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April 29, 2014

Washington State Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

RE: Comment on Proposed GR 15

Please accept the following comments from The Washington Defender Association. We recommend that:

1. GR 15(c)(6) NOT BE AMENDED to prohibit redacting names of non-convicted parties in legal indices, and
2. GR15(c)(2)(A) SHOULD BE AMENDED to protect the privacy interests of non-convicted individuals.

Redacting non-convicted party names in court indices does not defeat the Washington State Constitution's presumption for open court records. The proposed amendments to GR 15(c)(2)(A) emphasize the importance of the *Ishikawa* factors, which protect a defendant's "compelling interests" and "privacy interests." However, the proposed amendments under GR 15(c)(6) prohibit the redaction of party names, which compromises the privacy interests of non-convicted parties. Redacting the names of non-convicted persons will help reduce the impact of an arrest on employment, housing, and quality of life for those never convicted of a crime.

GR 15 Should not be amended to prohibit redacting names of non-convicted parties in legal indices.

For a non-convicted party, name redaction falls squarely within *Ishikawa* while still allowing public access to court records. There are many ways for the public to find a case where a non-

convicted person's name has been redacted. For example, a person may search with a case number, along with the party initials that would be included on a redacted file. Also, when the court institutes the new case management system that is now being developed, it could include more searchable criteria, including date, keyword, judge, attorney, or other criteria that would make public searches easier.

Redacting non-convicted party names in court indices does not jeopardize the public right to access court records. Coupled with the inclusion of party initials, this redaction would not inhibit a case search because the case could still be found in indices. The ability to find a case in court indices upholds the public right of openness of court records while protecting the compelling and privacy interests of non-convicted persons. Preventing the redaction of non-convicted persons should not be incorporated into GR 15 as it will have negative impacts and is not required by the Washington constitution.

GR 15 should be amended to protect the privacy interests of non-convicted individuals.

The proposed amendment to GR 15 that enumerates *Ishikawa* factors properly underscores the importance of protecting a party's privacy interests, which helps prevent court records from being used to deny opportunities of those not convicted of a crime. The proposed amendments properly identify the criteria a court must consider when weighing the sealing of records and the adequacy of sealing when it occurs.

The legislature has emphasized the importance of protecting private information from being widely distributed. The Criminal Records Privacy Act, RCW 10.97 et seq., recognizes the need to refrain from widely distributing criminal records as a means of protecting a person's right of privacy. This interest should similarly be reflected in the court rules.

Case law provides only limited direction on the appropriate level of protection given to a non-convicted person's privacy interests when balanced against the public right of open court records. Few cases have addressed the rights of non-convicted persons on appeal. The cases that have analyzed sealing rights attempted to balance *Ishikawa* factors when a person has been convicted, where the public's right to open court records may be higher.

Amend GR 15 to Properly Balance Privacy Interests and Open Records

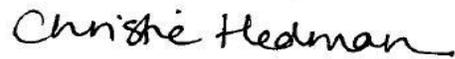
The proposed amendments to GR 15 incorporate the *Ishikawa* factors, which properly recognize the importance of protecting privacy interests. Such interests are expressed by the legislature as a way of preventing the widespread dissemination of criminal records. The proposed GR 15 also recognizes this interest by allowing for the sealing of non-conviction records and the adequacy of sealing when it occurs.

Sealing rules should be crafted to balance the important privacy rights of persons who appear before the court against the need to make our courts open and transparent. We believe that our suggestions meet this important balance.

Sincerely,

A handwritten signature in black ink that reads "Michael R. Kawamura". The signature is written in a cursive style with a long, sweeping underline.

Michael Kawamura
President

A handwritten signature in black ink that reads "Christie Hedman". The signature is written in a cursive style with a long, sweeping underline.

Christie Hedman
Executive Director

A handwritten signature in black ink that reads "Travis Stearns". The signature is written in a cursive style with a long, sweeping underline.

Travis Stearns
Deputy Director