

No. 73815-1-I

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WASHINGTON STATE COURT OF APPEALS  
DIVISION I

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KING COUNTY et al, RESPONDENTS

v.

DONNA ZINK, APPELLANT

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OPENING BRIEF OF APPELLANT DONNA ZINK

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## I. INTRODUCTION

The Washington Public Records Act (PRA), is a strongly worded mandate of the people demanding that members of the public be given **timely access to the “publics” records** in order for the people to remain in control over the instruments they created (RCW 42.56.030). Under the strongly worded mandate of the PRA all public agencies in Washington State must provide access to the public records owned, used, created or maintained by that specific public agency unless a specific explicit exemption applies to the requested records even if disclosure of the record causes embarrassment or inconvenience to others.

Although the Public Records Act (PRA) recognizes that government transparency can be restricted, under very limited circumstances (RCW 42.56.070(1); RCW 42.56.360), any limitations or exemptions must be very narrowly construed (RCW 42.56.030) and any “other statute” exemptions under RCW 42.56.070(1) apply only to those exemptions explicitly identified in that “other statute.”

The strict requirements of the PRA must not be ignored by our trial courts when determining whether any given record is exempt. Despite the strong language of the PRA, including that it is the controlling statute above all others, the King County Superior Court enjoined the release of any and all sex offender registration records and sentencing documents, without consideration

or application of RCW 42.56.540, based solely on the opinions of other trial court judges across the state, sex offender defense attorneys and treatment providers; the very people who have a stake in keeping the information and documents secret. This is error and an abuse of discretion.

In similar cases, King County Superior Court Cause #13-2-41107-5 SEA, consolidated with Cause #14-2-05984-1 SEA,<sup>1</sup> Zink appealed the declaratory judgment and order of the trial court enjoining both juvenile and adult registration records and information as exempt pursuant to RCW 4.24.550. In that case, just as in this one, the trial court declared RCW 4.24.550 to be an “other statute” exemption and the exclusive means of obtaining sex offender registration records and information. This cause of action was stayed pending the decision of our Supreme Court concerning RCW 4.24.550 as an “other statute” exemption.

On April 7, 2016, our Supreme Court entered a decision mandating that RCW 4.24.550 is not an “other statute” exemption, exempting registration records or information. *John Doe A v. Wash. State Patrol*, 185 Wn.2d 363 (2016) (*Doe v WSP*). The Supreme Court reversed the trial court’s decision and remanded the case back for the permanent injunction to be lifted and the

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<sup>1</sup> The parties listed as Plaintiffs in King County Cause #13-2-41107 SEA are “John Doe A, a **minor** by and through his legal guardians Richard Roe and Jane Roe; and John Doe B, a married man; as individuals and on behalf of others similarly situated.”

The parties listed as Plaintiffs in King County Cause #14-2-05984-1 SEA are “John Doe C, a **minor** by and through his legal guardians Richard Roe C and Jane Roe C; and John Doe D, a **minor** by and through his legal guardians Richard Roe D and Jane Roe D, John Doe E and John Doe F; as individuals and on behalf of others similarly situated.”

case dismissed. In rendering its decision, our Supreme Court made clear that our legislature did not want judges, any more than agencies, to be wielding broad and malleable exemptions (*Id.* ¶9-10). The Supreme Court's decision in *Doe v WSP* overturned all trial court decisions concerning sex offender registration records and information; including these consolidated causes of action currently before the court. As the Supreme Court has determined sex offender registration records and information is not exempt and must be released upon demand, this court should reverse the trial courts orders preventing the release of any and all registration records and remand back for the permanent, preliminary and temporary injunctions to be dismissed.

The only records still at issue in this appeal are the SSOSA evaluations previously determined to be sentencing documents by our Supreme Court and not exempt under the PRA. *Koenig v. Thurston County*, 175 Wn.2d 837, ¶31, 287 P.3d 523 (2012). Despite the decision and mandate of our Supreme Court, the King County Superior Court enjoined the release of the requested SSOSA evaluations claiming that the Supreme Court did not consider all exemptions and therefore the decision in *Koenig* is not binding on any future action claiming a different exemption.

This was error and an abuse of the courts discretion. Our Supreme Court has already determined that the SSOSA evaluations are sentencing documents used by a trial court in sentencing a sex offender and therefore available in the court record and in the prosecutor's office (RCW 9.94A.475 and .480). The

trial court's decision otherwise is an erroneous interpretation of the Public Records Act (PRA), case law and must be reversed.

Further, Zink is requesting this court to review the trial court's decision to allow Plaintiffs to file litigation in complete secrecy such that even the court does not know the true identity of the party of interest, cannot verify the accuracy of the "factual" evidence of need or even identify whether a true party of interest exists. CR 17(a) demands that every action in the court must be prosecuted in the name of the real party in interest. An affidavit filed under an assumed identity does not identify the "real party in interest" and is of no legal value. Without knowing the identity of a party the trial court has no way to verify the accuracy of the complaint, whether the person filing litigation has any actual interest in the case, and if the party filing the action has no true interest in the cause of action, the court has no jurisdiction to rule or declare anything.

Open administration of justice is a vital constitutional safeguard that may not be overridden to seal or redact court records except in the most unusual of circumstances. *Hundtofte v. Encarnación*, 181 Wn.2d 1, 330 P.3d 168 (2014). Here Respondents did not show a serious and imminent threat to a compelling interest that outweigh the public's interest in the open administration of justice. Respondents argued that each person has the right to a false identity and as long as the court has no knowledge of the identity of the individual filing complaint, summons and declarations, the records are not sealed. This is

not only contrary to well established court rules but it is also contrary to state statute Chapter 42.56 RCW (PRA) and a constitutional violation.

Zink, as a member of the general public and as an individual has right to know the party summoning her into court. Without that knowledge a trial court has no way to establish whether a party bringing action under RCW 42.56.540 has established they named in or the records specifically pertains to them. Simply saying that the person is named in the record is not good enough. The law requires that an affidavit be submitted as evidence. Furthermore, in a class action, the class representative must prove they actually are representative of the class they are assigned to represent. If the representative is totally unknown to the trial court, the court cannot assign that individual as class representative. Again, it is not enough for the party seeking to be a class representative to say they someone without verifiable evidence.

Although, as in Federal law, there are circumstances where a party is allowed to seal court records such that the parties name is unknown to the public, the party must still provide their name and apply court rules and established case law to determine whether the party has a right to secrecy in our judicial system. The entry of the Plaintiffs by the court clerk was error. The complaint and summons should have been rejected as deficient and Respondents should have been required to file motion and argue proper sealing of the court records in order to hide their identity. The trial court has not only committed error of law, the trial courts' decision that the court did

not need to know the identity of a litigant is a violation of our Washington State Constitution.

Finally, Zink requests this court to review the trial court's decision that a class action could be certified under the strongly worded PRA. RCW 42.56.540 specifically states that only a party named in the record or to whom the record pertains can initiate an action to enjoin the production of a public record. By allowing a class action to prevent the release of an entire group of records of a particular type regardless of whether the person named in the record has requested that record to be enjoined, the trial court is ignoring the language set forth by our legislature that the only person who can enjoin any particular record must be named in or a specific record must pertain to them. Trial courts interpret the law. By certifying a class of any and all persons named in a particular class of records, the trial court is creating a judicial exemption and violating the separation of powers doctrine.

## **II. ORDERS TO BE REVIEWED**

In cause #14-2-30190-1:

1. The November 20, 2014, order granting permission to proceed in pseudonym (CP 943-945)
2. The December 4, 2014, order certifying a class of Level I sex offenders (CP 959-963); and
3. The June 19, 2016, order permanently enjoining any and all Level I:
  - a) Registration records held anywhere in King County; including the sheriff's office;
  - b) A list or database of all registered sex offenders registered in King County; and
  - c) Special Sex Offender Sentencing Alternatives evaluations (CP 987-995).

In cause #14-2-32120-1;

1. The January 20, 2015, order on class action certification (CP 976-981);  
and
2. The January 20, 2015 preliminary injunction enjoining any and all Level II and III:
  - a) Registration records held anywhere in King County; including the sheriff's office;
  - b) A list or database of all registered sex offenders registered in King County; and
  - c) Special Sex Offender Sentencing Alternatives evaluations (CP 971-974).

Finally, Zink appeals the July 2, 2015, trial court order denying her motion for summary judgment dismissal in all three causes of action (CP 998).

Although John Doe 2 filed official court documents including the complaint and summons under a false name in secrecy, without permission of the court to do so in cause #14-2-32120-1 (see CR 4(b)(1)(i), 10(a), 17(a), CR 23 and RCW 42.56.540). This Court should order John Doe 2 to immediately resubmit all court documents filed in this action using his true name and true identity.

### III. ASSIGNMENTS OF ERROR

#### 1. Use of Pseudonym<sup>2</sup>

- a) The trial court erred and abused its discretion in finding that Plaintiffs may be allowed to proceed under a pseudonym if the need for anonymity outweighs the public interest in access to their identities (FOF 1) (CP 944).
- b) The trial court erred and abused its discretion in finding that Plaintiffs seek to exercise their right, under the Public Records Act (PRA) to enjoin

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<sup>2</sup> Findings of Fact (FOF), Conclusions of Law (COL).

release of personally identifying information which they contend is exempt from the PRA. Forcing Plaintiffs to disclose their identities to bring this action would eviscerate their ability to seek relief (FOF 2) (CP 944).

- c) The trial court erred and abused its discretion in finding that Plaintiffs have demonstrated a significant risk of physical, mental, economic, and emotional harm if their identities are disclosed. Plaintiffs also allege that the records at issue contain sensitive mental health information and that their privacy would be violated by disclosure of this information to the general public (FOF 3) (CP 944).
- d) The trial court erred and abused its discretion in finding that the public's right to know the proceedings will not be compromised apart from its ability to ascertain the names of the individual Plaintiffs. The names of individual Plaintiffs have little bearing on the public interest in the dispute or its result (FOF 4) (CP 944).
- e) The trial court erred and abused its discretion in finding that defendant will not be prejudiced if Plaintiffs proceed in pseudonym (FOF 5) (CP 944).
- f) The trial court erred and abused its discretion in finding that Plaintiffs' interest in proceeding anonymously outweighs the public interest in knowing their names (FOF 6) (CP 944).
- g) The trial court erred and abused its discretion in finding that permitting Plaintiffs to proceed in pseudonym is the least restrictive means to protect their interests. No other reasonable alternative exists (FOF 7) (CP 944).
- h) The trial court erred and abused its discretion in ordering that Plaintiffs be allowed to proceed in pseudonym throughout the pendency of this action (Order) (CP 944).

## **2. Class Action Certification**

- a) The trial court erred and abused its discretion when it certified a class of Level I sex offenders who are named in registration forms, a registration database, or SSOSA evaluations in the possession of King county who are either compliant with the conditions of registration or have been relieved of the duty to register (CP 960).
- b) The trial court erred and abused its discretion when it certified a class of Level II and III sex offenders who submitted registration forms that were or are in the possession of King county on or after the date of the public records request in order to exempt public records (CP 977-978).

- c) The trial court erred and abused its discretion when it certified a class of Level II and III sex offenders who underwent psychosexual mental health evaluations that were or are in the possession of King County on or after the date of the public records request in order to exempt public records (CP 978).
- d) The trial court erred and abused its discretion in finding that Plaintiffs' Doe A, Doe B and Doe J are either juveniles, successfully completed treatment or has been relieved of the duty to register and who under when "psychosexual evaluations" by certified mental health professionals in order to establish eligibility for a community-based alternative for treating sex offenders, the Special Sex Offender Sentencing Alternative (SSOSA) are registered with King County as Level II and III sex offenders (FOF and COL 1) (CP 960).
- e) The trial court erred and abused its discretion in finding that Zink requested "psychosexual evaluation possessed by King County (FOF 2) (CP 978).
- f) The trial court erred and abused its discretion when it entered findings that the normal civil rules apply to injunctive actions under the Public Records Act, and, accordingly, the Court may certify a Class in this action if the requirements of Civil Rules 23 are met (FOF 3)(CP 961).
- g) The trial court erred and abused its discretion in finding that Plaintiff John Doe 2 is a registered sex offender classified at risk Level III, completed a registration form in the possession of King County and has completed numerous "psychosexual evaluations" and some of those are in King County's possession (FOF 3) (CP 978).
- h) The trial court erred and abused its discretion in finding that the proposed class numbers in the hundreds and individuals are dispersed throughout King County and potentially throughout Washington and beyond there are those who have not been notified of the request at issue (FOF 4) (CP 961).
- i) The trial court erred and abused its discretion in finding that the proposed class is so numerous that joinder of all members is impracticable (FOF 4) (CP 978).
- j) The trial court erred and abused its discretion in finding that the proposed class is so numerous that joinder of all members is impracticable (FOF 5) (CP 961).
- k) The trial court erred and abused its discretion in finding that hundreds of individuals have undergone "psychosexual evaluations" during the relevant time period and a significant portion of those individuals are likely to be Level II and III offenders and the proposed Mental Health

Records Class in this case numbers in the hundreds or perhaps thousands (FOF 5) (CP 978).

- l) The trial court erred and abused its discretion in finding that the registration class is likely to number in the hundreds or thousands (FOF 6) (CP 979).
- m) The trial court erred and abused its discretion in finding that some of the individuals in the proposed classes are likely to be homeless and difficult to reach (FOF 7) (CP 979).
- n) The trial court erred and abused its discretion in finding that there are numerous question of law and fact in common in the class of Level I sex offenders (FOF 5) (CP 961).
- o) The trial court erred and abused its discretion in finding that there are numerous question of law and fact in common in the class (FOF 8) (CP 979).
- p) The trial court erred and abused its discretion in appointing John Doe A, John Doe B and John Doe J as Class Representatives and that any of the members of the class of Level I offenders would suffer any actual harm such as stigmatization, potential harassment and physical harm, anxiety and loss of economic opportunity (FOF 6) (CP 962).
- q) The trial court erred and abused its discretion in finding that Plaintiffs and their counsel will fairly and adequately protect the interest of the Class and the individual Plaintiffs have no interests adverse to or conflicting with the members of the Class or subclass (FOF 7) (CP 962).
- r) The trial court erred and abused its discretion in finding that Certification is appropriate because Defendant has acted or refused to act or failed to perform a legal duty on grounds generally applicable to the Class and final injunctive or declaratory relief will be appropriate with respect to the Class as a whole (FOF 8) (CP 962).
- s) The trial court erred and abused its discretion in ordering the class to be defined as “[a]ll individuals named in registration forms, a registration database, or SSOSA evaluation in the possession of King County and classified as sex offenders at Risk Level I, who are either compliant with the conditions of registration or have been relieved of the duty to register (Order 9) (CP 979).
- t) The trial court erred and abused its discretion in ordering that the class be defined as “[a]ll individuals classified as sex offenders at Risk Level II or Risk Level III who submitted sex offender registration forms that were or are in the possession of King County on or after the date of the public records request” (Order 12) (CP 980).

- u) The trial court erred and abused its discretion in ordering that the class be defined as “[a]ll individuals classified as sex offenders at Risk Level II or Risk Level III who underwent psychosexual mental health evaluations that were or are in the possession of King County on or after the date of the public records request” (Order 12) (CP 980).
- v) The trial court erred and abused its discretion in appointing John Doe A, John Doe B and John Doe J as Class Representative (Order 10) (CP 962).
- w) The trial court erred and abused its discretion in appointing Enslow Martin PLLC and the American Civil Liberties Union of Washington Foundation to serve as Class Counsel (Order 11) (CP 962).
- x) The trial court erred and abused its discretion in appointing John Doe 2 as Class Representative (Order 13) (CP 980).
- y) The trial court erred and abused its discretion in appointing Harry Williams IV and Amy Muth to serve as Class Counsel (Order 14) (CP 980).

### **3. Preliminary Injunction**

- a) The trial court erred and abused its discretion in finding that Plaintiffs and class have a clear legal and equitable right to enjoin registration information and that the public has no interest in these records (FOF 1) (CP 971).
- b) The trial court erred and abused its discretion in finding that Plaintiffs and class have a clear legal and equitable right to enjoin SSOSA evaluations and that the public has no interest in these records (FOF 2) (CP 973).
- c) The trial court erred and abused its discretion in finding that Plaintiff and the class have a well-grounded fear of immediate invasion of their rights and injunctive relief is rendered meaningless if a temporary injunction is not issued (FOF 3) (CP 973).
- d) The trial court erred and abused its discretion in finding that Plaintiffs and the class have shown the anticipated release would result in substantial and irreparable injury (FOF 4) (CP 973).
- e) The trial court erred and abused its discretion in ordering preliminary injunction enjoining from disclosure any and all sex offender registration forms for Level II and Level III sex offenders except as allowed following the procedures mandated by RCW 4.24.550 that (Orders) (CP 973).
- f) The trial court erred and abused its discretion in ordering King County to not release any psychosexual evaluation to Zink during the pendency of

the court's order which remains effective until the court rules on the merits of Plaintiff's claims (Order) (CP 973).

**4. Permanent Injunction**

- a. The trial court erred in finding John Doe A, B, and J are Level I sex offenders reside in King County who are compliant with all registration requirements at all times and are named in the requested records (FOF 4) (CP 989).
- b. The trial court erred in certifying a class of Level I sex offenders in order to permanently enjoin public records (FOF 12) (CP 990).
- c. The trial court erred in finding Class members are level I sex offenders named in sex offender registration forms and SSOSAs and as such the requested records specifically pertain to them (FOF14) (CP 990)
- d. The trial court erred in finding Plaintiffs submitted credible detailed declarations attesting to the harm caused by public disclosure of the requested records as compelling evidence of the irreparable harm that will result from blanket or generalized disclosure of the requested records (FOF15) (CP 990-991).
- e. The trial court erred in finding the declarations from "experts" attest to the actual harm disclosure of the records would cause are credible evidence or that the public interest is in maintaining confidentiality of sex offenders (FOF16) (CP 991).
- f. The trial court erred in finding SSOSA evaluations are mental health records (FOF 17) (CP 991).
- g. The trial court erred in finding that the evidence submitted shows blanket disclosure of sex offender records cause sex offenders to face mental or emotional damage associated with the stigma of disclosure, physical violence, difficulty in finding employment or housing as well as the victims and families facing harassment and criticism (FOF 18) (CP 991).
- h. The trial court erred in finding that blanket release of the records of Class members would make it more difficult for Level I offenders to safely integrate into their communities and might deter individuals from seeking treatment or providing sensitive information for effective treatment; undermining the legislature's purpose in creating the SSOSA and jeopardize the success of those who receive SSOSAs (FOF 19 )(CP 991).
- i. The trial court erred in finding the targeted disclosure of sex offender registration information dilutes the efficacy of disclosures related to individuals who pose a risk to the community and undermines the carefully

crafted legislative scheme differentiating between risk levels (FOF 20) (CP 991).

- j. The trial court erred in concluding that RCW 4.24.550 is an “other statute which prohibits disclosure of sex offender registration records and sets for a comprehensive scheme for what information is to be provided regarding sex offenders, to whom the information is provided, and under what circumstances the information is to be provided (COL 24) (CP 992).
- k. The trial court erred in concluding that RCW 4.24.550 clearly sets forth a legislative intention to limit release or disclosure of sex offender information to the general public and based on *State v. Ward*, 123 Wn.2d 488, 870 P.2d 295 (1994) the Supreme Court relied specifically on these legislative limits as a basis for upholding the constitutionality of the sex offender registration statutes (COL 25) (CP 992).
- l. The trial court erred in concluding the Legislature exempted Level I sex offenders who are compliant with registration requirements from blanket disclosure (COL 26) (CP 992).
- m. The trial court erred in concluding sex offender records are exempt from blanket disclosure because they do not fall into the permissive disclosure provisions of RCW 4.24.550 and the agency can only disclose relevant, necessary and accurate information of Level I offenders under certain specified circumstances (COL 27) (CP 992-993).
- n. The trial court erred in concluding that Zink’s PRA requests categorically do not fall within any of the specified permitted disclosures of sex offender information RCW 4.24.550(3)(a) (COL 28) (CP 993).
- o. The trial court erred in concluding Chapter 70.02 RCW is an “other statute” exempting the disclosure of SSOSA evaluations under the PRA and that SSOSA evaluations are health care records, specifically records of specialized mental health treatment (COL 29) (CP 993).
- p. The trial court erred in concluding that the SSOSA evaluations are confidential under Chapter 70.02 RCW (COL 30) (CP 993).
- q. The trial court erred in concluding that none of the permitted disclosures for mental health care records in Chapter 70.02 RCW allow for blanket disclosure to a general member of the public with no relationship to the patients, like Ms. Zink vis-à-vis the Level I Plaintiff (COL 31) (CP 993).
- r. The trial court erred in concluding that generalized or “blanket” disclosure of the requested records, without reference to the exemption at RCW 4.24.550 or Chapter 70.02 RCW would substantially and irreparably harm the Class as sex offenders who, if identified by public disclosure, face an increase in physical violence, stigmatization, mental and emotional distress,

loss of economic opportunity, increased difficulty finding employment, housing and their families and victims face harassment and ostracism (COL 32) (CP 993).

- s. The trial court erred in concluding that generalized release of records and sex offender information of Class members makes it more difficult for them to safely integrate into their communities (COL 33) (CP 993).
- t. The trial court erred in concluding that “Blanket” or generalized disclosure of sex offender records is not in the public interest, our legislature carefully created a statute that ties the level of public disclosure to the level of risk posed by an individual offender and our legislature clearly intended to limit disclosure of sex offender information to the general public to those circumstances presenting a threat to public safety (COL 34) (CP 994).
- u. The trial court erred in concluding that “Blanket” or generalized disclosure of the names, exact residential addresses and other information related to Level I offenders would not advance public safety or governmental interest and will undermine the efficacy of the current system of targeted disclosure (COL 35) (CP 994).
- v. The trial court erred in concluding the members of the Class have a clear legal and equitable right to enjoin the release of exempt records to the general public and a clear, legal and equitable right to have King County recognize the exemption contained in the statute (COL 36) (CP 994).
- w. The trial court erred in concluding that members of the Class have a well-grounded fear of immediate invasion of that right (COL 37) (CP 994).
- x. The trial court erred in concluding that Plaintiffs have shown that release of the requested records that name or specifically pertain to the members of the Classes would result in actual or substantial injury (COL 38) (CP 994).
- y. The trial court erred and abused its discretion in entering declaratory judgment exempting Level I sex offender registration records and SSOSA evaluations are exempt from disclosure under RCW 42.56.070 and 4.24.550 and that RCW 4.24.550 is the exclusive mechanism for obtaining sex offender records and information under the PRA (Order 1) (CP 994).
- z. The trial court erred and abused its discretion in entering declaratory judgment providing that level I sex offender SSOSA evaluations are exempt from disclosure under RCW 42.56.070 and Chapter 70.02 RCW and RCW 4.24.550 provides the exclusive mechanism for public disclosure of confidential medical information without the patient’s consent (Order 2) (CP 994-995).
- aa. The trial court erred and abused its discretion when it ordered that King county shall not produce the sex offender registration records (including

SSOSA evaluations) of Class members in response to Zink's requests for public records (whether pending or made during the duration of this litigation (including any appeals) absent evidence from Zink that she satisfies any of the particularized relationship requirements of RCW 4.24.550(3)(a) or Chapter 70.02 RCW (Order 3) (CP 995).

- bb. The trial court erred and abused its discretion when the court found Zink failed to demonstrate that she is entitled to Judgment as a matter of law and denied Zink's motion for Summary Judgment (CP 998).

#### **IV. STATEMENT OF THE CASE**

On October 1, 2014, Appellant, Zink, submitted a public record request to King County requesting all Special Sex Offender Sentencing Alternative evaluations in its possession. On October 10, 2014, Zink submitted a second request to King County for any and all sex offender registration forms as well as a list of all registered sex offenders registered in King County held anywhere in King County, including the sheriff's office. Zink clarified that a database of all sex offenders registered in King County would fulfill her request for a list. King County delayed the request claiming

On November 5, 2014, three completely anonymous and unknown parties, filed a class action lawsuit against Zink to prevent the release of the requested criminal records (CP 1-20), summoning Zink into this case of action using false identities (CP 18-20). All declarations filed in support of their complaint and motions to enjoin public records under RCW 42.56.540 and to be representatives of a class of Level I, II and III sex offenders were submitted under false names so that even the court does not know the names of the true parties of interest (CR 17(a)). Further, according to the on-line SCOMIS index, no motion for a restraining order was filed in the court.

On November 7, 2014, oral argument was heard by the Honorable Commissioner Nancy Bradburn-Johnson concerning the issuance of a restraining order to enjoin King County from releasing the requested records (CP 22-25). At the hearing King County Deputy Prosecuting Attorney, Howard Schneiderman, argued that King County was neutral and asked the court to issue an order preventing King County from releasing any sex offender records including level II and III offenders (RP (November 7, 2014) 2:22-3:11).<sup>3</sup>

MR. SCHNEIDERMAN: -- Our issue is that we think it's -- we agree that it's likely that the John Does will prevail and the Court will eventually rule that RCW 4.24 and 70.02 are other statutes that trump or govern the release of this information. What's not before you is a request to preserve the status quo for levels two and three offenders. That is an issue for us because, given the likelihood that the John Does will prevail, those statutes necessarily apply to levels two and three as well. So we would like the ruling to reflect that. Yes. We've entered --delineated language that states that, specifically, they're likely to prevail and get a ruling that those are other statutes that apply here. But they can't only apply to level ones.

THE COURT: In other words, it's all or nothing.

MR. SCHNEIDERMAN: It is. And we'd like the ruling to say that.

THE COURT: Okay.

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<sup>3</sup> The date of the hearings on the transcripts submitted by the transcriptionist state the date of the hearing was November 11, 2014. The actual date of the hearing according to the signed order and on-line SCOMIS index was November 7, 2014.

MS. PAK ENSLOW: And we have no objection to that, Your Honor.

THE COURT: You don't. Okay.

MR. SCHNEIDERMAN: And this is purely practical. As my clients struggle trying to figure out what to do with an unanswered, at least at the appellate level, legal question when faced on the one hand with the possibility of wrongfully withholding documents and then the taxpayers have to pay a daily fine versus a direction that the trial courts are taking on this issue.

(November 7, 2014) 2:22-3:11)(emphasis added).

MR. SCHNEIDERMAN: And in particular, Your Honor, 4.24.550 -- sets out a standard for all three levels for the release of information, differing requirements. It doesn't only apply to level ones.

THE COURT: Any person adjudicated or convicted under 9A.44.128, et cetera -- so here is the difficulty, I think, for the Court. Because the relief requested only deals with level one and I'm not being asked to make a determination about two and three, I think what we need to say is, I don't have any objection to putting in the language that you're asking, but I think what we need to make clear is that the ruling today only applies to level one because that's all the Court is being asked to do. Has she made a request for two and three?

MR. SCHNEIDERMAN: Yeah, every single sex offender.

THE COURT: Everybody, okay.

MR. SCHNEIDERMAN: Everybody, a massive, massive request.

(*Id.* 5:4-23)(emphasis added). The trial court discussed the fact that no Level II or III offenders had come forward requesting relief from Zink's request and

therefore the court could only provide the relief requested by the Level I, II and III sex offenders.

THE COURT: Yeah. I think well known for this, and the only reason, if I understand it correctly -- and I haven't read this particular motion, obviously, since it just came to me, but I've dealt with these -- My recollection of these prior -- we've had other motions with this -- is that level one is the least out to reoffend. They are the ones who often have jobs, living circumstances. And by releasing this information, it really is not serving the public. And it is in fact harming John Does, hence the comment about it likely that the motion will prevail. Two and three level, that's not necessarily the case. So that's why no one is in here at this point, I'm assuming, on level two and three expressing a concern. And I realize that, if they were here, we would be having probably a different argument, but level one, there's an easier argument here that it really is not critical to public safety. So I think we just need to say that, that at this time, two and three, levels two and three are not before this Court, that's not the motion, that the Court is aware that the statute arguably does apply to levels two -- statutes apply to all three levels, but the only ones we are being asked not to release information on is level one. Would that cure the issue for King County?

(*Id.* 5:24-6:25). King County agreed that the conviction records of Level II and III offenders was not before the court yet still requested the order to include Level II and III offenders so King County would not need to call an exemption.

MR. SCHNEIDERMAN: No, but what you're -- I agree with you totally, what's before you is not that issue. So I guess it's just we agree that, because of the way these cases are going so far on the trial court level, there's a good likelihood that they will prevail and

that the Court of Appeals will rule that these were other statutes. **That knowledge has to govern what we also do with twos and threes.** So while -- And that is the kind of statement I think the Court could make without a ruling directing us not to do something regarding -- twos and threes.

THE COURT: And do you agree?

MS. PAK ENSLOW: Your Honor, I believe that the order, as we've discussed it and amended it in handwriting, the one that you have, addresses the Court's issues. **So we added language in paragraph one that is broad and would arguably give the Defendants basis to withhold records for level two and level three offenders.** And I believe that the last paragraph of the order is expressly limited to level one sex offenders. So I believe that addresses the Court's issues. **I don't know if we have to expressly exclude the level two and level three.** And although I don't represent any level two or level three sex offenders, I think that the disclosure of their information would have similar harm to them because the information that Ms. Zink has requested is broader than the information that is available through RCW 4.24.550, for example, the exact address and photographs of the level two and level three offenders.

THE COURT: Okay. Okay. So you're both satisfied that the language that's been added in under paragraph number one is sufficient?

MR. SCHNEIDERMAN: I would prefer -- I like the language under paragraph one. I would like the final ruling to also say the same thing.

THE COURT: So I'm confused about what you mean, final ruling. This is just an interim ruling until you get to your next stage. So I just want to make sure we're talking about the same thing here.

MR. SCHNEIDERMAN: On the -- I understand. I would like the order to say the same thing without -- and obviously, I'm not

asking you to direct us to do or not do something with level twos, but I would like to add a sentence just before the date and signature line saying that the Court of Appeals is likely to rule that RCW, and then put in the statutes or other statutes that govern the release of sex offender information.

MS. PAK ENSLOW: No objection.

(*Id.* 7:1-9:6)(emphasis added). At the request of both the unknown Plaintiffs and Defendant, King County, without evidence of a true party of interest as required by RCW 42.56.540, CR 4(b)(1)(i), 10(a)(1), 17(a) and 23 and without a proper order to seal the records allowing for anonymity in our judicial system (GR 15; *Ishikawa*), the trial court issued a restraining order enjoining the records requested by Zink (CP 22-25).

On November 10, 2014, Does filed for preliminary injunction (CP 39-53). On November 11, 2014, the unknown Plaintiffs motioned the court to allow Does to file under pseudonym based on a federal case rather than on the Washington Constitution, GR 15 or the *Ishikawa Factors* (61-70) as well as motioned the court to allow these same unknown parties to be representative of a class of Level I sex offenders (CP 26-37).

On November 18, 2014, Zink filed a pro se notice of appearance (CP 72-73) and a response to Does' motion for preliminary injunction (CP 74-96), motion for class action certification (CP 97-112) and motion for use of pseudonym (CP 113-122). King County did not respond to any of the motions. On November 19, 2014, Does replied to Zink's objections to allowing unknown parties to file action against her without properly sealing the records according to the

Washington State rules (CP 123-127), Preliminary injunction (CP 128-134) and Class Action Certification (CP 135-140).

Does arguments centered around the fact that Zink was not prejudiced by being summoned into court by unknown Plaintiffs, without a preliminary injunction Does would be damaged by release of their criminal records and class action was appropriate to make sure all sex offenders benefitted from the decision. As evidence, the Does provided numerous rulings by other trial courts enjoined court record under RCW 7.40 and not RCW 42.56.540, allowing secrecy without the need for sealing pursuant to GR 15 and certifying various classes or sex offenders to enjoin the criminal records of all those convicted of sex offenses. Does also submitted “expert” declarations of defense attorneys and treatment providers stating that the records are exempt and must remain exempt in order to protect sex offenders.

On November 20, 2014, the Honorable Samuel Chung issued an order enjoining the requested records (CP 142-149), issued an order allowing Does to continue under a false identity (CP 150-152) and certified a class of Level I sex offenders to enjoin the requested records under RCW 42.56.540 (CP 154-158).

On November 25, 2014, Brandon Zimmerman filed for and received a temporary injunction preventing the release of his registration information and SSOSA evaluation in cause #14-2-31798-1 (CP 950-952). The temporary restraining order was renewed on December 9, 2014 (CP 965).

On December 1, 2014, John Doe 2 filed for and received a temporary restraining order in cause #14-2-32120-1, enjoining the registration records and

SSOSA evaluations of Level II and III sex offenders (CP 954-956). On December 8, 2014, King County motioned the court to consolidate all cases (CP 183-190). The request was granted on December 16, 2014 (CP 967-969). The Level I Does objected to consolidation since the two different classes consisted of different Levels of sex offenders with different qualifications pursuant to RCW 4.24.550 (CP 191-197). King County responded that consolidations was appropriate (CP 198-200). On December 18, 2014, the trial court consolidated the three causes of action (CP 201-203).

On January 3, 2015, Zink filed pro se notice of appearance (CP 204-205) and answer (CP 106-235). On January 8, 2015, the class of Level II and III sex offenders filed motion for preliminary injunction in cause #14-2-32120-1 (CP 236-251) and class action certification of a class of Level II and III sex offenders to be represented by Doe 2, a supposed Level III sex offender (CP 257-270). On January 14, 2015, Zink filed a response in opposition to preliminary injunction (CP 277-289) and class certification (CP 290-300; 301-346).

On January 15, 2015, Doe 2 filed a reply to Zinks objection to class certification (CP 347-354) as well as a reply to Zink's opposition to preliminary injunction (CP 355-363). On January 20, 2015, the Honorable Samuel S. Chung entered an order for preliminary injunction, enjoining Doe 2 as well as any and all Level II and III sex offender registration information, list of Level II and III sex offenders as well as the SSOSA valuation of Level II and III sex offenders

to Zink (CP 365-368) and an order granting class certification of all Level II and III sex offenders with John Doe 2 as the class representative (CP 369-374).

A schedule for Summary Judgment motions was set for June 19, 2015 (CP 375). On May 13, 2015, Doe 2 filed a motion to alter the summary judgment schedule (CP 375-378), Zink objected on May 19, 2015 (CP 383-388), Doe 2 filed a response on May 20, 2015 (CP 406-432) and the motion was granted by the court on May 29, 2015 (CP 643-644; 983-985). Doe 2 never filed for summary judgment or permanent injunction. Plaintiff Brandon Zimmerman did not file any motions after the initial TRO was ordered.

On May 22, 2015, the class of Level I sex offenders represented by the Parents of John Doe A, Richard Roe and Jane Roe as well as John Doe B and J, filed a Summary Judgement motion for permanent injunction of the requested records. (CP 433-457). Appellant Zink filed for Summary Judgement dismissal that same day (CP 526-616; 617;618-641).

On June 8, 2015, Zink filed declaration in opposition to permanent injunction of the requested records (CP 646-780; 781-795; 840-855). That same day, King County responded to Zink's Motion for Summary Judgement (CP 797-808) as well as Doe A (CP 803-827; 828). Replies were filed June 15, 2015 by Doe A (CP 857-864) and Zink (CP 866-878; 879-891; 892-902; 903-913).

On June 19, 2015, a declaratory judgment was entered in the King County Superior Court (CP 915-923) declaring:

- 1) All Level I sex offender registration records and SSOSA evaluations as exempt from disclosure under RCW 42.56.070 pursuant to RCW

- 4.24.550; the exclusive mechanism for public disclosure requests of sex offender registration records and information (CP 922-923);
- 2) All level I sex offender SSOSA evaluations are exempt under RCW 42.56.070 pursuant to Chapter 70.02 RCW and RCW 4.24.550 is the exclusive mechanism for public disclosure of confidential medical information with the patient's consent (CP 922-923); and
  - 3) Permanently enjoining King county from producing the sex offender registration records, including SSOSA evaluation, of the Level I class members whether pending, or made during the duration of this litigation including appeals, absent evidence from Zink that she satisfies any of the particularized relationship requirements of RCW 4.24.550(3) or Chapter 70.02 (CP 923).

The trial court also denied Zink's motion for Summary Judgment dismissal (CP 925). On July 28, 2015, Zink timely filed this appeal (CP 926-1054). It is from the decisions of the King County Superior Court that Zink requests review of.

### **5. History on Review**

After this appeal was filed, a motion to stay was submitted on December 31, 2015, while our Supreme Court made determination concerning RCW 4.24.550 and whether it was an "other statute" exemption controlling the release of sex offender records by our penal system. This case was stayed on January 26, 2016. On April 7, 2016, our Supreme Court made final determination in *Doe v. WSP*, 185 Wn.2d 363 (2016). The stay was lifted on May 25, 2016 and Zink requested on extension on time to file on June 24, 2016. RCW 4.24.550 was determined to not be an exemption under the PRA by our Supreme Court.

## V. ISSUES PRESENTED FOR REVIEW

### 1. Use of Pseudonym

- a. Is use of pseudonym sealing of court records whether the complaint and summons were redacted prior to filing in the Superior Court (CR 4(b)(1)(i), 10(a)(1) and 17(a); GR 15 and 31(c)(4))?
- b. Does allowing litigants initiating action to file court documents under a false name violation the Washington State Constitution?
- c. Can Plaintiffs to an action file complaint and summons without identifying the true party of interest, using a false identity?
- d. Can Plaintiffs to an action file all pleadings, memorandum and other court documents using a false identity such that the identity of Plaintiffs is not known to the court?
- e. Is use of pseudonym in place of the true name of the party sealing of court records and subject to the mandatory requirements of General Rule (GR) 15 and the *Ishikawa Factors*?
- f. Can a trial court make determination pursuant to RCW 42.56.540 that a party is actually named in or the record pertains to that person without being able to verify the true identity of the party?
- g. Can a trial court determine whether an unknown party has similar questions of law or fact common to the claims of the class (CR 23(a)(2))?
- h. Can a trial court determine whether an unknown party's claims are typical of the claims the party represents without verifiable evidence of the identity of the representative party (CR 23(a)(3))?
- i. Can a trial court determined an unknown party will fairly and adequately protect the interests of the class (CR 23(a)(4))?
- j. Can a trial court allow a party total anonymity in our judicial system because knowing their true identity would disclose mental health information and violate their privacy during litigation?

- k. Does the evidence provided by the Plaintiffs support the facts and conclusion of the trial court that use of pseudonym to obscure the identity of Plaintiffs was necessary and the only option available?
- l. Does Plaintiffs right to privacy in litigation outweigh the public right to know?
- m. Does allowing a litigant to initiate action under a false name prejudice the party summoned into an action?
- n. Did the trial court err in relying on other trial court decisions to determine whether to allow Respondent to file in pseudonym while ignoring decision of our Supreme Court?

## **2. Class Action Certification**

See also use of pseudonym issue concerning class certification above.

- a. Can a trial court certifying a class of person under the strict requirements of RCW 42.56.540 in order to exempt an entire body of records under the Public Records Act (PRA) (RCW 42.56.540)?
- b. Do Plaintiffs meet the requirements for certification of a class pursuant to CR 23?
- c. Did the trial court err in relying on other trial court decisions to determine whether to certify a class(es)?

## **3. Preliminary Injunction/Temporary Restraining Order**

- a. Did the trial court err in applying the wrong standard of review in issuing a temporary and preliminary injunction under RCW 7.40.020 and CR 65 rather than the more specific standard of review under RCW 42.56.540 (see also RCW 42.56.030)?
- b. Does RCW 7.40.020 or RCW 42.56.540 control the issue of injunction of public records?
- c. Are unsigned declarations of unknown parties credible compelling evidence?

- d. Did Plaintiffs clearly show that any actual and substantial harm would occur if the requested records were accessible to the public?
- e. Are the declarations of defense attorneys and treatment providers of sex offenders credible compelling evidence of any potential or actual harm if the requested records were accessible to the public?
- f. Does the public have an interest in knowing how sex offenders are convicted and sentenced in our judicial and penal system?
- g. Does the public's interest in monitoring our judicial and penal system concerning those who commit sex offenses outweigh the right of Level I sex offenders to enjoin the requested SSOSA evaluations?
- h. Did the trial court err in finding that the decision in *Koenig 2012*, by our Supreme Court was not the controlling legal authority concerning controlling the issue of whether SSOSA evaluations are sentencing documents and are not exempt from access by the public?
- i. Did the trial court err in issuing a preliminary injunction when the merits of the case are required to be answered in order to enjoin public records pursuant to RCW 42.56.540.

#### **4. Permanent Injunctions**

- a. Did the trial court err and abuse its discretion when the court did not use the mandatory requirements of RCW 42.56.540 to enjoin the requested records?
- b. Did the trial court err in enjoining the requested records for a classes of Level I, II and III sex offenders under RCW 4.24.550 and 70.02.250?
- c. Did the trial court err in finding that access to the SSOSA evaluations by the public would harm victims as well as the sex offender program when neither the victim nor the agency claimed any harm?
- d. Did the trial court err in finding a person not named in a specific record or to whom the record specifically pertains can enjoin the records of another person under the strict mandates of RCW 42.56.540?

- e. Did Plaintiffs' meet their burden of proof that the SSOSA evaluation are exempt and that they will suffer actual substantial harm if the public has access to the records?
- f. Did the trial court err in finding that the decision in *Koenig 2012*, by our Supreme Court was not the controlling legal authority concerning controlling the issue of whether SSOSA evaluations are sentencing documents and are not exempt from access by the public?
- g. Did the trial court err in refusing to dismiss all three actions under summary judgment for lack of a specific explicit exemption?
- h. Did the trial court err in relying on other trial court decisions to determine whether the records were exempt and should be enjoined and ignoring decision of our Supreme Court?

## VI. ARGUMENT

### 1. Affect of Decision of Our Supreme Court in *Doe v. WSP* on This Cause of Action

Our Supreme Court recently opined RCW 4.24.550 is not an "other statute" exemption and does not exempt the release of both juvenile and adult registration records and information *Doe v. WSP*, 185 Wn.2d 363 (2016). Many of the documents enjoined by the trial court were registration records or records containing registration information. This cause of action was put on stay while our Supreme Court made determination concerning RCW 4.24.550. That determination has now been made and the decisions of the Supreme Court is binding on all others. *State v. Ray*, 130 Wn.2d 673, 677, 926 P.2d 904 (1996).

Stare decisis means, literally, "[t]o stand by things decided."  
BLACK'S LAW DICTIONARY 1443 (8th ed. 2004). It involves

following rules laid down in previous judicial decisions unless they are found to contravene the ordinary principles of justice.

*Davis v. Baugh Indus. Contractors, Inc.* 159 Wn.2d 413, ¶22, 150 P.3d 545 (2007). As the decision concerning RCW 4.24.550 has been made and it has been determined that registration records and records containing registration information are not exempt and must be release upon request, the Zinks do not offer any further argument concerning the injunction of those specific records since that would be a waste of the court time. The Zinks request this court to reverse the King County Superior Court’s decision and order enjoining any and all registration records and records containing registration information as appealed, and instruct the trial court to dismiss the declaratory injunction against release of these specific records.

## **2. Use of Pseudonym and Court Records**

The standard of review of the interpretation of court rules and state statutes is reviewed de novo. *Citizens All. for Prop. Rights Legal Fund v. San Juan County*, 184 Wn.2d 428, ¶11 359 P.3d 753 (2015). The same principles used to determine the meaning of statutes also applies to the interpretation of court rules *State v. McEnroe*, 174 Wn.2d 795, 800, 279 P.3d 861 (2012). In this cause of action, the trial court has interpreted the rules and statutes to allow a party to file in complete anonymity, to proceed in pseudonym, such that even the court does not know the true identity of the party initiating action in the court.

A trial court's decision to seal records is reviewed for abuse of discretion. *Dreiling v. Jain*, 151 Wn.2d 900, 907, 93 P.3d 861 (2004). However, the proper standard governing the sealing of court records is reviewed de novo. *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005). The question before the court is whether the records were needed to be sealed. If the records required sealing, the trial court reached its decision by applying an improper legal standard and the proper procedure is to remand back to the trial court to apply the correct rule. *Bennett v. Bundy*, 176 Wn.2d 30, ¶9, 291 P.3d 886 (2013).

Court rules and State statutes must be interpreted and construed in such a fashion as to give all the language used effect, and no portion may be rendered meaningless or superfluous in the interpretation. *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010)(see also *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)). The rules associated with sealing of court records is found at GR 15. The definition of a court record is found at GR 31. CR 4, 10 and 17. Each of these court rules contain language stating that the party initiating legal action against another person must provide their legal name and be identified as the true party of interest and that party must be identified in the complaint and summons as well as the declarations, affidavits and other court records.

RCW 42.56.540 requires that an affidavit be submitted to the court in order for the party to prove they have right to bring action in the court to

enjoin the release of specific records they are named in or pertain to them. A declaration or affidavit of an unknown party is not sufficient evidence of verifiable fact upon which a court can determine whether the party is named in the record or the record pertains to that party. It is not enough to say it is so without the ability to verify the facts provided. Our courts don't operate on supposition and unverifiable evidence and by doing so, the trial court abused its discretion and Zink was prejudiced. Furthermore, the trial court violated both the State and Federal constitutions prohibiting secrecy in our judicial system without applying a test to determine whether secrecy in our courts outweighed the public interest as required by court rules.

Likewise, in order to certify a class of persons to be represented by any particular litigant in a class action, the court has need to know the true identity of the party seeking to be class representative. Specifically the trial court, based on the declaration or affidavit on file in the court must determine whether the party initiating action has shown that questions of law or fact are common to the class; 2) the claims or defenses of the representative party(ies) are typical of the claims or defenses of the class; and 3) the representative party(ies) will fairly and adequately protect the interests of the class. CR 23(a)(2-4). Again, it is not enough for the courts to simply state a thing is true. The statement or findings must be supported by evidence. In this cause of action the main evidence submitted is the declaration or affidavit of the party seeking to enjoin the records while representing a class of other similarly

situated without the court knowing the true identity of the class representative. Again, the trial court must be able to verify the evidence submitted and the failure to do so is error and an abuse of the trial courts discretion.

Respondents argued that other trial courts allowed subjects named in the record to proceed in pseudonym (RP (November 20, 2014) 4:3-5:12) and that GR 15 does not apply since the records are not sealed (RP (November 20, 2014) 9:13- 10:17). Zink argued that the trial court is required to apply GR 15 and the *Ishikawa Factors* in order to determine whether the requesting party had right to secrecy (RP (November 20, 2014) 5:16-9:9). Despite the clear and unambiguous language found in GR 15 and 31, CR 4(b)(1)(i), 10(a)(1) and 17(a) and the strongly worded mandate of our Supreme Court in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982) and without conducting the mandatory test as set forth in *Ishikawa*, the trial court ordered:

The Court is going to grant the motion to proceed under pseudonym. The Court is required to do a balancing test under this motion and the Court is satisfied that, as sex level one offenders, identification of their names will create a risk of retaliation, of physical and mental harm, and I think, based on the evidence that's been presented so far, the Court is satisfied under the balancing test that I'm supposed to do.

So the Court is going to grant the motion and your second -- if you have -- I'll sign all the orders later on, but we'll go on to the motion for preliminary injunction at this time.

(RP (November 20, 2014) 10:19-11:5). In the case of John Doe 2, no motion to seal or order granting use of pseudonym was entered, yet John Doe 2's

identity continues to be hidden. The trial court did not conduct the mandatory test under GR 15 and the *Ishikawa Factors* in the sealing of the court records. This is an abuse of the trial courts discretion *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005).

Clearly the summons, complaint, declarations, affidavits, memorandum and all other court records filed in court in conjunction with this cause of action are court records used by the trial court to make determination concerning whether to enjoin public records through class certification and are sealed. The key to distinguishing information to which article I, section 10 applies is dependent on whether the records are used by the trial court in its decision-making process. *Bennet v. Bundy*, 176 Wn.2d 303, ¶15, 291 P.3d 886 (2013) Simply put, while information that does not become part of the judicial process is not governed by the open courts provision in our constitution, in this case the records are used by the court in the summons, complaint, declarations, affidavits, pleadings and in all other records submitted to the court.

In addition to the court rules specifically stating that a party must be named in the record unless the identity of that person is unknown (CR 10(a)(2) and the proper application of the law was for the court to conduct a GR 15 test and apply the *Ishikawa Factors* at the time of the sealing. The trial court applied the wrong legal standard and the issue of sealing must be remanded for the trial court to apply the correct standard. Where a trial court

has based its decision on an improper rule or standard, the proper remedy is to remand to the trial court to apply the correct rule or standard. *Dreiling v. Jain*, 151 Wn.2d 900, 908, 93 P.3d 861 (2004).

Court records are defined by General Rule (GR) and include “any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding.” The definition of a court record includes the complaint (CR 4(b)(1)(i) and summons (CR 10(a)). Both of these court documents require a party bringing action into the court must be identified in the caption or title of the summons as well as in the caption or title of the complaint. In other words, the person being summoned into court has the right to know the identity of the person initiating the action.

While it might be true that under Federal Law, “where a law suit is brought solely against the government and seeks to raise an abstract question of law that affects many similarly situated individuals, the identities of the particular parties bringing the suit may be largely irrelevant to the public concern with the nature of the process,” *Doe v. Del Rio*, F.R.D 154, (S.D.N.Y. 2006) this cause of action involves a private citizen and not just the government. Not only is *Doe v. Del Rio*, F.R.D 154, (S.D.N.Y. 2006) not controlling of this case since Washington State has its own rules and laws for properly allowing anonymity in our justice system, it is not applicable here.

In keeping with our State Constitution, Art. 1, sec. 10, for open justice, a hearing in open court must be had prior to any sealing or redactions of court records with application of GR 15 and Ishikawa..

In order to make such a closure, the trial court was required to engage in an on-the-record analysis of the factors outlined in Ishikawa and to set forth findings supporting a determination “that there is a compelling interest which overrides the public's right to the open administration of justice.” Id. 6 The June 9 order lacks any discussion of Ishikawa. Accordingly, it must be vacated.

*Seattle Times Co. v. Serko*, 170 Wn.2d 581, ¶32, 243 P.3d 919 (2010)

(emphasis added). Furthermore, the public must have a voice in any sealing of court records.

The second Ishikawa factor requires that “[a]nyone present ... must be given an opportunity to object to the [suggested restriction].” *Ishikawa*, 97 Wn.2d at 38 (last alteration in original) (quoting *Federated Publ'ns, Inc. v. Kurtz*, 94 Wn.2d 51, 62, 615 P.2d 440 (1980)). In *Ishikawa*, we explained:

For this opportunity to have meaning, the proponent must have stated the grounds for the motion with reasonable specificity, consistent with the protection of the right sought to be protected. At a minimum, potential objectors should have sufficient information to be able to appreciate the damages which would result from free access to the proceeding and/or records. This knowledge would enable the potential objector to better evaluate whether or not to object and on what grounds to base its opposition. *Ishikawa*, 97 Wn.2d at 38.

*State v. Richardson*, 177 Wn.2d 351, ¶15, 302 P.3d 156 (2013) (emphasis added). In this cause of action, the trial court made determination with oral argument in open court, yet did not allow any persons present to voice objections and sealed the records without proper application of GR 15 or the Ishikawa Factors (RP (November 20, 2014) 10:18-11:11:1).

Washington's Constitution mandates that "[j]ustice in all cases shall be administered openly" (Art. 1, §10) and guarantees the public's right to access court records. This provision of openness in our judicial system is mandatory in order to assure fair trials. Secrecy in our justice system fosters misunderstanding and mistrust in the judicial system as it lacks the check of public scrutiny that our judicial system is following the rules, laws, statutes and our constitution. The trial court abused its discretion by using an incorrect legal standard and an improper legal rule in the sealing of court records.

Because the trial court failed to follow the well-established procedure for sealing court records, the courts order must be vacated and the issue of the sealing of court records remanded back to the trial court for proper application of GR 15 and the Ishikawa Factors using an on the record analysis in open court.

### **3. Class Action Certification**

The trial court's findings, conclusions, and orders do not address the issue of whether the legislative scheme outlined under RCW 42.56.540 allows a court to certify a class of persons and thereby exempt all records pertaining to

that class from production to a requester. This is error and an abuse of the Courts discretion.

The PRA controls in all questions of law.<sup>4</sup> The correct standard of review requires an analysis of RCW 42.56.540 to determine whether a person can form a Class and motion the court for exemption of an entire set of public records (blanket exemption of public records through class action), in this case SSOSA evaluations under the strict requirements of RCW 42.56.540. RCW 42.56.540 states:

The examination of any specific public record may be enjoined if, upon **motion and affidavit** by an agency or its representative or **a person who is named in the record or to whom the record specifically pertains**, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.

(*Id.*)(emphasis added). Assuming for the sake of this legal argument, Respondents are Level I, II and III sex offenders who are named in at least one of the requested records, respondents are not named in all of the records requested. RCW 42.56.540 is specific to a “**person who is named in the**

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<sup>4</sup> In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern. RCW 42.56.030.

**record** or to whom **the record specifically pertains.**” RCW 42.56.540 specifically requires the person named in the record or to whom the record pertains **must file a motion and affidavit** to the court. Class action certification would make this requirement superfluous, creating a judicially created exemption; a violation of the separation of powers doctrine.

[I]n PAWS II, we said that it did not make sense to imagine the legislature believed judges would be better custodians of open-ended exemptions because they lack the self-interest of agencies. The legislature's response to our opinion in Rosier makes clear that it does not want judges any more than agencies to be wielding broad and mal[li]eable exemptions. The legislature did not intend to entrust to ... judges the [power to imply] extremely broad and protean exemptions ... .125 Wn.2d at 259-60. Therefore, if the exemption is not found within the PRA itself, we will find an “other statute” exemption only when the legislature has made it explicitly clear that a specific record, or portions of it, is exempt or otherwise prohibited from production in response to a public records request.

*Doe v. WSP*, 185 Wn.2d 363, ¶10 (2016). By certifying a class of persons to enjoin any and all records of a specific classification and type the trial court is creating an exemption where an exemption does not exist. Under the plain meaning of the legislative intent in RCW 42.56.540, the trial court erred in not identifying which records at issue in this cause of action contain the name(s) of the parties filing complaint, summons and affidavit. Instead the trial court determined that it has the authority to create a judicial exemption through class certification; exempting all Level I, II and III sex offenders SSOSA evaluation under the guise of a class action. This is an absurd reading of the

plain meaning of RCW 42.56.540. The trial court abused its discretion when it determined and ordered that anonymous, completely unknown persons could enjoin the records of other persons under the strict requirements of RCW 42.56.540 and the trial court's order certifying a class of sex offenders whose identities are protected from disclosure to the public must be reversed.

#### **4. Mandatory Requirements of the Public Records Act**

The Washington Public Records Act is a powerful tool of the people to maintain control of all branches and agencies of government<sup>5</sup> through access to public records.<sup>6</sup> In order for the people to maintain control over government conduct, production of public records must be liberally construed and exemptions to production must be narrowly construed.<sup>7</sup> Our broad PRA exists to ensure that the public maintains control over their government, and the Courts will not deny the citizenry access to a whole class of possibly important government information.<sup>8</sup>

Public agencies are required to release all records created, owned, used, and/or retained by their respective agencies as expeditiously as possible.<sup>9</sup> Public agencies are not to distinguish amongst requesters.<sup>10</sup> Public agencies

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<sup>5</sup> RCW 42.56.010(1); RCW 42.56.070; *King County v. Sheehan*, 114 Wn. App. 325 57 P.3d 301 (Div. I, 2002); *Rental Hous. Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 527, 199 P.3d 393 (2009).

<sup>6</sup> RCW 42.56.010(3)(4); *O'Neill v. City of Shoreline*, 170 Wn.2d 138, ¶14-15, 240 P.3d 1149 (2010).

<sup>7</sup> RCW 42.56.030; *Livingston v. Cedeno*, 164 Wn.2d 46, ¶6, 186 P.3d 1055 (2008).

<sup>8</sup> *O'Neill v. City of Shoreline*, 170 Wn.2d 138, ¶15, 240 P.3d 1149 (2010).

<sup>9</sup> RCW 42.56.100.

<sup>10</sup> *Zink v. City of Mesa*, 140 Wn. App. 328, ¶24, 166 P.3d 738 (Div. III, 2007).

cannot exempt records from production based on the identity of the requester.<sup>11</sup> Public agencies in responding to a request for records cannot inquire as to the motivation of the requester.<sup>12</sup>

All public records created, owned, used and/or retained by public agencies are public and must be disclosed.<sup>13</sup> All non-exempt public records must be produced.<sup>14</sup> All exemptions claimed by public agencies resulting in non-production of public records, in whole or in part, must be justified, in writing, identifying the document withheld, the exemption allowing the withholding of the record, and an explanation of how that exemption applies to the withheld document or portion of the document.<sup>15</sup>

A claimed exemption is invalid if it does not in fact cover the requested document.<sup>16</sup> Agencies are under no obligation to claim exemption.<sup>17</sup> Conflict between the Washington State Public Records Act and any other statute, rule or law shall be decided under the statutory requirements of the Public Records Act.<sup>18</sup> Courts are to take into account that examination of public records is in the public interest, even though such examination may cause embarrassment to

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<sup>11</sup> RCW 42.56.050

<sup>12</sup> RCW 42.56.080. *City of Lakewood v. Koenig*, 160 Wn. App. 883, ¶16, 250 P.3d 113 (Div. II, 2011)

<sup>13</sup> *Sanders v. State*, 169 Wn.2d 827, ¶3, 240 P.3d 120 (2010).

<sup>14</sup> *Sanders v. State*, 169 Wn.2d 827, ¶4, 240 P.3d 120 (2010).

<sup>15</sup> RCW 42.56.210(3); RCW 42.56.520.

<sup>16</sup> *Sanders v. State*, 169 Wn.2d 827, ¶5, 240 P.3d 120 (2010).

<sup>17</sup> *Seattle Times v. Serko*, 170 Wn.2d 581, ¶29, 243 P.3d 919 (2010).

<sup>18</sup> RCW 42.56.030.

others.<sup>19</sup> Agencies are not to make privacy interest determinations on the basis that it identifies a person or a particular class of persons.

**5. Temporary and Preliminary Injunction of Public Records**

Agency action taken or challenged under the PRA is reviewed de novo. RCW 42.56.550(3); PAWS II, 125 Wn.2d 243, 252, 884 P.2d 592 (1994). The Court of Appeals stands in the same position as the trial court as if the trial court had never happened. Three statutes contained within the PRA deal with enjoining the “public’s records and third parties: RCW 42.56.210(2), RCW 42.56.520 and RCW 42.56.540. It becomes clear the intent of the legislature in enacting these three separate, yet connected statutes, when read together because they complement each other.

RCW 42.56.520 clearly states “[a]dditional time required to respond to a request may be based upon the **need to notify third parties**” (emphasis added). RCW 42.56.540 states that “an agency **has the option** of notifying persons named in the record or to whom a record specifically pertains” (emphasis added) unless required by law. Finally, RCW 42.56.210(2) clearly states inspection or copying of any specific exempt record(s) may be permitted if the superior court in the county in which the record is maintained finds, **after a hearing with notice thereof to every person in interest and the agency**, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.” If the Court does not read

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<sup>19</sup> RCW 42.56.550(3). *Koenig v. Thurston County*, 175 Wn.2d 837, ¶9, 287 P.3d 523 (2012); *King County v. Sheehan*, 114 Wn. App. 325, 336, 57 P.3d 307 (Div I, 2002).

together these subsections in this manner, then the need to notify in section 520 would be rendered superfluous by the agencies “option” to notify under section .540. Furthermore, the language of .210(2), giving a trial court the right to allow access to exempt records would be meaningless, a result we avoid when interpreting a statute. PAWS II at 260

We will not interpret statutes in a manner that renders portions of the statute superfluous.

*Lutheran Day Care v. Snohomish County*, 119 Wn.2d 91, 829 P.2d 746 (1992), cert denied, 506 U.S. 1079 (1993)).

Under the PRA, the “public’s” records are to be made promptly available upon request and all denials must be accompanied by an exemption log clearly outlining what records were being withheld, the number of records withheld, the author, as well as the claimed exemption and a brief explanation of how the claimed exemption applies to the requested record. Our legislature states three time that this is to be the case in all denials of public records. RCW 42.56.050, 42.56.070(1), and 42.56.210(3).

Specifically, at issue in this cause of action is the decision of the trial court to apply the general statute for injunctions RCW 7.40.020 rather than the statute specific to injunction of public records under RCW 42.56.540. The trial court’s decision was error and an abused its discretion.

Our Supreme Court has consistently applied the rule that the more specific statute prevails over the more general when two statutes are concurrent. In *State v. Cann*, 92 Wn.2d 193, 197, 595 P.2d 912 (1979).

The rule is that where general and special laws are concurrent, the special law applies to the subject matter contemplated by it to the exclusion of the general. *State v. Walls*, 81 Wn.2d 618, 503 P.2d 1068 (1972); *State v. Davis*, 48 Wn.2d 513, 294 P.2d 934 (1956); *State v. Becker*, 39 Wn.2d 94, 234 P.2d 897 (1951). 2A C. Sands, *Sutherland's Statutory Construction* § 51.05 (1973).

As these cases hold, where a special statute punishes the same conduct which is punished under a general statute, the special statute applies and the accused can be charged only under that statute.

This rule is consistent with general principles of statutory construction. See 2A C. Sands, *Statutory Construction* § 51.05 (4th ed. 1973).

*State v. Danforth*, 97 Wn.2d 255, 643 P.2d 882 (1982) RCW 42.56.540 is the controlling legal authority allowing a trial court to enjoin public records.

Because RCW 42.56.540 is specific to injunctions against production under the PRA, it is the governing injunction statute...

*Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, ¶12, *fn.* 2, 423, 259 P.3d 190 (2011)(emphasis added). In this case of action, the trial court used the wrong standard under RCW 7.40.020 to enjoin public records which has prolonged the release of the requested records without just cause.

The issuance of an injunction, whether temporary, preliminary or permanent, is enjoining public records under RCW 42.56.540. To find otherwise is not in keeping with the Supreme Court's decision in *Bainbridge Island* clearly stating that RCW 42.56.540 controls all injunctions of public records and not RCW 7.040. Under the strict requirements of the PRA any delay in access to public records by a trial court should trigger review by an

appellate court because it is a final decision under RCW 42.56.540. The trial courts order on preliminary injunction, enjoining all Level II and III SSOSA evaluations must be reverse and remanded back for dismissal.

## **6. Permanent Injunction**

Respondents claim that Special Sex Offender Alternative Sentencing evaluations are mental health records and are exempt pursuant to Chapter 70.02 RCW because they are confidential treatment records. This is false. Pursuant to RCW 70.02.010(31) a “patient” is defined as an individual who receives or has received health care. RCW 9.94A.670 (13) clearly and unequivocally states that the SSOSA evaluator cannot be the sex offender’s treatment provider or “any person who employs, is employed by, or shares profits with the person who examined the offender.” (*Id.*). Although it may be that only a qualified health care professional with special training can evaluate a convicted sex offender for the purpose of sentencing, that evaluator may not be the treatment provider and the convicted offender is not their “patient.”

Respondents claimed SSOSA evaluations must contain a proposed treatment plan (RCW 9.94A.670(3)(b)) so they are most certainly health records. While it is true that a proposed treatment plan must be included in a SSOSA evaluation in order for a court to consider alternative sentencing, the proposed treatment plan is merely a proposal for the trial court to consider in deciding whether to sentence the convicted sex offender under RCW 9.94A.507 or 9.94A.670 and is not the final treatment plan as established by the assigned treatment provider. The treatment provider actually providing

psychosexual therapy under a SSOSA sentence must perform a new evaluation and finalize a treatment plan at the time treatment begins.

The SSOSA evaluation and proposed treatment plan submitted to a trial court for a decision on sentencing of a convicted sex offender is required to be maintained as a public record in the official court of record and in the Prosecuting Attorney's Office for public access. RCW 9.94A.475 and .480(1). See RCW 9.94A.030(32) for a definition of a "most serious offense." SSOSA evaluations are required to be open and available to the public pursuant to statute and cannot be enjoined from release. The trial court's decision otherwise is error of law and must be reversed.

**7. Supreme Court Decisions, Case Law Doctrine and the Weight of Stare Decisis**

Zink made a request for non-exempt criminal sentencing documents (RCW 9.94A.475). Respondents argued that numerous trial courts across the State of Washington have enjoined the release of SSOSA evaluation in response to a request for access by Zink. Whether every trial court in the State of Washington finds SSOSA evaluations private and exempt pursuant to RCW 70.02, our Supreme Court has determined SSOSA evaluations are sentencing documents, are not exempt and must be released to a requesting member of the public. This mandate by our Supreme Court cannot simply be ignored and considered irrelevant.

Review under the PRA as previously discussed is de novo. Whether the issue of an SSOSA being a mental health record was brought up at the trial level or on appeal is irrelevant as the issue could have been brought before the

Supreme Court without having gone through the trial court. A review of the briefs filed in Koenig as well as the dissents plea to the legislature to make SSOSA evaluations exempt clearly show that the issue was brought before the Supreme Court and that our Legislature chose not to make SSOSA evaluation exempt. The issue concerning whether SSOSA evaluation are exempt has already been decided and the trial court was required to follow case law mandates of our Supreme Court.

As the Court of Last Resort, Supreme Court decisions are binding on all lower courts; including the Court of Appeals. It is a generally understood, that when a point has been settled by a decision of a higher court, it forms a precedent which is not afterwards to be departed from. The trial court must abide or adhere to decisions made by our Supreme Court in this case and not on other trial court decisions. It is not within this court's discretion under the doctrine of stare decisis to second guess or disregard a Supreme Court mandate.

Stare decisis means, literally, "[t]o stand by things decided." BLACK'S LAW DICTIONARY 1443 (8th ed. 2004). It involves following rules laid down in previous judicial decisions unless they are found to contravene the ordinary principles of justice.

*Davis v. Baugh Indus. Contractors, Inc.* 159 Wn.2d 413, ¶22, 150 P.3d 545 (2007). [T]he decisions of the courts of last resort are held to be binding on all others. *State v. Ray*, 130 Wn.2d 673, 677, 926 P.2d 904 (1996).

Stare decisis furthers unity in the system of justice, assuring that decisions by courts of last resort are reliably binding. *State v. Ray*, 130 Wn.2d 673, 677, 926 P.2d 904 (1996); *State ex rel. Wash. State Fin. Comm. v. Martin*, 62 Wn.2d 645, 665, 384 P.2d 833 (1963).

We have recognized that without the stabilizing effect of stare decisis, "law could become subject to . . . the whims of current holders of judicial office." *In re Rights to Waters of Stranger Creek* , 77 Wn.2d 649 , 653, 466 P.2d 508 (1970). . .

Continued adherence to precedent also reflects the important consideration that when a legal principle has been long established, it allows citizens to choose their courses of action with a reasonable expectation of future legal consequences. *Crown Controls, Inc. v. Smiley* , 110 Wn.2d 695 , 704-05, 756 P.2d 717 (1988). See also Stephen Markman, *Precedent: Tension Between Continuity in the Law and the Perpetuation of Wrong Decisions* , 8 TEX. REV. L. & POL. 283, 284 (2004) (suggesting factors for determining when the presumption favoring precedent may be overcome, including "consideration of the reliance interests of the people, all of whom must carry out their personal and business affairs within the constraints of the legal system").

*Davis v. Baugh Indus. Contractors, Inc.* 159 Wn.2d 413, ¶¶24-25, 150 P.3d 545 (2007)(emphasis added).

Through stare decisis, the law has become a disciplined art--perhaps even a science--deriving balance, form and symmetry from this force which holds the components together. It makes for stability and permanence, and these, in turn, imply that a rule once declared is and shall be the law. Stare decisis likewise holds the courts of the land together, making them a system of justice, giving them unity and purpose, so that the decisions of the courts of last resort are held to be binding on all others.

Without stare decisis, the law ceases to be a system; it becomes instead a formless mass of unrelated rules, policies, declarations and assertions--a kind of amorphous creed yielding to and wielded by them who administer it. Take away stare decisis, and what is left may have force, but it will not be law.

*State v. Ray*, 130 Wn.2d 673, 677, 926 P.2d 904 (1996)(quoting opinion given by Justice Hale in *State ex rel. State Fin. Comm. v. Martin*, 62 Wn.2d 645, 665-66, 384 P.2d 833 (1963)(emphasis added). The relevant facts of this case are that Ms. Zink requested sentencing documents (SSOSA evaluations); records of conviction required to be freely disseminated (RCW 10.97.050(1)). See also the Sentencing Reform Act of 1981 Chapter 9.94A RCW. The trial court's determination that the records were exempt despite the Supreme Court ruling was error and an abuse of discretion and must be reversed so that these public records are once again available to the public for public inspection.

## **VII. COSTS**

The Zink's request this Court to award them fees and costs under RAP 14. Pursuant to RAP 14.1 the appellate court which accepts review and makes final determination (RAP 14.1(b)) decides costs in all cases (RAP 14.1(a)). As the substantially prevailing party in this cause of action, the Zinks respectfully request this Court to award them fees and costs for this appeal. See *Mount Adams Sch. Dist. v. Cook*, 150 Wn.2d 716, 727, 81 P.3d 111 (2003).

## **VIII. PUBLICATION**

Zink respectfully requests this court to publish the decisions made in this cause of action. Whether use of pseudonym is a sealing of court records regulated by GR 15 and our Supreme Court's decision in *Seattle Times v. Ishikawa*, whether an injunction preventing release of public records falls under the prevue of RCW 7.40 or 42.56.540, and whether or not Class Action

of individuals can be certified to prevent the release of public records under the strict requirements of the PRA, specifically RCW 42.56.540 are questions of paramount importance to the public as they pertain to access to public records by the public in a reasonable amount of time. Requesters need to know what is at stake when RCW 42.56.540 is invoked in response to a request for access to public records under the PRA. Is it reasonable for a request to be delayed if an agency has no exemption yet notifies third parties, delaying release and initiating legal action through proxy using class action and false identities? These issues are in need of immediate resolution by our upper courts.

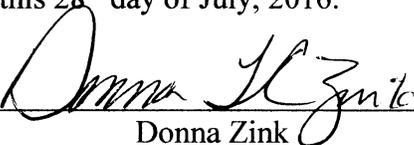
## **IX. CONCLUSION**

All records enjoined under RCW 4.24.550 must be released pursuant to the decision in *Doe v. WSP*, 185 Wn.2d 363 (2016). The Zinks respectfully request this court to issue a mandate reversing the decision of the trial court to enjoin the registration records and information. Further the Zinks respectfully request this court to once again determine that the SSOSA evaluation are sentencing documents, used by the court to sentence sex offenders to alternative sentencing and maintained in both the court and the prosecutor's office for public inspection. In obtaining a "court ordered" evaluation, Respondents are not requesting treatment and, in fact, the evaluator is prohibited from treating the convicted sex offender by law. Respondents do not meet the definition of a "patient" and an evaluator is prohibited from providing treatment to the sex offender evaluated. Furthermore, the convicted

sex offender is not seeking medical treatment. They are seeking a lighter sentence with little to no jail time. Respondent has failed to meet their burden of proof that the SSOSA evaluations are medical or mental health records and our Supreme Court has already mandated that they are sentencing documents.

Finally, the strongly worded mandate of the PRA does not allow for class action certification. Pursuant to the clear and unambiguous language of RCW 42.56.540, the only controlling legal authority allowing a trial court to enjoin public records from release in a third party PRA action, demands that the person seeking to enjoin a record or records must be either named in that specific record or that specific record must pertain to them. To find that an unknown party is named in a record without knowing who that party is, renders the language of RCW 42.56.540 meaningless. Courts are not allowed to subtract or add language to alter the statute. Rather, Courts must interpret the language of a statute as it is written by the legislation giving meaning to every sentence, phrase and word.

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of July, 2016.

By   
Donna Zink  
Pro se

2016 AUG -1 AM 11:36

STATE OF WASHINGTON

**X. CERTIFICATION OF SERVICE**

I, Donna Zink, declare that on the 28<sup>th</sup> day of July, 2016, I did send a true and correct copy of appellant's "Opening Brief of Appellant Donna Zink" via e-mail service to:

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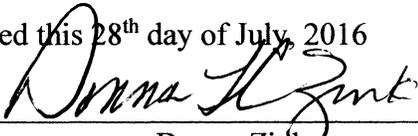
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Dated this 28<sup>th</sup> day of July, 2016

By   
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Donna Zink  
Pro se

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CLERK OF APPELLATE COURT  
STATE OF WASHINGTON

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**XI. APPENDIX A**

**1. Chapter 9.94A RCW - Sentencing Reform Act of 1981**

**Definitions - RCW 9.94A.030(33)**

(33) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

...

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

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(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

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(i) Kidnapping in the second degree;

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(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

...

(p) Sexual exploitation;

....

(s) Any other class B felony offense with a finding of sexual motivation;

...

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988,

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5 through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from  
6 July 25, 1993, through July 27, 1997;

7 (w) Any out-of-state conviction for a felony offense with a finding of sexual  
8 motivation if the minimum sentence imposed was ten years or more; provided  
9 that the out-of-state felony offense must be comparable to a felony offense under  
10 this title and Title 9A RCW and the out-of-state definition of sexual motivation  
11 must be comparable to the definition of sexual motivation contained in this  
12 section.

13 **RCW 9.94A.030(33)(a, c, d, g, h, i, m, n, p, s, u, v(i-ii), w)**

14 **Plea agreements and sentences for certain offenders - Public Records -  
15 RCW 9.94A.475**

16 Any and all recommended sentencing agreements or plea agreements and the  
17 sentences for any and all felony crimes shall be made and retained as public  
18 records if the felony crime involves:

- 19 (1) Any violent offense as defined in this chapter;
- 20 (2) Any most serious offense as defined in this chapter;
- 21 (3) Any felony with a deadly weapon special verdict under RCW 9.94A.825;
- 22 (4) Any felony with any deadly weapon enhancements under RCW 9.94A.533  
23 (3) or (4), or both;
- 24 (5) The felony crimes of possession of a machine gun, possessing a stolen  
25 firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm  
26 in the first or second degree, and/or use of a machine gun in a felony; or
- (6) The felony crime of driving a motor vehicle while under the influence of  
intoxicating liquor or any drug as defined in RCW 46.61.502, and felony  
physical control of a motor vehicle while under the influence of intoxicating  
liquor or any drug as defined in RCW 46.61.504.

**RCW 9.94A.475 (emphasis added).**

**Judgment and sentence document - Delivery to caseload forecast council -  
RCW 9.94A.480**

(1) A current, newly created or reworked judgment and sentence document for  
each felony sentencing shall record any and all recommended sentencing

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5 agreements or plea agreements and the sentences for any and all felony crimes  
6 kept as public records under  
7 RCW 9.94A.475 shall contain the clearly printed name and legal signature of the  
8 sentencing judge. The judgment and sentence document as defined in this  
9 section shall also provide additional space for the sentencing judge's reasons for  
10 going either above or below the presumptive sentence range for any and all  
11 felony crimes covered as public records under RCW 9.94A.475. Both the  
12 sentencing judge and the prosecuting attorney's office shall each retain or  
13 receive a completed copy of each sentencing document as defined in this section  
14 for their own records.

15 (2) The caseload forecast council shall be sent a completed copy of the judgment  
16 and sentence document upon conviction for each felony sentencing under  
17 subsection (1) of this section.

18 (3) If any completed judgment and sentence document as defined in subsection  
19 (1) of this section is not sent to the caseload forecast council as required in  
20 subsection (2) of this section, the caseload forecast council shall have the  
21 authority and shall undertake reasonable and necessary steps to assure that all  
22 past, current, and future sentencing documents as defined in subsection (1) of  
23 this section are received by the caseload forecast council.

#### 24 **RCW 9.94A.480**

#### 25 **Special sex offender sentencing alternative - RCW 9.94A.670**

26 (1) Unless the context clearly requires otherwise, the definitions in this  
subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a  
certified sex offender treatment provider or a certified affiliate sex offender  
treatment provider as defined in RCW 18.155.020.

(b) "Substantial bodily harm" means bodily injury that involves a temporary  
but substantial disfigurement, or that causes a temporary but substantial loss  
or impairment of the function of any body part or organ, or that causes a  
fracture of any body part or organ.

(c) "Victim" means any person who has sustained emotional, psychological,  
physical, or financial injury to person or property as a result of the crime  
charged. "Victim" also means a parent or guardian of a victim who is a  
minor child unless the parent or guardian is the perpetrator of the offense.

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(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense. If the conviction results from a guilty plea, the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state;

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

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6 (v) Other evaluation measures used.

7 The report shall set forth the sources of the examiner's information.

8 (b) The examiner shall assess and report regarding the offender's amenability  
9 to treatment and relative risk to the community. A proposed treatment plan  
10 shall be provided and shall include, at a minimum:

11 (i) Frequency and type of contact between offender and therapist;

12 (ii) Specific issues to be addressed in the treatment and description of  
13 planned treatment modalities;

14 (iii) Monitoring plans, including any requirements regarding living  
15 conditions, lifestyle requirements, and monitoring by family members and  
16 others;

17 (iv) Anticipated length of treatment; and

18 (v) Recommended crime-related prohibitions and affirmative conditions,  
19 which must include, to the extent known, an identification of specific  
20 activities or behaviors that are precursors to the offender's offense cycle,  
21 including, but not limited to, activities or behaviors such as viewing or  
22 listening to pornography or use of alcohol or controlled substances.

23 (c) The court on its own motion may order, or on a motion by the state shall  
24 order, a second examination regarding the offender's amenability to  
25 treatment. The examiner shall be selected by the party making the motion.  
26 The offender shall pay the cost of any second examination ordered unless the  
court finds the defendant to be indigent in which case the state shall pay the  
cost.

(4) After receipt of the reports, the court shall consider whether the offender and  
the community will benefit from use of this alternative, consider whether the  
alternative is too lenient in light of the extent and circumstances of the offense,  
consider whether the offender has victims in addition to the victim of the  
offense, consider whether the offender is amenable to treatment, consider the  
risk the offender would present to the community, to the victim, or to persons of  
similar age and circumstances as the victim, and consider the victim's opinion  
whether the offender should receive a treatment disposition under this section.

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5 The court shall give great weight to the victim's opinion whether the offender  
6 should receive a treatment disposition under this section. If the sentence  
7 imposed is contrary to the victim's opinion, the court shall enter written findings  
8 stating its reasons for imposing the treatment disposition. The fact that the  
9 offender admits to his or her offense does not, by itself, constitute amenability to  
10 treatment. If the court determines that this alternative is appropriate, the court  
11 shall then impose a sentence or, pursuant to RCW 9.94A.507, a minimum term  
12 of sentence, within the standard sentence range. If the sentence imposed is less  
13 than eleven years of confinement, the court may suspend the execution of the  
14 sentence as provided in this section.

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17 (5) As conditions of the suspended sentence, the court must impose the  
18 following:

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20 (a) A term of confinement of up to twelve months or the maximum term  
21 within the standard range, whichever is less. The court may order the  
22 offender to serve a term of confinement greater than twelve months or the  
23 maximum term within the standard range based on the presence of an  
24 aggravating circumstance listed in RCW 9.94A.535(3). In no case shall the  
25 term of confinement exceed the statutory maximum sentence for the offense.  
26 The court may order the offender to serve all or part of his or her term of  
confinement in partial confinement. An offender sentenced to a term of  
confinement under this subsection is not eligible for earned release under  
RCW 9.92.151 or 9.94A.728.

(b) A term of community custody equal to the length of the suspended  
sentence, the length of the maximum term imposed pursuant to RCW  
9.94A.507, or three years, whichever is greater, and require the offender to  
comply with any conditions imposed by the department under RCW  
9.94A.703.

(c) Treatment for any period up to five years in duration. The court, in its  
discretion, shall order outpatient sex offender treatment or inpatient sex  
offender treatment, if available. A community mental health center may not  
be used for such treatment unless it has an appropriate program designed for  
sex offender treatment. The offender shall not change sex offender treatment  
providers or treatment conditions without first notifying the prosecutor, the  
community corrections officer, and the court. If any party or the court  
objects to a proposed change, the offender shall not change providers or  
conditions without court approval after a hearing.

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5 (d) Specific prohibitions and affirmative conditions relating to the known  
6 precursor activities or behaviors identified in the proposed treatment plan  
7 under subsection (3)(b)(v) of this section or identified in an annual review  
8 under subsection (8)(b) of this section.

9 (6) As conditions of the suspended sentence, the court may impose one or more  
10 of the following:

11 (a) Crime-related prohibitions;

12 (b) Require the offender to devote time to a specific employment or  
13 occupation;

14 (c) Require the offender to remain within prescribed geographical boundaries  
15 and notify the court or the community corrections officer prior to any change  
16 in the offender's address or employment;

17 (d) Require the offender to report as directed to the court and a community  
18 corrections officer;

19 (e) Require the offender to pay all court-ordered legal financial obligations as  
20 provided in RCW 9.94A.030;

21 (f) Require the offender to perform community restitution work; or

22 (g) Require the offender to reimburse the victim for the cost of any  
23 counseling required as a result of the offender's crime.

24 (7) At the time of sentencing, the court shall set a treatment termination hearing  
25 for three months prior to the anticipated date for completion of treatment.

26 (8) (a) The sex offender treatment provider shall submit quarterly reports on the  
offender's progress in treatment to the court and the parties. The report shall  
reference the treatment plan and include at a minimum the following: Dates  
of attendance, offender's compliance with requirements, treatment activities,  
the offender's relative progress in treatment, and any other material specified  
by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment  
at least once a year. At least fourteen days prior to the hearing, notice of the  
hearing shall be given to the victim. The victim shall be given the

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5 opportunity to make statements to the court regarding the offender's  
6 supervision and treatment. At the hearing, the court may modify conditions  
7 of community custody including, but not limited to, crime-related  
8 prohibitions and affirmative conditions relating to activities and behaviors  
9 identified as part of, or relating to precursor activities and behaviors in, the  
10 offender's offense cycle or revoke the suspended sentence.

11 (9) At least fourteen days prior to the treatment termination hearing, notice of  
12 the hearing shall be given to the victim. The victim shall be given the  
13 opportunity to make statements to the court regarding the offender's supervision  
14 and treatment. Prior to the treatment termination hearing, the treatment provider  
15 and community corrections officer shall submit written reports to the court and  
16 parties regarding the offender's compliance with treatment and monitoring  
17 requirements, and recommendations regarding termination from treatment,  
18 including proposed community custody conditions. The court may order an  
19 evaluation regarding the advisability of termination from treatment by a sex  
20 offender treatment provider who may not be the same person who treated the  
21 offender under subsection (5) of this section or any person who employs, is  
22 employed by, or shares profits with the person who treated the offender under  
23 subsection (5) of this section unless the court has entered written findings that  
24 such evaluation is in the best interest of the victim and that a successful  
25 evaluation of the offender would otherwise be impractical. The offender shall  
26 pay the cost of the evaluation. At the treatment termination hearing the court  
may: (a) Modify conditions of community custody, and either (b) terminate  
treatment, or (c) extend treatment in two-year increments for up to the remaining  
period of community custody.

(10) (a) If a violation of conditions other than a second violation of the  
prohibitions or affirmative conditions relating to precursor behaviors or  
activities imposed under subsection (5)(d) or (8)(b) of this section occurs  
during community custody, the department shall either impose sanctions as  
provided for in RCW 9.94A.633(1) or refer the violation to the court and  
recommend revocation of the suspended sentence as provided for in  
subsections (7) and (9) of this section.

(b) If a second violation of the prohibitions or affirmative conditions  
relating to precursor behaviors or activities imposed under subsection (5)(d)  
or (8)(b) of this section occurs during community custody, the department  
shall refer the violation to the court and recommend revocation of the  
suspended sentence as provided in subsection (11) of this section.

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(11) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(12) If the offender violates a requirement of the sentence that is not a condition of the suspended sentence pursuant to subsection (5) or (6) of this section, the department may impose sanctions pursuant to RCW 9.94A.633(1).

(13) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical.

Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(14) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment.

**RCW 9.94A.670 (emphasis added).**

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6                   **2.            Chapter 18.155 RCW - Sex Offender Treatment**  
7                   **Providers**

8                   **Definitions RCW 18.155.020**

9                   Unless the context clearly requires otherwise, the definitions in this section  
10                  apply throughout this chapter:

11                  (1) "Certified sex offender treatment provider" means a licensed, certified, or  
12                  registered health professional who is certified to examine and treat sex offenders  
13                  pursuant to chapters 9.94A and 13.40 RCW and sexually violent predators under  
14                  chapter 71.09 RCW.

15                  (2) "Certified affiliate sex offender treatment provider" means a licensed,  
16                  certified, or registered health professional who is certified as an affiliate to  
17                  examine and treat sex offenders pursuant to chapters 9.94A and 13.40 RCW and  
18                  sexually violent predators under chapter 71.09 RCW under the supervision of a  
19                  certified sex offender treatment provider.

20                  (3) "Department" means the department of health.

21                  (4) "Secretary" means the secretary of health.

22                  (5) "Sex offender treatment provider" or "affiliate sex offender treatment  
23                  provider" means a person who counsels or treats sex offenders accused of or  
24                  convicted of a sex offense as defined by RCW 9.94A.030.

25                  **RCW 18.155.020.**

26                  **Certificate required – RCW 18.155.030**

(1) No person shall represent himself or herself as a certified sex offender  
treatment provider or certified affiliate sex offender treatment provider without  
first applying for and receiving a certificate pursuant to this chapter.

(2) Only a certified sex offender treatment provider, or certified affiliate sex  
offender treatment provider who has completed at least fifty percent of the  
required hours under the supervision of a certified sex offender treatment  
provider, may perform or provide the following services:

(a) Evaluations conducted for the purposes of and pursuant to RCW 9.94A.670  
and 13.40.160;

(b) Treatment of convicted level III sex offenders who are sentenced and  
ordered into treatment pursuant to chapter 9.94A RCW and adjudicated level III

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5 juvenile sex offenders who are ordered into treatment pursuant to chapter 13.40  
6 RCW;

7 (c) Except as provided under subsection (3) of this section, treatment of sexually  
8 violent predators who are conditionally released to a less restrictive alternative  
9 pursuant to chapter 71.09 RCW.

10 (3) A certified sex offender treatment provider, or certified affiliate sex offender  
11 treatment provider who has completed at least fifty percent of the required hours  
12 under the supervision of a certified sex offender treatment provider, may not  
13 perform or provide treatment of sexually violent predators under subsection  
14 (2)(c) of this section if the treatment provider has been:

15 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

16 (b) Convicted in any other jurisdiction of an offense that under the laws of this  
17 state would be classified as a sex offense as defined in RCW 9.94A.030; or

18 (c) Suspended or otherwise restricted from practicing any health care profession  
19 by competent authority in any state, federal, or foreign jurisdiction.

20 (4) Certified sex offender treatment providers and certified affiliate sex offender  
21 treatment providers may perform or provide the following service: Treatment of  
22 convicted level I and level II sex offenders who are sentenced and ordered into  
23 treatment pursuant to chapter 9.94A RCW and adjudicated juvenile level I and  
24 level II sex offenders who are sentenced and ordered into treatment pursuant to  
25 chapter 13.40 RCW.

26 **RCW 18.155.030.**

### **3. Chapter 42.56 RCW - Public Records Act**

#### **PRA Construction – RCW 42.56.030**

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

**RCW 42.56.030**

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5 **Documents and indexes to be made public – RCW 42.56.070(1)**

6 Each agency, in accordance with published rules, shall make available for public  
7 inspection and copying all public records, unless the record falls within the  
8 specific exemptions of \*subsection (6) of this section, this chapter, or other  
9 statute which exempts or prohibits disclosure of specific information or records.  
10 To the extent required to prevent an unreasonable invasion of personal privacy  
11 interests protected by this chapter, an agency shall delete identifying details in a  
12 manner consistent with this chapter when it makes available or publishes any  
13 public record; however, in each case, the justification for the deletion shall be  
14 explained fully in writing.

15 **RCW 42.56.070(1)**

16 **4. Chapter 70.02 RCW - Adult Corrections**

17 **Definitions (as amended by 2014 c 220) - RCW 70.02.010**

18 (14) "Health care" means any care, service, or procedure provided by a health  
19 care provider:

20 (a) To diagnose, treat, or maintain a patient's physical or mental condition; or

21 (b) That affects the structure or any function of the human body.

22 (16) "Health care information" means any information, whether oral or recorded  
23 in any form or medium, that identifies or can readily be associated with the  
24 identity of a patient and directly relates to the patient's health care, including a  
25 patient's deoxyribonucleic acid and identified sequence of chemical base pairs.  
26 The term includes any required accounting of disclosures of health care  
information.

(18) "Health care provider" means a person who is licensed, certified, registered,  
or otherwise authorized by the law of this state to provide health care in the  
ordinary course of business or practice of a profession.

(21) "Information and records related to mental health services" means a type of  
health care information that relates to all information and records compiled,  
obtained, or maintained in the course of providing services by a mental health  
service agency or mental health professional to persons who are receiving or  
have received services for mental illness. The term includes mental health  
information contained in a medical bill, registration records, as defined in RCW  
71.05.020, and all other records regarding the person maintained by the  
department, by regional support networks and their staff, and by treatment  
facilities. The term further includes documents of legal proceedings under

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5 chapter 71.05, 71.34, or 10.77 RCW, or somatic health care information. For  
6 health care information maintained by a hospital as defined in RCW 70.41.020  
7 or a health care facility or health care provider that participates with a hospital in  
8 an organized health care arrangement defined under federal law, "information  
9 and records related to mental health services" is limited to information and  
10 records of services provided by a mental health professional or information and  
11 records of services created by a hospital-operated community mental health  
12 program as defined in RCW 71.24.025(6). The term does not include  
13 psychotherapy notes.

14 (27) "Mental health professional" ((has the same meaning as in RCW  
15 71.05.020)) means a psychiatrist, psychologist, psychiatric advanced registered  
16 nurse practitioner, psychiatric nurse, or social worker, and such other mental  
17 health professionals as may be defined by rules adopted by the secretary of  
18 social and health services under chapter 71.05 RCW, whether that person works  
19 in a private or public setting.

20 (31) "Patient" means an individual who receives or has received health care. The  
21 term includes a deceased individual who has received health care.

22 (44) "Treatment" means the provision, coordination, or management of health  
23 care and related services by one or more health care providers or health care  
24 facilities, including the coordination or management of health care by a health  
25 care provider or health care facility with a third party; consultation between  
26 health care providers or health care facilities relating to a patient; or the referral  
of a patient for health care from one health care provider or health care facility  
to another.

**RCW 70.02.010 (14, 16, 18, 21, 27, 31, 44).**

**Mental health services, confidentiality of records—Permitted disclosures.  
(Effective until April 1, 2016.) - RCW 70.02.230**

(1) Except as provided in this section, RCW 70.02.050, 71.05.445, 70.96A.150,  
74.09.295, 70.02.210, 70.02.240, 70.02.250, and 70.02.260, or pursuant to a  
valid authorization under RCW 70.02.030, the fact of admission to a provider  
for mental health services and all information and records compiled, obtained,  
or maintained in the course of providing mental health services to either  
voluntary or involuntary recipients of services at public or private agencies  
must be confidential.

**RCW 70.02.230.**

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**Mental health services—Department of corrections. (Effective until April 1, 2016.) - RCW 70.02.250**

(1) Information and records related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW must be released, upon request, by a mental health service agency to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request must be in writing and may not require the consent of the subject of the records.

**RCW 70.02.250.**

**Court-ordered mental health treatment of persons subject to department of corrections supervision—Initial assessment inquiry—Required notifications—Rules. (Effective until April 1, 2016.) – RCW 71.05.445**

(1)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service provider that he or she is subject to supervision by the department of corrections, the mental health service provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the mental health service provider with a copy of the order granting relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the mental health service provider is not required to notify the department of corrections that the mental health service provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notification is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by email or facsimile, so long as the notifying mental health service provider is clearly identified.

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5 (2) The information to be released to the department of corrections shall include  
6 all relevant records and reports, as defined by rule, necessary for the department  
7 of corrections to carry out its duties.

8 (3) The department and the department of corrections, in consultation with  
9 regional support networks, mental health service providers as defined in RCW  
10 71.05.020, mental health consumers, and advocates for persons with mental  
11 illness, shall adopt rules to implement the provisions of this section related to the  
12 type and scope of information to be released. These rules shall:

13 (a) Enhance and facilitate the ability of the department of corrections to  
14 carry out its responsibility of planning and ensuring community protection  
15 with respect to persons subject to sentencing under chapter 9.94A or 9.95  
16 RCW, including accessing and releasing or disclosing information of  
17 persons who received mental health services as a minor; and

18 (b) Establish requirements for the notification of persons under the  
19 supervision of the department of corrections regarding the provisions of this  
20 section.

21 (4) The information received by the department of corrections under this section  
22 shall remain confidential and subject to the limitations on disclosure outlined in  
23 chapter 71.05 RCW, except as provided in RCW 72.09.585.

24 **RCW 71.05.445.**

25 **Sex offenders—Release of information to protect public—End-of-sentence  
26 review committee—Assessment—Records access—Review, classification,  
referral of offenders—Issuance of narrative notices. - RCW 72.09.345**

(1) In addition to any other information required to be released under this  
chapter, the department is authorized, pursuant to RCW 4.24.550, to release  
relevant information that is necessary to protect the public concerning offenders  
convicted of sex offenses.

(6) The committee shall classify as risk level I those sex offenders whose risk  
assessments indicate they are at a low risk to sexually reoffend within the  
community at large. The committee shall classify as risk level II those offenders  
whose risk assessments indicate they are at a moderate risk to sexually reoffend  
within the community at large. The committee shall classify as risk level III  
those offenders whose risk assessments indicate they are at a high risk to  
sexually reoffend within the community at large.

**RCW 72.09.345(1)(6).**

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5 **Mental health services information—Required inquiries and disclosures—**  
6 **Release to court, individuals, indeterminate sentence review board, state**  
7 **and local agencies – RCW 72.09.585**

8 (6) The information received by the department under RCW 71.05.445 or  
9 70.02.250 may be disclosed by the department to individuals only with respect  
10 to offenders who have been determined by the department to have a high risk of  
11 reoffending by a risk assessment, as defined in RCW 9.94A.030, only as  
12 relevant and necessary for those individuals to take reasonable steps for the  
13 purpose of self-protection, or as provided in RCW 72.09.370(2). The  
14 information may not be disclosed for the purpose of engaging the public in a  
15 system of supervision, monitoring, and reporting offender behavior to the  
16 department. The department must limit the disclosure of information related to  
17 mental health services to the public to descriptions of an offender's behavior,  
18 risk he or she may present to the community, and need for mental health  
19 treatment, including medications, and shall not disclose or release to the public  
20 copies of treatment documents or records, except as otherwise provided by law.  
21 All disclosure of information to the public must be done in a manner consistent  
22 with the written policy established by the secretary. The decision to disclose or  
23 not shall not result in civil liability for the department or its employees so long  
24 as the decision was reached in good faith and without gross negligence. Nothing  
25 in this subsection prevents any person from reporting to law enforcement or the  
26 department behavior that he or she believes creates a public safety risk.

**RCW 72.09.585(6).**

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21 **1. Chapter 71.05 RCW - MENTAL ILLNESS**

22 **Court-ordered mental health treatment of persons subject to department of**  
23 **corrections supervision—Initial assessment inquiry—Required**

24 **notifications—Rules. (Effective until April 1, 2016.) - RCW 71.05.445**

25 Court-ordered mental health treatment of persons subject to department of  
26 corrections supervision—Initial assessment inquiry—Required notifications—  
Rules. (Effective until April 1, 2016.)

(1)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service

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5 provider that he or she is subject to supervision by the department of  
6 corrections, the mental health service provider shall notify the department of  
7 corrections that he or she is treating the offender and shall notify the offender  
8 that his or her community corrections officer will be notified of the treatment,  
9 provided that if the offender has received relief from disclosure pursuant to  
10 RCW 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the  
11 mental health service provider with a copy of the order granting relief from  
12 disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the mental  
13 health service provider is not required to notify the department of corrections  
14 that the mental health service provider is treating the offender. The  
15 notification may be written or oral and shall not require the consent of the  
16 offender. If an oral notification is made, it must be confirmed by a written  
17 notification. For purposes of this section, a written notification includes  
18 notification by email or facsimile, so long as the notifying mental health  
19 service provider is clearly identified.

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21 (2) The information to be released to the department of corrections shall include  
22 all relevant records and reports, as defined by rule, necessary for the department  
23 of corrections to carry out its duties.

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25 (3) The department and the department of corrections, in consultation with  
26 regional support networks, mental health service providers as defined in RCW  
71.05.020, mental health consumers, and advocates for persons with mental  
illness, shall adopt rules to implement the provisions of this section related to the  
type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to  
carry out its responsibility of planning and ensuring community protection  
with respect to persons subject to sentencing under chapter 9.94A or 9.95  
RCW, including accessing and releasing or disclosing information of  
persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the  
supervision of the department of corrections regarding the provisions of this  
section.

(4) The information received by the department of corrections under this section  
shall remain confidential and subject to the limitations on disclosure outlined in  
chapter 71.05 RCW, except as provided in RCW 72.09.585.

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(5) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(6) Whenever federal law or federal regulations restrict the release of information and records related to mental health services for any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(7) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(8) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments.

**RCW 71.05.445**

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**XII. APPENDIX B**

**1. Washington Administrative Code 246-930 Sex Offender Treatment Provider**

**Requirements for certification - WAC 246-930-065 -**

(1) An applicant for certification must:

(a) Be credentialed as a *health professional* as provided in WAC 246-930-020. The credential must be in good standing without pending disciplinary action;

(b) Successfully complete an education program as required in WAC 246-930-030;

(c) Successfully complete an examination;

(d) Be able to practice with reasonable skill and safety; and

(e) Have no sex offense convictions, as defined in RCW 9.94A.030 or convictions in any other jurisdiction of an offense that under Washington law would be classified as a sex offense as defined in RCW 9.94A.030.

(2) An applicant for certification as a provider must also complete treatment and evaluation experience required in WAC 246-930-040.

**WAC 246-930-065**

**Standards for assessment and evaluation reports - WAC 246-930-320**

(1) General considerations in evaluating clients. Providers and affiliates shall:

(a) Be knowledgeable of current assessment procedures used;

(b) Be aware of the strengths and limitations of self-report and make reasonable efforts to verify information provided by the client;

(c) Be knowledgeable of the client's legal status including any court orders applicable.

(d) Have a full understanding of the SSOSA and SSODA process, if applicable, and be knowledgeable of relevant criminal and legal considerations;

(e) Be impartial;

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5 (f) Provide an objective and accurate base of data; and

6 (g) Avoid addressing or responding to referral questions which exceed the  
7 present level of knowledge in the field or the expertise of the evaluator.

8 (2) Providers and affiliates must complete written evaluation reports. These  
9 reports must:

10 (a) Be accurate, comprehensive and address all of the issues required for court or  
11 other disposition;

12 (b) Present all knowledge relevant to the matters at hand in a clear and organized  
13 manner;

14 (c) Include the referral sources, the conditions surrounding the referral and the  
15 referral questions addressed;

16 (d) Include a compilation of data from as many sources as reasonable,  
17 appropriate, and available. These sources may include but are not limited to:

(i) Collateral information including:

18 (A) Police reports;

19 (B) Child protective services information; and

20 (C) Criminal correctional history;

21 (ii) Interviews with the client;

22 (iii) Interviews with significant others;

23 (iv) Previous assessments of the client such as:

24 (A) Medical;

25 (B) Substance abuse; and

26 (C) Psychological and sexual deviancy;

(v) Psychological/physiological tests;

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6 (e) Address, at a minimum, the following issues:

7 (i) A description of the current offense(s) or allegation(s) including, but not  
8 limited to, the evaluator's conclusion about the reasons for any discrepancy  
9 between the official and client's versions of the offenses or allegations;

10 (ii) A sexual history, sexual offense history and patterns of sexual  
11 arousal/preference/interest;

12 (iii) Prior attempts to remediate and control offensive behavior including prior  
13 treatment;

14 (iv) Perceptions of significant others, when appropriate, including their ability  
15 and/or willingness to support treatment efforts;

16 (v) Risk factors for offending behavior including:

17 (A) Alcohol and drug abuse;

18 (B) Stress;

19 (C) Mood;

20 (D) Sexual patterns;

21 (E) Use of pornography; and

22 (F) Social and environmental influences;

23 (vi) A personal history including:

24 (A) Medical;

25 (B) Marital/relationships;

26 (C) Employment;

(D) Education; and

(E) Military;

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(vii) A family history;

(viii) History of violence and/or criminal behavior;

(ix) Mental health functioning including coping abilities, adaptation style, intellectual functioning and personality attributes; and

(x) The overall findings of psychological/physiological/medical assessment if these assessments have been conducted;

(f) Include conclusions and recommendations. The conclusions and recommendations shall be supported by the data presented in the report and include:

(i) The evaluator's conclusions regarding the appropriateness of community treatment;

(ii) A summary of the evaluator's diagnostic impressions;

(iii) A specific assessment of relative risk factors, including the extent of the client's dangerousness in the community at large; and

(iv) The client's willingness for outpatient treatment and conditions of treatment necessary to maintain a safe treatment environment.

(g) Include a proposed treatment plan which is clear and describes in detail:

(i) Anticipated length of treatment, frequency and type of contact with providers or affiliates, and supplemental or adjunctive treatment;

(ii) The specific issues to be addressed in treatment and a description of planned treatment interventions including involvement of significant others in treatment and ancillary treatment activities;

(iii) Recommendations for specific behavioral prohibitions, requirements and restrictions on living conditions, lifestyle requirements, and monitoring by family members and others that are necessary to the treatment process and community safety; and

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(iv) Proposed methods for monitoring and verifying compliance with the conditions and prohibitions of the treatment program.

(3) If a report fails to include information specified in (a) through (e) of this subsection, the evaluation should indicate the information not included and cite the reason the information is not included.

(4) Second evaluations shall state whether prior evaluations were considered. The decision regarding use of other evaluations prior to conducting the second evaluation is within the professional discretion of the provider or affiliate. The second evaluation need not repeat all assessment or data compilation measures if it reasonably relies on existing current information. The second evaluation must address all issues outlined in subsection (2) of this section, and include conclusions, recommendations and a treatment plan if one is recommended.

(5) The provider or affiliate who provides treatment shall submit to the court and the parties a statement that the provider or affiliate is either adopting the proposed treatment plan or submitting an alternate plan. Any alternate plan and the statement shall be provided to the court before sentencing. Any alternate plan must include the treatment methods described in WAC 246-930-332(1). **WAC 246-930-320.**

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**XIII. APPENDIX C**

**1. Civil Court Rules**

**Process - CR 4**

(a) Summons--Issuance.

(1) The summons must be signed and dated by the plaintiff or the plaintiff's attorney, and directed to the defendant requiring the defendant to defend the action and to serve a copy of the defendant's appearance or defense on the person whose name is signed on the summons.

(2) Unless a statute or rule provides for a different time requirement, the summons shall require the defendant to serve a copy of the defendant's defense within 20 days after the service of summons, exclusive of the day of service. If a statute or rule other than this rule provides for a different time to serve a defense, that time shall be stated in the summons.

(3) A notice of appearance, if made, shall be in writing, shall be signed by the defendant or the defendant's attorney, and shall be served upon the person whose name is signed on the summons. In condemnation cases a notice of appearance only shall be served on the person whose name is signed on the petition.

(4) No summons is necessary for a counterclaim or cross claim for any person who previously has been made a party. Counterclaims and cross claims against an existing party may be served as provided in rule 5.

(b) Summons.

(1) Contents. The summons for personal service shall contain:

(i) the title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant;

(ii) a direction to the defendant summoning the defendant to serve a copy of the defendant's defense within a time stated in the summons;

(iii) a notice that, in case of failure so to do, judgment will be rendered against the defendant by default. It shall be signed and dated by the plaintiff, or

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5 the plaintiff's attorney, with the addition of the plaintiff's post office address, at  
6 which the papers in the action may be served on the plaintiff by mail.

7 **CR 4(a)(b)**

8 **Forms of Pleadings and Other Papers - CR 10(a)(1)**

9 (a) Caption. Every pleading shall contain a caption setting forth the name of the  
10 court, the title of the action, the file number if known to the person signing it,  
11 and an identification as to the nature of the pleading or other paper.

12 (1) Names of Parties. In the complaint the title of the action shall  
13 include the names of all the parties, but in other pleadings it is sufficient to state  
14 the name of the first party on each side with an appropriate indication of other  
15 parties.

16 (2) Unknown Names. When the plaintiff is ignorant of the name of the  
17 defendant, it shall be so stated in the plaintiff's pleading, and such defendant  
18 may be designated in any pleading or proceeding by any name, and when the  
19 defendant's true name shall be discovered, the pleading or proceeding may be  
20 amended accordingly.

21 **CR 10(a)(1)(2).**

22 **Parties, Plaintiffs and Defendants; Capacity - CR 17(a)**

23 (-) Designation of Parties. The party commencing the action shall be known as  
24 the plaintiff, and the opposite party as the defendant.

25 (a) Real Party in Interest. Every action shall be prosecuted in the name of the  
26 real party in interest. An executor, administrator, guardian, bailee, trustee of an  
express trust, a party with whom or in whose name a contract has been made for  
the benefit of another, or a party authorized by statute may sue in the party's own  
name without joining the party for whose benefit the action is brought. No  
action shall be dismissed on the ground that it is not prosecuted in the name of  
the real party in interest until a reasonable time has been allowed after objection  
for ratification of commencement of the action by, or joinder or substitution of,  
the real party in interest; and such ratification, joinder, or substitution shall have  
the same effect as if the action had been commenced in the name of the real  
party in interest.

**CR 17(a).**

**Class Actions – CR 23**

(a) Prerequisites to a Class Action. One or more members of a class may sue  
or be sued as representative parties on behalf of all only if:

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(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of section (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interest; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

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6 (C) the desirability or undesirability of concentrating the litigation of the  
claims in the particular forum;

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8 (D) the difficulties likely to be encountered in the management of a class  
action.

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10 (c) Determination by Order Whether Class Action To Be Maintained; Notice;  
Judgment; Actions Conducted Partially as Class Actions.

11 (1) As soon as practicable after the commencement of an action brought as a  
12 class action, the court shall determine by order whether it is to be so maintained.  
An order under this subsection may be conditional, and may be altered or  
13 amended before the decision on the merits.

14 (2) In any class action maintained under subsection (b)(3), the court shall  
direct to the members of the class the best notice practicable under the  
15 circumstances, including individual notice to all members who can be  
16 identified through reasonable effort. The notice shall advise each member that  
(A) the court will exclude the member from the class if the member so requests  
17 by a specified date; (B) the judgment, whether favorable or not, will include all  
members who do not request exclusion; and (C) any member who does not  
18 request exclusion may, if the member desires, enter an appearance through  
counsel.

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20 (3) The judgment in an action maintained as a class action under subsection  
(b)(1) or (b)(2), whether or not favorable to the class, shall include and describe  
21 those whom the court finds to be members of the class. The judgment in an  
action maintained as a class action under subsection (b)(3), whether or not  
22 favorable to the class, shall include and specify or describe those to whom the  
notice provided in subsection (c)(2) was directed, and who have not requested  
23 exclusion, and whom the court finds to be members of the class.

24 (4) When appropriate,

25 (A) an action may be brought or maintained as a class action with respect to  
26 particular issues, or

(B) a class may be divided into subclasses and each subclass treated as a  
class, and the provisions of this rule shall then be construed and applied  
accordingly.

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(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) imposing conditions on the representative parties or on intervenors;

(4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

(5) dealing with similar procedural matters. The orders may be combined with an order under rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(f) Disposition of Residual Funds.

(1) "Residual Funds" are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the parties to a class action from suggesting, or the trial court from approving, a settlement that does not create residual funds.

(2) Any order entering a judgment or approving a proposed compromise of a class action certified under this

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rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Legal Foundation of Washington to support activities and programs that promote access to the civil justice system for low income residents of Washington State. The court may disburse the balance of any residual funds beyond the minimum percentage to the Legal Foundation of Washington or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.

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6 **XIV. APPENDIX D**

7 **1. General Court Rules**

8 **Destruction, Sealing and Redaction of Court Records – GR 15**

9 (a) Purpose and Scope of the Rule. This rule sets forth a uniform procedure  
10 for the destruction, sealing, and redaction of court records. This rule applies to  
11 all court records, regardless of the physical form of the court record, the method  
12 of recording the court record, or the method of storage of the court record.

13 (b) Definitions.

14 (1) "Court file" means the pleadings, orders, and other papers filed with the  
15 clerk of the court under a single or consolidated cause number(s).

16 (2) "Court record" is defined in GR 31(c)(4).

17 (3) Destroy. To destroy means to obliterate a court record or file in such a  
18 way as to make it permanently irretrievable. A motion or order to expunge shall  
19 be treated as a motion or order to destroy.

20 (4) Seal. To seal means to protect from examination by the public and  
21 unauthorized court personnel. A motion or order to delete, purge, remove,  
22 excise, or erase, or redact shall be treated as a motion or order to seal.

23 (5) Redact. To redact means to protect from examination by the public and  
24 unauthorized court personnel a portion or portions of a specified court record.

25 (6) Restricted Personal Identifiers are defined in GR 22(b)(6).

26 (7) Strike. A motion or order to strike is not a motion or order to seal or  
destroy.

(8) Vacate. To vacate means to nullify or cancel.

(c) Sealing or Redacting Court Records.

(1) In a civil case, the court or any party may request a hearing to seal or  
redact the court records. In a criminal case or juvenile proceeding, the court, any  
party, or any interested person may request a hearing to seal or redact the court  
records. Reasonable notice of a hearing to seal must be given to all parties in the  
case. In a criminal case, reasonable notice of a hearing to seal or redact must

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5 also be given to the victim, if ascertainable, and the person or agency having  
6 probationary, custodial, community placement, or community supervision over  
7 the affected adult or juvenile. No such notice is required for motions to seal  
documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).

8 (2) After the hearing, the court may order the court files and records in the  
9 proceeding, or any part thereof, to be sealed or redacted if the court makes and  
10 enters written findings that the specific sealing or redaction is justified by  
11 identified compelling privacy or safety concerns that outweigh the public  
12 interest in access to the court record. Agreement of the parties alone does not  
constitute a sufficient basis for the sealing or redaction of court records.  
Sufficient privacy or safety concerns that may be weighed against the public  
interest include findings that:

13 (A) The sealing or redaction is permitted by statute; or

14 (B) The sealing or redaction furthers an order entered under CR 12(f) or a  
15 protective order entered under CR 26(c); or

16 (C) A conviction has been vacated; or

17 (D) The sealing or redaction furthers an order entered pursuant to RCW  
18 4.24.611; or

19 (E) The redaction includes only restricted personal identifiers contained in  
20 the court record; or

21 (F) Another identified compelling circumstance exists that requires the  
22 sealing or redaction.

23 (3) A court record shall not be sealed under this section when redaction will  
adequately resolve the issues before the court pursuant to subsection (2) above.

24 (4) Sealing of Entire Court File. When the clerk receives a court order to seal  
25 the entire court file, the clerk shall seal the court file and secure it from public  
26 access. All court records filed thereafter shall also be sealed unless otherwise  
ordered. The existence of a court file sealed in its entirety, unless protected by  
statute, is available for viewing by the public on court indices. The information  
on the court indices is limited to the case number, names of the parties, the  
notation "case sealed," the case type and cause of action in civil cases and the  
cause of action or charge in criminal cases, except where the conviction in a

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5 criminal case has been vacated, section (d) shall apply. The order to seal and  
6 written findings supporting the order to seal shall also remain accessible to the  
7 public, unless protected by statute.

8 (5) Sealing of Specified Court Records. When the clerk receives a court order  
9 to seal specified court records the clerk shall:

10 (A) On the docket, preserve the docket code, document title, document or  
11 subdocument number and date of the original court records;

12 (B) Remove the specified court records, seal them, and return them to the file  
13 under seal or store separately. The clerk shall substitute a filler sheet for the  
14 removed sealed court record. If the court record ordered sealed exists in a  
15 microfilm, microfiche or other storage medium form other than paper, the clerk  
16 shall restrict access to the alternate storage medium so as to prevent  
17 unauthorized viewing of the sealed court record; and

18 (C) File the order to seal and the written findings supporting the order to seal.  
19 Both shall be accessible to the public.

20 (D) Before a court file is made available for examination, the clerk shall  
21 prevent access to the sealed court records.

22 (6) Procedures for Redacted Court Records. When a court record is redacted  
23 pursuant to a court order, the original court record shall be replaced in the public  
24 court file by the redacted copy. The redacted copy shall be provided by the  
25 moving party. The original unredacted court record shall be sealed following the  
26 procedures set forth in (c)(5).

(d) Procedures for Vacated Criminal Convictions. In cases where a criminal  
conviction has been vacated and an order to seal entered, the information in the  
public court indices shall be limited to the case number,  
case type with the notification "DV" if the case involved domestic violence, the  
adult or juvenile's name, and the notation "vacated."

(e) Grounds and Procedure for Requesting the Unsealing of Sealed Records.

(1) Sealed court records may be examined by the public only after the court  
records have been ordered unsealed pursuant to this section or after entry of a  
court order allowing access to a sealed court record.

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5 (2) Criminal Cases. A sealed court record in a criminal case shall be ordered  
6 unsealed only upon proof of compelling circumstances, unless otherwise  
7 provided by statute, and only upon motion and written notice to the persons  
8 entitled to notice under subsection (c)(1) of this rule except:

9 (A) If a new criminal charge is filed and the existence of the conviction  
10 contained in a sealed record is an element of the new offense, or would  
11 constitute a statutory sentencing enhancement, or provide the basis for an  
12 exceptional sentence, upon application of the prosecuting attorney the court  
13 shall nullify the sealing order in the prior sealed case(s).

14 (B) If a petition is filed alleging that a person is a sexually violent predator,  
15 upon application of the prosecuting attorney the court shall nullify the sealing  
16 order as to all prior criminal records of that individual.

17 (3) Civil Cases. A sealed court record in a civil case shall be ordered  
18 unsealed only upon stipulation of all parties or upon motion and written notice  
19 to all parties and proof that identified compelling circumstances for continued  
20 sealing no longer exist, or pursuant to RCW 4.24 or CR 26(j). If the person  
21 seeking access cannot locate a party to provide the notice required by this rule,  
22 after making a good faith reasonable effort to provide such notice as required by  
23 the Superior Court Rules, an affidavit may be filed with the court setting forth  
24 the efforts to locate the party and requesting waiver of the notice provision of  
25 this rule. The court may waive the notice requirement of this rule if the court  
26 finds that further good faith efforts to locate the party are not likely to be  
successful.

(4) Juvenile Proceedings. Inspection of a sealed juvenile court record is  
permitted only by order of the court upon motion made by the person who is the  
subject of the record, except as otherwise provided in RCW 13.50.010(8) and  
13.50.050(23). Any adjudication of a juvenile offense or a crime subsequent to  
sealing has the effect of nullifying the sealing order, pursuant to RCW  
13.50.050(16).

(f) Maintenance of Sealed Court Records. Sealed court records are subject to  
the provisions of RCW 36.23.065 and can be maintained in mediums other than  
paper.

(g) Use of Sealed Records on Appeal. A court record or any portion of it,  
sealed in the trial court shall be made available to the appellate court in the event

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5 of an appeal. Court records sealed in the trial court shall be sealed from public  
6 access in the appellate court subject to further order of the appellate court.

7 (h) Destruction of Court Records.

8 (1) The court shall not order the destruction of any court record unless  
9 expressly permitted by statute. The court shall enter written findings that cite the  
10 statutory authority for the destruction of the court record.

11 (2) In a civil case, the court or any party may request a hearing to destroy  
12 court records only if there is express statutory authority permitting the  
13 destruction of the court records. In a criminal case or juvenile proceeding, the  
14 court, any party, or any interested person may request a hearing to destroy the  
15 court records only if there is express statutory authority permitting the  
16 destruction of the court records. Reasonable notice of the hearing to destroy  
17 must be given to all parties in the case. In a criminal case, reasonable notice of  
18 the hearing must also be given to the victim, if ascertainable, and the person or  
19 agency having probationary, custodial, community placement, or community  
20 supervision over the affected adult or juvenile.

21 (3) When the clerk receives a court order to destroy the entire court file the  
22 clerk shall:

23 (A) Remove all references to the court records from any applicable  
24 information systems maintained for or by the clerk except for accounting  
25 records, the order to destroy, and the written findings. The order to destroy and  
26 the supporting written findings shall be filed and available for viewing by the  
public.

(B) The accounting records shall be sealed.

(4) When the clerk receives a court order to destroy specified court records  
the clerk shall;

(A) On the automated docket, destroy any docket code information except  
any document or sub-document number previously assigned to the court record  
destroyed, and enter "Order Destroyed" for the docket entry;

(B) Destroy the appropriate court records, substituting, when applicable, a  
printed or other reference to the order to destroy, including the date, location,  
and document number of the order to destroy; and

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6 (C) File the order to destroy and the written findings supporting the order to  
7 destroy. Both the order and the findings shall be publicly accessible.

8 (5) This subsection shall not prevent the routine destruction of court records  
9 pursuant to applicable preservation and retention schedules.

10 (i) Trial Exhibits. Notwithstanding any other provision of this rule, trial  
11 exhibits may be destroyed or returned to the parties if all parties so stipulate in  
12 writing and the court so orders.

13 (j) Effect on Other Statutes. Nothing in this rule is intended to restrict or to  
14 expand the authority of clerks  
15 under existing statutes, nor is anything in this rule intended to restrict or expand  
16 the authority of any public  
17 auditor, or the Commission on Judicial Conduct in the exercise of duties  
18 conferred by statute.

## 19 **GR 15**

### 20 **Access to Court Records – GR 31**

21 (a) Policy and Purpose. It is the policy of the courts to facilitate access to  
22 court records as provided by Article I, Section 10 of the Washington State  
23 Constitution. Access to court records is not absolute and shall be consistent with  
24 reasonable expectations of personal privacy as provided by article 1, Section  
25 7 of the Washington State Constitution and shall not unduly burden the business  
26 of the courts.

(b) Scope. This rule applies to all court records, regardless of the physical form  
of the court record, the method of recording the court record or the method of  
storage of the court record. Administrative records are not within the scope of  
this rule. Court records are further governed by GR 22.

(c) Definitions.

(1) "Access" means the ability to view or obtain a copy of a court record.

(2) "Administrative record" means any record pertaining to the management,  
supervision or administration of the judicial branch, including any court, board,  
or committee appointed by or under the direction of any court or other entity  
within the judicial branch, or the office of any county clerk.

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6 (3) "Bulk distribution" means distribution of all, or a significant subset, of  
7 the information in court records, as is and without modification.

8 (4) "Court record" includes, but is not limited to: (i) Any document,  
9 information, exhibit, or other thing that is maintained by a court in connection  
10 with a judicial proceeding, and (ii) Any index, calendar, docket, register of  
11 actions, official record of the proceedings, order, decree, judgment, minute, and  
12 any information in a case management system created or prepared by the court  
13 that is related to a judicial proceeding. Court record does not include data  
14 maintained by or for a judge pertaining to a particular case or party, such as  
15 personal notes and communications, memoranda, drafts, or other working  
16 papers; or information gathered, maintained, or stored by a government agency  
17 or other entity to which the court has access but which is not entered into the  
18 record.

19 (5) "Criminal justice agencies" are government agencies that perform  
20 criminal justice functions pursuant to statute or executive order and that allocate  
21 a substantial part of their annual budget to those functions.

22 (6) "Dissemination contract" means an agreement between a court record  
23 provider and any person or entity, except a Washington State court (Supreme  
24 Court, court of appeals, superior court, district court or municipal court), that is  
25 provided court records. The essential elements of a dissemination contract shall  
26 be promulgated by the JIS Committee.

(7) "Judicial Information System (JIS) Committee" is the committee with  
oversight of the statewide judicial information system. The judicial information  
system is the automated, centralized, statewide information system that serves  
the state courts.

(8) "Judge" means a judicial officer as defined in the Code of Judicial  
Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(9) "Public" includes an individual, partnership, joint venture, public or  
private corporation, association, federal, state, or local governmental entity or  
agency,

however constituted, or any other organization or group of persons,  
however organized.

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5 (10) "Public purpose agency" means governmental agencies included in the  
6 definition of "agency" in RCW 42.17.020 and other non-profit organizations  
7 whose principal function is to provide services to the public.

8 (d) Access.

9 (1) The public shall have access to all court records except as restricted by  
10 federal law, state law, court rule, court order, or case law.

11 (2) Each court by action of a majority of the judges may from time to time  
12 make and amend local rules governing access to court records not inconsistent  
13 with this rule.

14 (3) A fee may not be charged to view court records at the courthouse.

15 (e) Personal Identifiers Omitted or Redacted from Court Records

16 (1) Except as otherwise provided in GR 22, parties shall not include, and if  
17 present shall redact, the following personal identifiers from all documents filed  
18 with the court, whether filed electronically or in paper, unless necessary or  
19 otherwise ordered by the Court.

20 (A) Social Security Numbers. If the Social Security Number of an  
21 individual must be included in a document, only the last four digits of that  
22 number shall be used.

23 (B) Financial Account Numbers. If financial account numbers are  
24 relevant, only the last four digits shall be recited in the document.

25 (C) Driver's License Numbers.

26 (2) The responsibility for redacting these personal identifiers rests solely  
with counsel and the parties. The Court or the Clerk will not review each  
pleading for compliance with this rule. If a pleading is filed without redaction,  
the opposing party or identified person may move the Court to order redaction.  
The court may award the prevailing party reasonable expenses, including  
attorney fees and court costs, incurred in making or opposing the motion.

COMMENT

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5 This rule does not require any party, attorney, clerk, or judicial officer  
6 to redact information from a court record that was filed prior to the adoption of  
7 this rule.

8 (f) Distribution of Court Records Not Publicly Accessible

9 (1) A public purpose agency may request court records not publicly  
10 accessible for scholarly, governmental, or research purposes where the  
11 identification of specific individuals is ancillary to the purpose of the inquiry. In  
12 order to grant such requests, the court or the Administrator for the Courts must:

13 (A) Consider: (i) the extent to which access will result in efficiencies in  
14 the operation of the judiciary; (ii) the extent to which access will fulfill a  
15 legislative mandate; (iii) the extent to which access will result in efficiencies in  
16 other parts of the justice system; and (iv) the risks created by permitting the  
17 access.

18 (B) Determine, in its discretion, that filling the request will not violate  
19 this rule.

20 (C) Determine the minimum access to restricted court records necessary  
21 for the purpose is provided to the requestor.

22 (D) Assure that prior to the release of court records under section (f) (1),  
23 the requestor has executed a dissemination contract that includes terms and  
24 conditions which: (i) require the requester to specify provisions for the secure  
25 protection of any data that is confidential; (ii) prohibit the disclosure of data in  
26 any form which identifies an individual; (iii) prohibit the copying, duplication,  
or dissemination of information or data provided other than for the stated  
purpose; and (iv) maintain a log of any distribution of court records which will  
be open and available for audit by the court or the Administrator of the  
Courts. Any audit should verify that the court records are being appropriately  
used and in a manner consistent with this rule.

(2) Courts, court employees, clerks and clerk employees, and the  
Commission on Judicial Conduct may access and use court records only for the  
purpose of conducting official court business.

(3) Criminal justice agencies may request court records not publicly  
accessible.

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5 (A) The provider of court records shall approve the access level and  
6 permitted use for classes of criminal justice agencies including, but not  
7 limited to, law enforcement, prosecutors, and corrections. An agency that is not  
8 included in a class may request access.

9 (B) Agencies requesting access under this section of the rule shall  
10 identify the court records requested and the proposed use for the court records.

11 (C) Access by criminal justice agencies shall be governed by a  
12 dissemination contract. The contract shall: (i) specify the data to which access is  
13 granted; (ii) specify the uses which the agency will make of the data; and (iii)  
14 include the agency's agreement that its employees will access the data only for  
15 the uses specified.

16 (g) Bulk Distribution of Court Records

17 (1) A dissemination contract and disclaimer approved by the JIS  
18 Committee for JIS records or a dissemination contract and disclaimer approved  
19 by the court clerk for local records must accompany all bulk distribution of court  
20 records.

21 (2) A request for bulk distribution of court records may be denied if  
22 providing the information will create an undue burden on court or court clerk  
23 operations because of the amount of equipment, materials, staff time, computer  
24 time or other resources required to satisfy the request.

25 (3) The use of court records, distributed in bulk form, for the purpose of  
26 commercial solicitation of individuals named in the court records is prohibited.

(h) Appeals. Appeals of denials of access to JIS records maintained at state  
level shall be governed by the rules and policies established by the JIS  
Committee.

(i) Notice. The Administrator for the Courts shall develop a method to notify  
the public of access to court records and the restrictions on access.

(j) Access to Juror Information. Individual juror information, other than name,  
is presumed to be private. After the conclusion of a jury trial, the attorney for a  
party, or party pro se, or member of the public, may petition the trial court for  
access to individual juror information under the control of court. Upon a  
showing of good cause, the court may permit the petitioner to have access to

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5 relevant information. The court may require that juror information not be  
6 disclosed to other persons.

7 (k) Access to Master Jury Source List. Master jury source list information,  
8 other than name and address, is presumed to be private. Upon a showing of  
9 good cause, the court may permit a petitioner to have access to relevant  
10 information from the list. The court may require that the information not be  
11 disclosed to other persons.

## 12 **CR 31**

### 13 **Access to Administrative Records - General Principles – GR 31.1**

14 (a) Policy and Purpose. Consistent with the principles of open  
15 administration of justice as provided in article I, section 10 of the Washington  
16 State Constitution, it is the policy of the judiciary to facilitate access to  
17 administrative records. A presumption of access applies to the judiciary's  
18 administrative records. Access to administrative records, however, is not  
19 absolute and shall be consistent with exemptions for personal privacy,  
20 restrictions in statutes, restrictions in court rules, and as required for the integrity  
21 of judicial decision-making. Access shall not unduly burden the business of the  
22 judiciary.

23 (b) Overview of Public Access to Judicial Records. There are three  
24 categories of judicial records.

25 (1) Case records are records that relate to in-court proceedings, including  
26 case files, dockets, calendars, and the like. Public access to these records is  
governed by GR 31, which refers to these records as "court records," and not by  
this GR 31.1. Under GR 31, these records are presumptively open to public  
access, subject to stated exceptions.

(2) Administrative records are records that relate to the management,  
supervision, or administration of a court or judicial agency. A more specific  
definition of "administrative records" is in section (i) of this rule. Under section  
(j) of this rule, administrative records are presumptively open to public access,  
subject to exceptions found in sections (j) and (l) of this rule.

(3) Chambers records are records that are controlled and maintained by a  
judge's chambers. A more specific definition of this term is in section (m) of  
this rule. Under section (m), chambers records are not open to public access.

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5 PROCEDURES FOR ADMINISTRATIVE RECORDS

6 (c) Procedures for Records Requests.

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8 (1) COURTS AND JUDICIAL AGENCIES TO ADOPT PROCEDURES.  
9 Each court and judicial agency must adopt a policy implementing this rule and  
10 setting forth its procedures for accepting and responding to administrative  
11 records requests. The policy must include the designation of a public records  
12 officer and shall require that requests from the identified individual or, if an  
13 entity, an identified entity representative, be submitted in writing to the  
14 designated public records officer. Best practices for handling administrative  
15 records requests shall be developed under the authority of the Board for Judicial  
16 Administration.

17 COMMENT: When adopting policies and procedures, courts and judicial  
18 agencies will need to carefully consider many issues, including the extent to  
19 which judicial employees may use personally owned computers and other media  
20 devices to conduct official business and the extent to which the court or agency  
21 will rely on the individual employee to search his or her personally owned  
22 media devices for documents in response to a records request. For judicial  
23 officers and their chambers staff, documents on personal media devices may still  
24 qualify as chambers records, see section (m) of this rule.

25 (2) PUBLICATION OF PROCEDURES FOR REQUESTING  
26 ADMINISTRATIVE RECORDS. Each court and judicial agency must  
27 prominently publish the procedures for requesting access to its administrative  
28 records. If the court or judicial agency has a website, the procedures must be  
29 included there. The publication shall include the public records officer's work  
30 mailing address, telephone number, fax number, and e-mail address.

31 (3) INITIAL RESPONSE. Each court and judicial agency must initially  
32 respond to a written request for access to an administrative record within five  
33 working days of its receipt, but for courts that convene infrequently no more  
34 than 30 calendar days, from the date of its receipt. The response shall  
35 acknowledge receipt of the request and include a good-faith estimate of the time  
36 needed to respond to the request. The estimate may be later revised, if  
37 necessary. For purposes of this rule, "working days" mean days that the court or  
38 judicial agency, including a part-time municipal court, is open.

39 (4) COMMUNICATION WITH REQUESTER. Each court and judicial  
40 agency must communicate with the requester as necessary to clarify the records

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5 being requested. The court or judicial agency may also communicate with the  
6 requester in an effort to determine if the requester's need would be better served  
7 with a response other than the one actually requested.

8 (5) **SUBSTANTIVE RESPONSE.** Each court and judicial agency must  
9 respond to the substance of the records request within the timeframe specified in  
10 the court's or judicial agency's initial response to the request. If the court or  
11 judicial agency is unable to fully comply in this timeframe, then the court or  
12 judicial agency should comply to the extent practicable and provide a new good  
13 faith estimate for responding to the remainder of the request. If the court or  
14 judicial agency does not fully satisfy the records request in the manner  
15 requested, the court or judicial agency must justify in writing any deviation from  
16 the terms of the request.

17 (6) **EXTRAORDINARY REQUESTS LIMITED BY RESOURCE**  
18 **CONSTRAINTS.** If a particular request is of a magnitude that the court or  
19 judicial agency cannot fully comply within a reasonable time due to constraints  
20 on the court's or judicial agency's time, resources, and personnel, the court or  
21 judicial agency shall communicate this information to the requester. The court  
22 or judicial agency must attempt to reach agreement with the requester as to  
23 narrowing the request to a more manageable scope and as to a timeframe for the  
24 court's or judicial agency's response, which may include a schedule of  
25 installment responses. If the court or judicial agency and requester are unable to  
26 reach agreement, then the court or judicial agency shall respond to the extent  
practicable and inform the requester that the court or judicial agency has  
completed its response.

(7) **RECORDS REQUESTS THAT INVOLVE HARASSMENT,**  
**INTIMIDATION, THREATS TO SECURITY, OR CRIMINAL ACTIVITY.** A  
court or judicial agency may deny a records request if it determines that: the  
request was made to harass or intimidate the court or judicial agency or its  
employees; fulfilling the request would likely threaten the security of the court  
or judicial agency; fulfilling the request would likely threaten the safety or  
security of judicial officers, staff, family members of judicial officers or staff, or  
any other person; or fulfilling the request may assist criminal activity.

(d) **Review of Records Decision.**

(1) **NOTICE OF REVIEW PROCEDURES.** The public records officer's  
response to a public records request shall include a written summary of the  
procedures under which the requesting party may seek further review.

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6 (2) DEADLINE FOR SEEKING INTERNAL REVIEW. A record  
7 requester's petition under section (d)(3) seeking internal review of a public  
8 records officer's decision must be submitted within 90 days of the public records  
9 officer's decision.

10 (3) INTERNAL REVIEW WITHIN COURT OR AGENCY. Each court  
11 and judicial agency shall provide a method for review by the judicial agency's  
12 director, presiding judge, or judge designated by the presiding judge. For a  
13 judicial agency, the presiding judge shall be the presiding judge of the court that  
14 oversees the agency. The court or judicial agency may also establish  
15 intermediate levels of review. The court or judicial agency shall make publicly  
16 available the applicable forms. The review proceeding is informal and  
17 summary. The review proceeding shall be held within five working days, but  
18 for courts that convene infrequently no more than 30 calendar days, from the  
19 date the court or agency receives the request for review. If that is not reasonably  
20 possible, then within five working days the review shall be scheduled for the  
21 earliest practical date.

22 (4) EXTERNAL REVIEW. Upon the exhaustion of remedies under section  
23 (d)(3), a record requester aggrieved by a court or agency decision may obtain  
24 further review by choosing between the two alternatives set forth in subsections  
25 (i) and (ii) of this section (d)(4).

26 (i) REVIEW VIA CIVIL ACTION IN COURT. The requesting person  
may use a judicial writ of mandamus, prohibition, or certiorari to file a civil  
action in superior court challenging the records decision.

COMMENT: Subsection (i) does not create any new judicial remedies, but  
merely recognizes existing procedures for initiating a civil action in court.

(ii) INFORMAL REVIEW BY VISITING JUDGE OR OTHER OUTSIDE  
DECISION MAKER. The requesting person may seek informal review by a  
person outside the court or judicial agency. If the requesting person seeks review  
of a decision made by a court or made by a judicial agency that is directly  
reportable to a court, the outside review shall be by a visiting judicial officer. If  
the requesting person seeks review of a decision made by a judicial agency that  
is not directly reportable to a court, the outside review shall be by a person  
agreed upon by the requesting person and the judicial agency. In the event the  
requesting person and the judicial agency cannot agree upon a person, the  
presiding superior court judge in the county in which the judicial agency is

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5 located shall either conduct the review or appoint a person to conduct the  
6 review. The review proceeding shall be informal and summary. The decision  
7 resulting from the informal review proceeding may be further reviewed in  
8 superior court pursuant to a writ of mandamus, prohibition, or certiorari.  
9 Decisions made by a judge under this subsection (ii) are part of the judicial  
10 function.

11 (iii) **DEADLINE FOR SEEKING EXTERNAL REVIEW.** A request for  
12 external review must be submitted within 30 days of the issuance of the court or  
13 judicial agency's final decision under section (d)(3).

14 (e) **Monetary Awards Not Allowed.** Attorney fees, costs, civil penalties, or  
15 fines may not be awarded under this rule.

16 (f) **Persons Who Are Subjects of Records.**

17 (1) Unless otherwise required or prohibited by law, a court or judicial  
18 agency has the option of notifying a person named in a record or to whom a  
19 record specifically pertains, that access to the record has been requested.

20 (2) A person who is named in a record, or to whom a record specifically  
21 pertains, may present information opposing the disclosure to the applicable  
22 decision maker under sections (c) and (d).

23 (3) If a court or judicial agency decides to allow access to a requested  
24 record, a person who is named in that record, or to whom the record specifically  
25 pertains, has a right to initiate review under subsections (d)(3)-(4) or to  
26 participate as a party to any review initiated by a requester under subsections  
(d)(3)-(4). If either the record subject or the record requester objects to informal  
review under subsection (d)(4)(ii), such alternative shall not be available. The  
deadlines that apply to a requester apply as well to a person who is a subject of a  
record.

(g) **Court and Judicial Agency Rules.** Each court may from time to time  
make and amend local rules governing access to administrative records not  
inconsistent with this rule. Each judicial agency may from time to time make  
and amend agency rules governing access to its administrative records not  
inconsistent with this rule.

(h) **Charging of Fees.**

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5 (1) A fee may not be charged to view administrative records, except the  
6 requester may be charged for research required to locate, obtain, or prepare the  
7 records at the rate set forth in section (h)(4).

8 (2) A fee may be charged for the photocopying or scanning of administrative  
9 records. If another court rule or statute specifies the amount of the fee for a  
10 particular type of record, that rule or statute shall control. Otherwise, the  
11 amount of the fee may not exceed the amount that is authorized in the Public  
12 Records Act, chapter 42.56 RCW.

13 (3) The court or judicial agency may require a deposit in an amount not to  
14 exceed the estimated cost of providing copies for a request. If a court or judicial  
15 agency makes a request available on a partial or installment basis, the court or  
16 judicial agency may charge for each part of the request as it is provided. If an  
17 installment of a records request is not claimed or reviewed within 30 days, the  
18 court or judicial agency is not obligated to fulfill the balance of the request.

19 (4) A fee not to exceed \$30 per hour may be charged for research and  
20 preparation services required to fulfill a request taking longer than one hour.  
21 The fee shall be assessed from the second hour onward.

22 COMMENT: The authority to charge for research services is discretionary,  
23 allowing courts to balance the competing interests between recovering the costs  
24 of their response and ensuring the open administration of justice. The fee should  
25 not exceed the actual costs of response.

26 (5) A court or judicial agency may require prepayment of fees.

#### APPLICATION OF RULE FOR ADMINISTRATIVE RECORDS

This rule applies to all administrative records, regardless of the physical form of  
the record, the method of recording the record, or the method of storage of the  
record.

##### (i) Definitions.

(1) "Access" means the ability to view or obtain a copy of an administrative  
record.

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(2) “Administrative record” means a public record created by or maintained by a court or judicial agency and related to the management, supervision, or administration of the court or judicial agency.

COMMENT: The term “administrative record” does not include any of the following: (1) “court records” as defined in GR 31; (2) chambers records as set forth later in this rule; or (3) an attorney’s client files that would otherwise be covered by the attorney-client privilege or the attorney work product privilege.

(3) “Court record” is defined in GR 31.

(4) “Judge” means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(5) “Public” includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

(5) “Public record” includes any writing, except chambers records and court records, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any court or judicial agency regardless of physical form or characteristics. “Public record” also includes metadata for electronic administrative records.

COMMENT: See *O’Neill v. City of Shoreline*, 170 Wn.2d 138, 240 P.3d 1149 (2010) (defining “metadata”).

(6) “Writing” means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

COMMENT: E-mails and telephone records are included in this broad definition of “writing.”

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5 (j) Administrative Records—General Right of Access. Court and judicial  
6 agency administrative records are open to public access unless access is  
7 exempted or prohibited under this rule, other court rules, federal statutes, state  
8 statutes, court orders, or case law. To the extent that records access would be  
9 exempt or prohibited if the Public Records Act applied to the judiciary’s  
10 administrative records, access is also exempt or prohibited under this rule. To  
11 the extent that an ambiguity exists as to whether records access would be  
12 exempt or prohibited under this rule or other enumerated sources, responders  
13 and reviewing authorities shall be guided by the Public Records Act, chapter  
14 42.56 RCW, in making interpretations under this rule. In addition, to the extent  
15 required to prevent a significant risk to individual privacy or safety interests, a  
16 court or judicial agency shall delete identifying details in a manner consistent  
17 with this rule when it makes available or publishes any public record; however,  
18 in each instance, the justification for the deletion shall be provided fully in  
19 writing.

20 (k) Entities Subject to Rule.

21 (1) This rule applies to the Supreme Court, the Court of Appeals, the  
22 superior courts, the district and municipal courts, and the following judicial  
23 agencies:

24 (i) All judicial organizations that are overseen by a court, including entities  
25 that are designated as agencies, departments, committees, boards, commissions,  
26 task forces, and similar groups;

(ii) The Superior Court Judges’ Association, the District and Municipal  
Court Judges’ Association, and similar associations of judicial officers and  
employees;

(iii) The Washington State Office of Civil Legal Aid and the Washington  
State Office of Public Defense; and

(iv) All subgroups of the entities listed in this section (k)(1).

COMMENT: The elected court clerks and their staff are not included in this  
rule because (1) they are covered by the Public Records Act and (2) they do not  
generally maintain the judiciary’s administrative records that are covered by this  
rule.

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5 (2) This rule does not apply to the Washington State Bar Association.  
6 Public access to the Bar Association's records is governed by [a proposed  
7 General Rule 12.4, pending before the Supreme Court].

8 (3) A judicial officer is not a court or judicial agency.

9 COMMENT: This provision protects judges and court commissioners from  
10 having to respond personally to public records requests. Records requests would  
11 instead go to the court's public records officer.

12 (4) An attorney or entity appointed by a court or judicial agency to provide  
13 legal representation to a litigant in a judicial or administrative proceeding does  
14 not become a judicial agency by virtue of that appointment.

15 (5) A person or entity entrusted by a judicial officer, court, or judicial  
16 agency with the storage and maintenance of its public records, whether part of a  
17 judicial agency or a third party, is not a judicial agency. Such person or agency  
18 may not respond to a request for access to administrative records, absent express  
19 written authority from the court or judicial agency or separate authority in court  
20 rule to grant access to the documents.

21 COMMENT: Judicial e-mails and other documents sometimes reside on IT  
22 servers, some are in off-site physical storage facilities. This provision prohibits  
23 an entity that operates the IT server from disclosing judicial records. The entity  
24 is merely a bailee, holding the records on behalf of a court or judicial agency,  
25 rather than an owner of the records having independent authority to release  
26 them. Similarly, if a court or judicial agency puts its paper records in storage  
with another entity, the other entity cannot disclose the records. In either  
instance, it is the court or judicial agency that needs to make the decision as to  
releasing the records. The records request needs to be addressed by the court's  
or judicial agency's public records officer, not by the person or entity having  
control over the IT server or the storage area. On the other hand, if a court or  
judicial agency archives its records with the state archivist, relinquishing by  
contract its own authority as to disposition of the records, the archivist would  
have separate authority to disclose the records.

Because of this rule's broad definition of "public record", this paragraph (6)  
would apply to electronic records, such as e-mails (and their metadata) and  
telephone records, among a wide range of other records.

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(1) Exemptions. In addition to exemptions referred to in section (j), the following categories of administrative records are exempt from public access:

(1) Requests for judicial ethics opinions;

(2) Minutes of meetings held exclusively among judges, along with any staff;

COMMENT: Meeting minutes do not always contain information that needs to be withheld from public access. Courts have discretion whether to release meeting minutes, because an exemption from this rule merely means that a document is not required to be disclosed. Disclosure would be appropriate if the document does not contain information of a confidential, sensitive, or protected nature. Courts and judicial agencies are encouraged to carefully consider whether some, or all, of their meeting minutes should be open to public access. Adopting a local rule on this issue would assist the public in knowing which types of minutes are accessible and which are not.

(3) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this rule, except that a specific record is not exempt when publicly cited by a court or agency in connection with any court or agency action. This exemption applies to a record only while a final decision is pending on the issue that is being addressed in that record; once the final decision has been made, the record is no longer covered by this exemption. For purposes of documents related to budget negotiations with a budgetary authority, the “final decision” is the decision by the budgetary authority to adopt the budget for that year or biennium.

(4) Evaluations and recommendations concerning candidates seeking appointment or employment within a court or judicial agency;

COMMENT: Paragraph (4) is intended to encompass documents such as those of the Supreme Court’s Capital Counsel Committee, which evaluates attorneys for potential inclusion on a list of attorneys who are specially qualified to represent clients in capital cases.

(5) Personal identifying information, including individuals’ home contact information, Social Security numbers, date of birth, driver’s license numbers, and identification/security photographs;

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5 (6) Documents related to an attorney's request for a trial or appellate court  
6 defense expert, investigator, or other services, any report or findings submitted  
7 to the attorney or court or judicial agency by the expert, investigator, or other  
8 service provider, and the invoicing of the expert, investigator or other service  
9 provider during the pendency of the case in any court. Payment records are not  
10 exempt, provided that they do not include medical records, attorney work  
11 product, information protected by attorney-client privilege, information sealed  
12 by a court, or otherwise exempt information;

13 (7) Documents, records, files, investigative notes and reports, including the  
14 complaint and the identity of the complainant, associated with a court's or  
15 judicial agency's internal investigation of a complaint against the court or  
16 judicial agency or its contractors during the course of the investigation. The  
17 outcome of the court's or judicial agency's investigation is not exempt;

18 (8) [Reserved];

19 (9) Family court mediation files; and

20 (10) Juvenile court probation social files.

21 (11) Those portions of records containing specific and unique vulnerability  
22 assessments or specific and unique emergency and escape response plans, the  
23 disclosure of which would have a substantial likelihood of threatening the  
24 security of a judicial facility or any individual's safety.

25 (12) The following records of the Certified Professional Guardian Board:

26 (i) Investigative records compiled by the Board as a result of an  
investigation conducted by the Board as part of the application process, while a  
disciplinary investigation is in process under the Board's rules and regulations,  
or as a result of any other investigation conducted by the Board while an  
investigation is in process. Investigative records related to a grievance become  
open to public inspection once the investigation is completed.

(ii) Deliberative records compiled by the Board or a panel or committee of  
the Board as part of a disciplinary process.

(iii) A grievance shall be open to public access, along with any response to  
the grievance submitted by the professional guardian or agency, once the  
investigation into the grievance has been completed or once a decision has been

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5 made that no investigation will be conducted. The name of the professional  
6 guardian or agency shall not be redacted from the grievance.

7 CHAMBERS RECORDS

8 (m) Chambers Records. Chambers records are not administrative records  
9 and are not subject to disclosure.

10 COMMENT: Access to chambers records could necessitate a judicial officer  
11 having to review all records to protect against disclosing case sensitive  
12 information or other information that would intrude on the independence of  
13 judicial decision-making. This would effectively make the judicial officer a de  
14 facto public records officer and could greatly interfere with judicial functions.

15 (1) “Chambers record” means any writing that is created by or maintained  
16 by any judicial officer or chambers staff, and is maintained under chambers  
17 control, whether directly related to an official judicial proceeding, the  
18 management of the court, or other chambers activities. “Chambers staff” means  
19 a judicial officer’s law clerk, a judicial officer’s administrative staff, and any  
20 other staff when providing support directly to the judicial officer at chambers.

21 COMMENT: Some judicial employees, particularly in small jurisdictions, split  
22 their time between performing chambers duties and performing other court  
23 duties. An employee may be “chambers staff” as to certain functions, but not as  
24 to others. Whether certain records are subject to disclosure may depend on  
25 whether the employee was acting in a chambers staff function or an  
26 administrative staff function with respect to that record.

Records may remain under chambers control even though they are stored  
elsewhere. For example, records relating to chambers activities that are stored  
on a judge’s personally owned or workplace-assigned computer, laptop  
computer, cell phone, and similar electronic devices would still be chambers  
records. As a further example, records that are stored for a judicial chambers on  
external servers would still be under chambers control to the same extent as if  
the records were stored directly within the chambers. However, records that are  
otherwise subject to disclosure should not be allowed to be moved into  
chambers control as a means of avoiding disclosure.

(2) Court records and administrative records do not become chambers  
records merely because they are in the possession or custody of a judicial officer  
or chambers staff.

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6 COMMENT: Chambers records do not change in character by virtue of being  
7 accessible to another chambers. For example, a data base that is shared by  
8 multiple judges and their chambers staff is a “chambers record” for purposes of  
9 this rule, as long as the data base is only being used by judges and their  
10 chambers staff.

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**IMPLEMENTATION AND EFFECTIVE DATE**

(n) Best Practices. Best practice guidelines adopted by the Supreme Court may be relied upon in acting upon public requests for documents.

(o) Effective Date of Rule.

(1) This rule will go into effect on a future date to be determined by the Supreme Court based upon a recommendation from the Board for Judicial Administration. The rule will apply to records that are created on or after that date.

COMMENT: A delayed effective date is being used to allow time for development of best practices, training, and implementation. The effective date will be added to the rule once it has been determined.

(2) Public access to records that are created before that date are to be analyzed according to other court rules, applicable statutes, and the common law balancing test. The Public Records Act, chapter 42.56 RCW, does not apply to judicial records, but it may be used for non-binding guidance.

**GR 31.1**