

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 30, 2019 9:24 AM
To: Tracy, Mary
Subject: FW: CrRLJ 4.11 and CrR 4.11 Recording Witness Interviews

From: Brandes, Ramona [mailto:Ramona.Brandes@kingcounty.gov]
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To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: CrRLJ 4.11 and CrR 4.11 Recording Witness Interviews

I urge you to adopt proposed CrR and CrRLJ criminal rule 4.11. This rule will ensure fundamental fairness in the criminal justice process by providing all parties with a method for accurately documenting witness statements. Accurate documentation of statements is already mandated by the discovery process in civil cases wherein depositions are conducted on all witnesses. It is far past time that cases involving the loss of freedom receive the same procedural protections as cases involving the loss of money. Implementing 4.11 will not only result in a more effective and economical discovery process, but it will enhance and support the truth-finding function of the court.

Accurate documentation of witness statements is essential to the integrity of the investigative phase of a criminal case, and such accuracy is expected by savvy jurors in the age of technology. We should expect it as well. The absence of the ability to document witness interviews verbatim merely frustrates the fact-finder's ability to ascertain truth from fiction. Further, it erodes public confidence that the system is fair and will deliver justice.

Prosecutor's complaints that allowing a party to record witness interviews violates the privacy act are completely fallacious. . Prosecutors routinely video-record their interviews of the most vulnerable witnesses without any concern for the wishes of the child. For a conversation to be considered private and protected by RCW 9.73.040, the conversation has to be intended to be private conversation. Under no analysis can an interview with counsel and/or investigator for the purpose of preparing a publicly open criminal case be considered a conversation that is intended to be private. Generally speaking, a person who doesn't want their interview recorded is a person who wants to be able to claim that the opposing counsel took something out of context, or wants to avoid being challenged on their claims in the future—and the worst offenders are police officers. It's exceedingly uncommon for a private citizen to decline recording even currently, but quite common for police officers to do so. Defense counsel have far too long been the brunt of these types of diversion tactics designed to distract from the actual facts of a case. We want the record to be clear and we look to this court to provide an avenue for such by the passage of 4.11.

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