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Honorable Ronald Carpenter
Temple of Justice
Post Office Box 40929
Olympia, Washington
98504-0929

April 30, 2014

Re: Proposed Changes to GR 15

Dear Clerk Carpenter:

This letter comments on the proposed changes to GR 15. In addition to the comments I made last year to the Data Dissemination Committee's draft proposal, I join in many of the concerns expressed in Mr. Eric Stahl's comment to this proposal.

This Court has issued scores of decisions over the past fifteen years, each repeating this state's strong interest in enforcing the constitutional commands of Article I, Section 10 of the Washington State Constitution. Those decisions have stressed that records and proceedings must be open and that closure is permitted only under the most unusual circumstances. Decisions of superior court judges and of the Court of Appeals have been repeatedly reversed and cases remanded for retrial for transgressions of these principles.

And yet these proposed changes to GR 15 seem to reverse the direction of this Court's jurisprudence with little or no attempt to reconcile the proposal with this Court's nearly unbroken line of decisions encouraging openness. The result, I respectfully suggest, will be to deepen confusion over the jurisprudential basis for this Court's open courts case law, to undermine the support for those decisions, and to erode the principle of openness that this Court has worked to defend.

For example, as Mr. Stahl aptly observes, "the grounds for sealing are vastly expanded to allow for near-total secrecy of juvenile and non-conviction criminal records." The treatment of non-conviction data presumes that records of an acquittal should be sealed. *See* GR 15(c)(4)(E). Trials resulting in acquittals are often very controversial; the public should not be denied access to a detailed review of such cases. It is difficult to see why this class of records should be treated as categorically exempt from the presumption of openness. Likewise, a gubernatorial pardon is a reason to seal under the proposed rule, despite the fact that an exercise of executive clemency is often hotly debated. GR 15(c)(4)(F). Again, it is unclear why the constitutional presumption of openness is categorically different as to these records.

Similarly, dissemination of juvenile conviction data presents thorny policy questions pitting concerns for oversight of judicial processes against the interest in allowing juvenile offenders to move on with their lives. These difficult questions should be decided by this Court in a manner that reconciles a new policy with this Court's case law. The purpose of the rule is apparently "to

address juvenile offender records in the rule consistent with chapter 13.50 RCW." But notably absent from the rule is any discussion as to whether there will be any individualized consideration as required by our state constitution. Recent changes to chapter 13.50 RCW compound the confusion, as those changes require the creation of an "administrative sealing" process in juvenile court where, apparently, the vast majority of juvenile cases will be automatically sealed. It is unclear whether the new GR 15 will be consistent with the constitution or with the new statute.

Additionally, the proposed rule seems to transform a strong constitutional presumption of openness into a multi-factored test where considerations in favor of closure are weighed equally against the interest of openness. See GR 15(c)(2)(A)(i).

This proposed rule undercuts rather than supports this Court's open courts jurisprudence. Its adoption would contribute to disarray in this important area of the law. On purely procedural questions, it makes sense to use the rule-making process to announce a new rule, so that interested parties can adapt their practice to the new rule. However, on important policy matters intertwined with difficult constitutional questions, rule-making may insufficiently explain why a policy shift has occurred.

For these reasons, I respectfully ask that this rule be rejected as drafted, and that exceptions—whether sweeping or incremental—to the constitutional protections of an open court system be carefully crafted through the decision making process in this Court. After the constitutional questions are resolved, a rule can be proposed to implement this Court's decisions.

Respectfully submitted,

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