

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, April 24, 2019 4:03 PM
To: Tracy, Mary
Subject: FW: comments re proposed court rule 4.11

From: Taylor, Karissa [mailto:Karissa.Taylor@kingcounty.gov]
Sent: Wednesday, April 24, 2019 3:47 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: comments re proposed court rule 4.11

Re proposed court rule 4.11 and recording witness interviews:

The people of this State intend that victims and witnesses in criminal cases be "treated with dignity, respect, courtesy, and sensitivity; and that the rights extended in this chapter to victims, survivors of victims, and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants." RCW 7.69.010. This proposed rule effectively allows attorneys to mislead or intimidate witnesses who are reluctant to be recorded, which is inconsistent with this most basic principle of justice.

Because the rule coerces victims and witnesses to agree to recording, it violates Article I, Section 35 of the Washington Constitution which requires that crime victims be afforded due dignity and respect.

The proposed rule coerces the witness to agree to recording, by failing to inform them of the right to refuse and by punishing refusal. It is likely to result in some witnesses refusing to further cooperate with prosecution, defeating the interests of justice and reducing community safety. The rule does not address the necessity to obtain consent to recording by all others present.

The rule invites a court to craft a jury instruction "to examine the statement carefully," inviting a comment on the credibility of a particular witness without giving any real direction to the trial court. Judicial comments on the evidence are unconstitutional in Washington.

It is inappropriate to use a person's right to refuse to be recorded against them. It is inappropriate for a jury in a criminal case to be directed to determine the legitimacy of a person's refusal to be recorded, which is that person's right.

Karissa Taylor