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⑮ ALSO ADMITTED IN TEXAS
⑯ ALSO ADMITTED IN WASHINGTON, D.C.
⑰ ALSO ADMITTED IN WISCONSIN
⑱ NOT ADMITTED IN WASHINGTON

April 29, 2016

SENT VIA E-MAIL (supreme@courts.wa.gov)

Honorable Charles W. Johnson, Chair
Supreme Court Rules Committee
c/o Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed Amendment to GR 14.1, citation to unpublished opinions

Dear Justice Johnson:

I write, as Chair of Keller Rohrback's Commercial Litigation Group, to report that our group endorses the proposed amendment to GR 14.1.

We recognize the varied concerns regarding the process that gives rise to unpublished opinions and the associated concerns for the precedential value of such opinions. Notwithstanding those concerns, we believe there are many circumstances where the litigants and the courts would greatly benefit from the ability to take note of such opinions. We also believe Washington's trial and appellate judges would be able to give such opinions the consideration they warrant.

Keller Rohrback's litigators have, on more than a few occasions, encountered situations where an unpublished opinion squarely addresses an issue before the court for which no other authority can be found. Depriving a trial court judge of an opinion on a matter of first impression in which the Court of Appeals has previously issued a clear ruling on an issue before the court does not further the interests of justice.

As one example, I recently sought issuance of a prejudgment writ of attachment. Under RCW 6.25.070(4), notice of the hearing "shall be served in the same manner as a summons in a civil action." Because the summons and complaint had already been served on the defendant, and the defendant was then represented by counsel, we served defendant's attorney with the

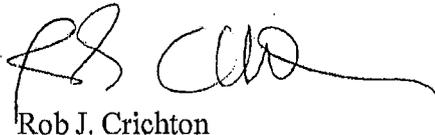
Honorable Charles W. Johnson
April 29, 2016
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required notice, as required by CR 5(b). The defendant later argued to the court that we had failed to satisfy the statutory requirement. No published authority addressed this very specific issue as to whether service on a defendant's counsel of record satisfied the statutory notice requirement. The Court of Appeals had ruled (in an unpublished opinion in *Trickle Down, Inc. v. Rickel*, 91 Wn. App. 1070 (1998)) that service on counsel of record pursuant to CR 5(b) sufficed. To say that this opinion lacks precedential value ignores the complete dearth of other authority, and implications of its clear ruling on a matter of first impression. In my case, the Superior Court judge decided the issue without the benefit of the Court of Appeals' thinking.

We are aware that certain judges of the Court of Appeals have opposed the proposed amendment to GR 14.1 on the ground that there are few benefits to citing to unpublished opinions that were deemed non-precedential. For the foregoing reasons, we respectfully disagree. If there is published authority on point, we anticipate that counsel can argue as to why that authority might be entitled to more weight. Such advocacy already occurs with regard to published opinions. We see no reason why counsel, and ultimately the courts, cannot similarly assess the merits and precedential value of unpublished opinions.

Very truly yours,



Rob J. Crichton
rcrichton@kellerrohrback.com

RJC:tla

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, April 29, 2016 3:44 PM
To: Tracy, Mary
Subject: FW: Proposed Changes to GR 14.1 - Comments Submission
Attachments: RJCLtr-CommentsReProposedChangestoGR14.1andRAP13.4.pdf

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Mendy Graves [mailto:mgraves@KellerRohrback.com]
Sent: Friday, April 29, 2016 3:44 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Rob Crichton <rcrichton@KellerRohrback.com>
Subject: Proposed Changes to GR 14.1 - Comments Submission

Good afternoon,

On behalf of Rob Crichton, I have attached his comments regarding the proposed amendment to GR 14.1 (citation to unpublished opinions).

Please let me know if you have any issues opening the attachment.

Regards,

Tiffany L. Armstrong

for

Mendy M. Graves
Keller Rohrback L.L.P.
Legal Assistant
Phone: (206) 623-1900
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Email: mgraves@kellerrohrback.com

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