regulation of discovery under CrR 4.7(h). Any
7 disputes about an interview or manner of recording shall be resolved in accordance with
8 CrR 4.6(b) and (c) and CrR 4.7(h). This rule shall not affect any other legal rights of
9 witnesses.

10 **(b) Providing Copies.** Copies of recordings and transcripts, if made, shall be
11 provided to all other parties in accordance with the requirements of CrR 4.7. If an
12 interview is recorded by a court reporter, and is discoverable under CrR 4.7, any party or
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