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NO. 95551-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Petitioner,

v.

JENNIFER DREEWES,

Respondent.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

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**RESPONDENT JENNIFER DREEWES' ANSWER  
TO BRIEF OF AMICI CURIAE**

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## A. INTRODUCTION

The public's access to Jennifer Dreewes' status as an indigent appellant has not been concealed. Rather, in proceedings below, the State incorporated personal financial information from Dreewes' divorce proceedings to argue about an appellate cost award. The incorporated personal financial information has been sealed by the superior court under the framework set forth in *Seattle Times v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). The appellate issue to which it pertained was mooted by amendment to the Rules of Appellate Procedure and, therefore, was not decided by the Court of Appeals. Thus, contrary to Amici's claim, the public has no actual interest in personal financial information sealed in Dreewes' divorce proceedings.

## B. RESTATEMENT OF RELEVANT FACTS

Dreewes' criminal conviction resulted in a 90-month sentence. CP 61. Upon application, the superior court found Dreewes indigent for purposes of appeal. CP 1-3. Those proceedings remain public. *Id.*

When Dreewes filed her opening brief, the prior version of RAP 14.2 and case law construing it required her to include argument that the court should deny the State an award of appellate costs should the State substantially prevail on appeal. App'ts Opening Br., No. 74055-5-I, pp.35-36 (filed Aug. 29, 2016); *State v. Sinclair*, 192 Wn. App. 380, 385, 389-

90, 367 P.3d 612, *review denied*, 185 Wn.2d 1034(2016). Dreewes relied on the presumption of continued indigency under RAP 15.2(f); she did not include any personal financial details in her brief. Opening Br., pp.35-36.

The State responded by introducing personal financial declarations filed in ongoing superior court divorce proceedings between Dreewes and her estranged husband. Resp'ts Br., No. 74055-5-I, pp.22-24 (filed Jan. 12, 2017). The State designated Dreewes and her husband's personal financial declarations with attached documents. State's Des. of CPs, No. 74055-5-I (filed Jan. 12, 2017). The State also incorporated details from the declarations in its response brief. Resp'ts Br., p.23 (describing salaries, bonuses, personal property, debts owed).

Dreewes, acting pro se, had moved to seal her financial declaration in the divorce proceedings, but the superior court had not yet ruled on Dreewes' motion. Sealed Fin'l Docs., No. 95571-9 (filed Apr. 16, 2018) (containing Dreewes' pro se motion to seal filed Nov. 23, 2016). The State was aware of Dreewes' motion, which was included in the documents it submitted on appeal. *See id.* Although the timing is unclear, the record shows her husband's declaration is also under seal in the superior court. Order dated Aug. 8, 2017, App. A to Mot. to Seal, No. 74055-5-I (filed Aug. 16, 2017) (noting Patrick Dreewes' "documents are already sealed").

In Division One, Dreewes moved to seal the documents designated by the State and the section of its brief incorporating information from those documents. Mot. to Seal Pers. Fin'l Info. Filed by the State, No. 74055-5-I (filed Jan. 24, 2017); Reply to Mot. to Seal, No. 74055-5-I (filed Jan. 31, 2017). Dreewes also responded substantively to the State's argument in her reply brief and by necessity incorporated more details of her personal finances, moving to seal that section of her reply brief. App'ts Reply Br., No. 74055-5-I, pp.12-14 (filed Feb. 15, 2017); Mot. to Seal Section of Reply Br. Relying on Pers. Fin'l Info., No. 74055-5-I (filed Feb. 15, 2017).

A commissioner denied the motions to seal "for now" and ordered the designation of clerk's papers stricken because "the clerk's papers in the divorce case are not part of the record on review in this criminal case." Ruling, No. 74055-5-I (Mar. 13, 2017). The commissioner permitted Dreewes to "renew her motion to seal" if the superior court sealed her declaration in the divorce proceedings. *Id.* at 3. The commissioner also authorized the State to "submit copies of the documents filed in the divorce case on the issue of appellate costs" provided the State redacted financial account numbers. *Id.* at 4. The State did not refile the personal financial declarations from Dreewes' divorce proceedings until it was

required to do so, under seal, by the Commissioner of this Court. Ruling, No. 95571-9 (Apr. 13, 2018).

Meanwhile, the superior court sealed Dreewes' personal financial declaration and supporting documents in the divorce proceedings and noted that her husband's documents were already sealed. Order dated Aug. 8, 2017, App. A to Mot. to Seal, No. 74055-5-I (filed Aug. 16, 2017).

Once the documents underlying the appellate costs briefing were sealed by the superior court, Dreewes renewed her motion to seal in this appeal. Mot. to Seal Portions of Briefing that Incorporate Pers. Fin'l Sealed Below, No. 74055-5-I (filed Aug. 16, 2017). The motion was denied by the clerk, and the panel denied Dreewes' motion to modify. Notation Ruling, No. 74055-5-I (Oct. 4, 2017); Mot. to Modify, No. 74055-5-I (filed Oct. 31, 2017); Order Denying Mot. to Modify, No. 74055-5-I (Jan. 29, 2018). The Commissioner of this Court referred Dreewes' motion for discretionary review to a department of this Court, which accepted review. Ruling, No. 95571-9 (Apr. 13, 2018); Mot. Discr. Rev., No. 95571-9 (filed Feb. 28, 2018); Order on Motions, No. 955771-9 (Jun. 6, 2018) (granting review and consolidating with No. 95551-4).

The Allied Daily Newspapers of Washington and the Washington Coalition for Open Government filed a brief as amici curiae, to which Dreewes now responds.

C. ARGUMENT IN ANSWER TO AMICI

**1. The public's interest in the personal financial information discussed in the appellate briefing is minimal because the issue was mooted by amendment to the RAPs and has not been considered by the appellate courts.**

Amici contends the public has a serious interest in the contested financial information the State discussed in its response brief below.

Amici Br., pp.2, 15. Amici inflates the public's interest because they ignore the posture of the issue in this appeal and do not understand the issue of appellate costs imposed in the context of criminal appeals.

During this appeal, appellate courts altered procedural and substantive rules that apply when the prosecution prevails in a criminal appeal and requests that an indigent person pay the State for the costs of the appeal. In her opening brief in the Court of Appeals, filed in 2016, Dreewes argued appellate costs should not be imposed if the State is the prevailing party. Opening Br., No. 74055-5-I, pp.35-36 (filed Aug. 29, 2016); *see Sinclair*, 192 Wn. App. at 385, 389-90 (appellate court has discretion to deny an award of appellate costs under former RAP 14.2 if indigent party addresses issue in appellate briefing). Dreewes' argument relied solely on public information from this criminal case. Opening Br., pp.35-36. She was required to raise an objection to a potential future cost

bill in her opening brief in order to preserve this claim, under then-existing law. *Sinclair*, 192 Wn. App. at 385, 389-90.

In response, the State filed contested financial declarations from Dreewes and her estranged husband's ongoing divorce action and repeated the details of those documents in its responsive argument section. Resp'ts Br., No. 74055-5-I, pp.22-24 (filed Jan. 12, 2017).<sup>1</sup> The State argued the contested financial information showed Dreewes could afford appellate costs, although she was indigent on appeal. *Id.*

Dreewes rebutted the State's mischaracterizations in her reply brief, and moved to seal the recitation of her personal finances. App'ts Reply Br., No. 74055-5-I, pp.12-14 (filed Feb. 15, 2017).

The Court of Appeals did not address the issue of appellate costs at all. Slip Op. at 32, n.19. In 2017, the appellate rules were amended to create a presumption that costs will not be awarded against an indigent appellant and to provide a commissioner or clerk with authority to decide whether a party has the ability to pay appellate costs. RAP 14.2. Thus,

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<sup>1</sup> Dreewes' husband's financial declaration had apparently already been sealed, but the superior court had not yet decided Dreewes' pro se motion to seal her own declaration and supporting documents. *Compare* Order dated Aug. 8, 2017, App. A to Mot. to Seal, No. 74055-5-I (filed Aug. 16, 2017) (ordering sealed Dreewes' declaration and attached documents and noting Patrick Dreewes' "documents are already sealed") *with* Sealed Fin'l Docs., No. 95571-9 (filed Apr. 16, 2018) (containing Dreewes' pro se motion to seal filed Nov. 23, 2016).

after Dreewes filed her opening brief addressing the issue of appellate costs, this Court amended the appellate rules to allow parties to wait to address ability to pay until after final decision in the appeal. Consequently, the Court of Appeals did not consider Dreewes' ability to pay and did not address appellate costs. This Court will also not consider the issue. The issue is moot unless the State is the substantially prevailing party on appeal and moves the commissioner or clerk to find Dreewes has the ability to pay and to award appellate costs.

Contrary to Amici's portrayal, the contested financial information related only to the issue of appellate costs. *See* Amici Br., pp.3-4. The State did not use the personal financial information to address Dreewes' argument that the legal financial obligations imposed by the trial court should be stricken. Resp'ts Br., p.21-22.

Because the issue is moot and was never decided by any court, the public has minimal interest in the contested details of Dreewes and her estranged husband's personal finances. *See Doe G v. Dep't of Corrections*, 190 Wn.2d 185, 410 P.3d 1156 (2018) (public has interest when it can be involved in and scrutinize judicial decision). No decision affects the expenditure of public funds aside from the superior court's initial finding of indigency, which is publicly available. *See State v. Parvin*, 184 Wn.2d 741, 771, 364 P.3d 94 (2015) (public has interest in decisions affecting

expenditure of public funds). Amici’s argument “the public needs to know what arguments are presented in order to understand and evaluate decisions” holds no water because the courts made no decision on this issue. Amici Br., p.2.

**2. The very public availability of Dreewes’ financial circumstances harms Dreewes’ reentry.**

Although the public’s interest is minimal at best, the risk of harm to Dreewes is great. Amici claims Dreewes identifies no particular harm from the exposure of her personal financial information. But this Court recognizes personal financial information is inherently private. *Hundtofte v. Encarnación*, 169 Wn. App. 498, 513-14, 280 P.3d 513 (2012) (financial records in family law cases entitled to privacy); *Dreiling v. Jain*, 151 Wn.2d 900, 918-19, 93 P.3d 861 (2004) (personal financial information may be subject to sealing). The consequences are even greater in the age of the worldwide web and for those convicted of crimes.

Appellate briefing is publicly available on the Washington courts website. Anyone who makes even a cursory web search for Jennifer Dreewes can connect with this case and the appellate briefing. With a simple internet search, potential housing providers, employers, mortgagers, and acquaintances can find a snapshot of Dreewes’ personal financial details as portrayed in contested divorce and appellate

proceedings. Unless these portions of the briefs are sealed, the pervasively available information will follow and affect Dreewes indefinitely.

Public exposure has additional, concrete consequences. Credit reporting agencies glean public financial information and amass it to determine an individual's credit score. *See* Bannon, Alicia et al., Brennan Ctr. for Justice, Criminal Justice Debt: A Barrier to Reentry 27 (2010), <https://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>. A low credit score will affect Dreewes' housing and employment opportunities. *Id.* Whether applying for a mortgage, to rent, or to public housing, "credit scores are often a screening mechanism." *Id.*

Public availability of these briefing sections, exposing Dreewes and her estranged husband's debts, will also stigmatize the former couple. Debt generally carries a harsh, negative stigma. Michael D. Sousa, Debt Stigma and Social Class, 41 Seattle U. L. Rev. 965, 966-67 (Spring 2018) (discussing how notions of morality are imbued in debt; "The physical harshness by which society historically treated debtors has now faded, of course, but the moral opprobrium directed at individuals who either cannot pay back their debts or who file for bankruptcy protection is arguably as stinging as ever."). "American society still stigmatizes those who fail in the economic game of life by incurring unmanageable financial debt." *Id.* at 967; *see* Stacey Abrams, Commentary: My \$200,000 Debt Should Not

Disqualify Me For Governor of Georgia, *Fortune* (Apr. 24, 2018), <http://fortune.com/2018/04/24/stacey-abrams-debt-georgia-governor/> (describing “fallout” from her “personal financial disclosure report”).

Despite having no prior criminal record, Dreewes will face well-recognized obstacles when she reenters free society after her incarceration. *See, e.g., State v. Blazina*, 182 Wn.2d 827, 835-37, 344 P.3d 680 (2015); Amy L. Solomon, In Search of a Job: Criminal Records as Barriers to Employment, *NIJ Journal* No. 270, 42-51 (2012), <https://www.nij.gov/journals/270/pages/criminal-records.aspx>; CP 58-68 (imposing 90 months of incarceration). She asks simply that she not be further burdened with a very accessible, public airing of a snapshot of her personal finances.

**3. Briefing cannot be used to circumvent sealing orders by publicizing information subject to court-ordered sealing.**

Amici argues appellate briefing can incorporate and publicly file information from records subject to a valid sealing order. Amici’s reading of GR 15 is illogical and contradicted by the rule’s plain language.

a. General Rule 15(g) applies to appellate briefing.

Amici argues GR 15(g) does not apply to appellate briefing.

However, by definition GR 15(g) plainly includes appellate briefing.<sup>2</sup>

First, the rule explicitly states GR 15 “sets forth a uniform procedure for the destruction, sealing, and redaction of court records” that “applies to all court records.” GR 15(a). The plain language demonstrates GR 15 was intended to apply broadly to all court records. Moreover, the rule should be applied uniformly.

The term “court records” is further defined in GR 31 and also includes appellate briefing. GR 15(b)(2) (referencing definition in GR 31(c)(4)). Court records are defined expansively and includes “Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding.” GR 31(c)(4). An appeal brief is a document and a thing maintained by the courts in connection with appellate proceedings. Thus, GR 15 applies to appellate briefing.

The plain language is supported by logic. Amici’s claim that sealed court records should be exempt from sealing when used in appellate court briefing would thwart the goal of uniformity. GR 15(a). In fact, such a rule would entirely gut GR 15. If a party could include sealed information in public appellate briefing, which is readily available on the Washington

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<sup>2</sup> The full text of General Rule 15 is attached as an appendix.

Courts' website, the sealing order would be largely ineffectual. GR 15 should not be read so illogically.

b. General Rule 15(g) is not narrowly limited to designations of the record for a singular case

Amici also claims GR 15 should only apply to designations of the record within a singular case, if that proceeding is appealed. Amici Br., pp.10, 12. Again, the plain language refutes Amici's argument.

GR 15(g) directs that any court record sealed in the trial court must be sealed in an appellate court, but is subject to further order of the appellate court.

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

GR 15. The rule does not particularize its application to a single proceeding. Rather, it applies to any court record or portion of a court record sealed in the trial court. GR 15(g) ("A court record or any portion of it, sealed in the trial court"). And, it applies to any appeal. GR 15(g) ("in the event of an appeal").

Amici's claim that GR 15(g) applies only to a direct appeal from the specified trial court proceeding during which the record was sealed would undermine the trial court's sealing order by enabling publicity in

unrelated appeals. A sealing order is useful only if it shields the record or information from public view. GR 15(b)(4) (“To seal means to protect from examination by the public and unauthorized court personnel.”); GR 15(c)(5)(D) (“the clerk shall prevent access to the sealed court records”). This purpose is served only if it applies to every appellate court proceeding, “subject to further order of the appellate court.” GR 15(g).

Amici also illogically argues the general rules should not apply to appeals unless RAP 9.6 and RAP 9.7 are implicated. Amici Br., p.13. But Amici ignores that the State sought to designate the underlying financial documents from Dreewes’ divorce proceedings in this appeal. Thus, RAPs 9.6 and 9.7 were explicitly invoked by the State. Ultimately, this Court’s Commissioner directed the State to file the documents under seal in this appeal, thus they are a part of the record albeit under seal. *See* Amici Br., p.12 n.4. That the underlying documents are under seal in this appeal only reinforces that the limited portions of the briefing incorporating information from those sealed documents must also be sealed.

Moreover, the “general” rules apply to every case in our court system. In particular, GR 15 applies here because the documents and information contained therein were sealed in the trial court.

Amici’s argument suffers an additional infirmity: inefficiency. Under Amici’s rule, trial court sealing orders would have no presumptive

effect. Thus, appellate courts would be required to rehear the same sealing motions heard and decided by the trial court. This would create needless work for our appellate courts. *See* GR 15(c)(2) (requiring court to enter written findings in support of any order to seal or redact). A party adversely affected by the sealing order can appeal the order, but the parties should not be required to renew a valid sealing order at each new stage of appeal. *See State v. Richardson*, 177 Wn.2d 351, 363-65, 302 P.3d 156 (2013) (intervenor has right to appeal denial of motion to unseal entered after judgment in criminal proceeding).

Contrary to Amici's argument, the rule does not subject appellate courts to trial court review. Amici Br., pp.11 (claiming Dreewes' reading "puts trial courts in the driver's seat"), 12. Rather, the rule provides a presumption of sealing in the appeals courts when a trial court previously ordered sealing. GR 15(g). It also explicitly provides the appellate court with authority to amend the sealing order: "Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court." GR 15(g).

Here, the appellate court commissioner declined to order sealing in the first instance. But, the ruling explicitly authorized Dreewes to refile her motion if the superior court subsequently sealed the records at issue. Thus, the trial court did not act as an appellate reviewer of the Court of

Appeals, as Amici claims. The appellate court deferred to the trial court, and the trial court acted after Dreewes filed her second motion to seal in superior court.

Critically, however, the appellate court did not revise its ruling to conform with the superior court order sealing the documents. This Court is now in the position to correct that error.

**4. In discussing the need for sealing, Amici ignores the content of the State's response brief as well as other considerations.**

In discussing sealing, Amici focuses on Dreewes' reply brief. Amici Br., pp.13-17. Yet, Dreewes moved to seal pages 22 to 24 of the State's response brief in addition to section 5 of her reply brief. Mot. to Seal, No. 74055-5-I, p.3 (filed Jan. 24, 2017); Mot. Discr. Rev., No. 95571-9, pp.6, 7 (filed Feb. 28, 2018). The Court should consider the content of both sections of briefing when determining the need to seal.

At pages 22 to 24, the State's response brief mischaracterizes and discloses details of Dreewes' personal financial circumstances, which jeopardize her successful reentry. For example, the State discloses debt allegedly owing on a vehicle in the amount of \$14,000. Resp'ts Br., p.23. The State further publicizes Dreewes' assertion of her estranged husband's falsehoods. Resp'ts Br., p.23. The State also argues for Dreewes' ability to borrow against her own property. *Id.*

The Court should also seal the responsive portion of Dreewes' reply brief. This briefing is even more detrimental to Dreewes' long-term success because, in response to the State's attempt to paint Dreewes as solvent and to defend her indigency under threat from the State, Dreewes accurately recounted the financial records from which the State purported to glean its information. The financial records in fact show the couple's debts exceed their assets. Sealed Fin'l Docs., No. 95571-9 (filed Apr. 16, 2018) (Fin'l Decl. of Patrick Dreewes at 1 (total monthly expenses and debt payments vastly outweigh net monthly income), 4 (showing no liquid assets), 6 (showing debts owed); Decl. of J. Dreewes at 3 (attesting with supporting documentation that \$16,033.80 is owed on vehicle rather than \$20,396.00), 4 (asserting amounts owed are slightly less than husband claims)). While the State alleged Dreewes had the ability to pay appellate costs, Dreewes replied with support for her insolvency and, thus, lack of ability to pay. Again, the matter is moot, because under RAP 15.2(f) Dreewes remains indigent for purpose of appeal and the appellate courts have not decided the issue in light of the amendment to RAP 14.2.

Amici's contention that the presence of legal argument precludes the possibility of sealing should be denied. At most, this claim relates to whether sealing or redaction is the better course. GR 15 treats sealing and redacting as synonyms. GR 15(b)(4) ("A motion or order to delete, purge,

remove, excise, erase, or redact shall be treated as a motion or order to seal.”). And, Dreewes recognized redaction as an alternative to sealing. Mot. Discr. Rev., p.9. However, redaction would leave little or no substance for the public’s edification. *See id.*

As discussed, under GR 15(g), the briefing incorporating information from records sealed in the superior court “shall” be sealed on appeal. Accordingly, the Court need not apply the multi-factor test from *Ishikawa*, 97 Wn.2d 30. Proper application of the *Ishikawa* factors, however, also compel sealing. *Contra Amici Br.*, pp.13-17.

*Ishikawa* sets forth five factors relevant to this inquiry: (1) the need for closure and sealing; (2) the opportunity to object to closure; (3) an analysis of the alternatives to sealing; (4) weighing the competing interests of sealing to the public's right to access; and (5) limitations in both the application and duration of the order. 97 Wn.2d at 30, 37-39.

First, sealing is necessary because the briefing sections relay personal financial information and details of Dreewes’ personal financial circumstances—debts owed, lack of assets, income. *See* Section C.2, *supra*. Moreover, in the case of the State’s response brief, the briefing misrepresents Dreewes’ finances.

Second, the State, Amici, and any other interested person has had ample opportunity to object to sealing here and in the Court of Appeals.

Third, there is no alternative to sealing two pages from the response brief and the final section of Dreewes' reply brief, both of which repeatedly and explicitly discuss the details of Dreewes' personal finances. While these pages could theoretically be redacted, the remaining words would be sparse. Sealing is the most practical solution.

Fourth, Dreewes recognizes the public's general right to access appellate proceedings. *See, e.g.*, Const. art. I, § 10. However, the courts' opinions, all but a few pages of the briefing, the orders, all proceedings, and the remainder of the court file would remain open to the public. Moreover, in light of this Court's amendment to RAP 14.2, the public's interest in reviewing the details of Dreewes' personal financial circumstances is even more diminished.

Finally, there is no more limited remedy than sealing the relatively short portions of the briefs that incorporate the Dreewes' personal financial information.

Balancing these factors, the superior court sealed the underlying financial declarations and supporting documents submitted by Dreewes and her estranged husband. *See* Order dated Aug. 8, 2017, App. A to Mot. to Seal, No. 74055-5-I (filed Aug. 16, 2017). This Court should likewise hold *Ishikawa* and GR 15(g) compel sealing here.

**5. The State extracted the contested financial details from superior court divorce proceedings after Dreewes had moved to seal and then filed it publicly in these proceedings without notice.**

Amici's emphasis on Dreewes' filing of a second motion to seal in her superior court divorce proceedings is misplaced. Amici Br., pp.7, 11. While the State knew Dreewes, acting pro se, had moved to seal her financial records in the superior court, the State extracted personal financial details from those records, incorporated them into its appellate briefing, and publicly filed the briefing and the underlying documents in the Court of Appeals, without any notice to Dreewes.

Dreewes represents herself, from prison, in her superior court divorce proceedings. *See Sealed Fin'l Docs.*, No. 95571-9 (filed Apr. 16, 2018). When she filed certain financial records in those proceedings, she also filed a pro se motion to seal. *See id.* (motion to seal dated Nov. 23, 2016). The superior court apparently did not act on Dreewes' motion to seal. And the State, without notice to Dreewes or request for resolution of the motion to seal, filed the financial records in these criminal appellate court proceedings and incorporated the details of those records into pages 22 to 24 of its publicly-filed response brief.

When Dreewes moved to seal, a commissioner denied the motion with leave to file anew if the documents became sealed in the superior

court. Thus, the State knew Dreewes would likely renew her superior court motion to seal. Dreewes was not obligated to notify the State that she filed a second pro se motion to seal her records in the superior court. *See* GR 15(c)(1) (in civil cases, reasonable notice must be provided only to parties in the case). If the State or Amici were interested in Dreewes' motion, they could have reviewed her divorce proceedings. Dreewes did nothing in secret. In fact, the appellate commissioner's ruling had broadcast the likelihood of a renewed motion to seal in the superior court.

Nothing prevented the State or Amici from objecting to the motion to seal in the superior court. Yet, neither the State nor Amici objected.

#### D. CONCLUSION

Under GR 15(g) and *Ishikawa*, this Court should seal those portions of the response and reply briefs that incorporate information from sealed superior court documents.

DATED this 29th day of August, 2018.

Respectfully submitted,



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# **APPENDIX**

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## General Rules

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GR 15  
DESTRUCTION, SEALING, AND REDACTION OF COURT RECORDS

(a) Purpose and Scope of the Rule. This rule sets forth a uniform procedure for the destruction, sealing, and redaction of court records. 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.

(b) Definitions.

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

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

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

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

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

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

(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 also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over 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).

(2) After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public 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:

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

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

(C) A conviction has been vacated; or

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

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

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

(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.

(4) Sealing of Entire Court File. When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public 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 criminal case has been vacated, section (d) shall apply. The order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.

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

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

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

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

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

(6) Procedures for Redacted Court Records. When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original unredacted court record shall be sealed following the 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.

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

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

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

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

(h) Destruction of Court Records.

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

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

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

(A) Remove all references to the court records from any applicable information systems maintained for or by the clerk except for accounting records, the order to destroy, and the written findings. The order to destroy and 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

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

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

(i) Trial Exhibits. Notwithstanding any other provision of this rule, trial exhibits may be destroyed or

returned to the parties if all parties so stipulate in writing and the court so orders.

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

[Adopted effective September 22, 1989; amended effective September 1, 1995; June 4, 1997; June 16, 1998; September 1, 2000; October 1, 2002; July 1, 2006; April 28, 2015.]

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, )  
 )  
 Petitioner, )  
 ) NO. 95551-4  
 )  
 )  
 JENNIFER DREEWES, )  
 )  
 Respondent. )

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I, MARIA ARRANZA RILEY, STATE THAT ON THE 29<sup>TH</sup> DAY OF AUGUST, 2018, I CAUSED THE ORIGINAL RESPONDENT'S ANSWER TO BRIEF OF AMICI CURIAE TO BE FILED IN THE WASHINGTON STATE SUPREME COURT AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON, THIS 29<sup>TH</sup> DAY OF AUGUST, 2018.



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