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October 11, 2017

Supreme Court of the State of Washington
Clerk of the Court
P.O. Box 40929
Olympia, WA 98504-0929
Via email to supreme@courts.wa.gov

Re: Proposed Amendment to RAP 3.4

Dear Chief Justice Fairhurst and Justices of the Court:

The Access to Justice Board has reviewed the proposed amendments to Rule of Appellate Procedure ("RAP") 3.4 regarding the use of juvenile litigants' initials in lieu of full legal names in case captions in Washington's appellate courts. For the reasons set forth in detail in the attached letter by the ACLU of Washington Foundation and other signatory organizations, the Access to Justice Board fully supports the proposed amendments to RAP 3.4. In particular, the Board believes that the proposed amendments are conducive to greater access to justice for juvenile litigants who may otherwise be reticent to exercise their appellate rights.

If you have any questions or need more information, please do not hesitate to contact the Access to Justice Manager, Diana Singleton, at dianas@wsba.org or at 206-727-8025.

Respectfully,

Geoffrey Revelle
Access to Justice Board Chair



May 30, 2017

Supreme Court of the State of Washington
Clerk of the Court
P.O. Box 40929
Olympia, WA 98504-0929
Via email to supreme@courts.wa.gov.

Re: Proposed Amendment to RAP 3.4

Dear Chief Justice Fairhurst and Justices of the Court,

AMERICAN CIVIL
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FOUNDATION
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JEAN ROBINSON
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

The undersigned organizations write in support of proposed amendments to Rule of Appellate Procedure (RAP) 3.4, concerning the use of juvenile initials in case captions on appeal. Proposed RAP 3.4 would require appellate juvenile offender cases to be captioned using initials, rather than the juvenile's full name. This change would further the rehabilitative purposes of the juvenile justice system without compromising public access to judicial proceedings.

Use of Juvenile Initials in Appellate Cases Would Further the Purposes of the Juvenile Justice System

The use of a juvenile's full names in an appellate case caption would chill the juvenile's exercise of the right to appeal. Under a policy adopted by the JISC Data Dissemination policy, juvenile offender records at the trial level are not indexed online and cannot be accessed by the public through the Washington Courts website. This is not the case with appellate court records. Appellate decisions are available online, and indexed in search engines such as Google. Once a juvenile's appellate case decision is published online, it is widely available to potential employers, landlords, community members, and schools. In fact, up to 59% of hiring managers use search engines to research candidates.¹ The risk of additional exposure will chill juveniles from bringing appeals, particularly because juvenile trial court records can be sealed by statute and there is no clear remedy to seal records that have been disseminated in search engines.

In addition, the exposure of a juvenile's full name in appellate case captions will undermine the juvenile's rehabilitation and reintegration. This Court and the legislature have recognized the harm that may result from broad access to juvenile records. In *State v. S.J.C.*, this Court stated:

¹ Amy McDonnell, *60% of employers are peeking into candidates' social media profiles*, Career Builder, April 28, 2016), at <https://www.careerbuilder.com/advice/60-of-employers-are-peeking-into-candidates-social-media-profiles>

A publicly available juvenile court record has very real and objectively observable negative consequences, including denial of “housing, employment, and education opportunities. . . . The stigma of an open juvenile record and the negative consequences that follow are particularly unjustifiable in light of the fact that the mind of an adolescent is measurably and materially different from the mind of an adult.

State v. S.J.C., 183 Wn. 2d 408, 432 (2015) (internal citations omitted).

Similarly, the Washington legislature stated in crafting our state’s juvenile records policy, “[w]hen juvenile court records are publicly available, former juvenile offenders face substantial barriers to reintegration, as they are denied housing, employment, and education opportunities on the basis of these records.” Laws of 2014, ch. 175, § 1. This loss of opportunity may lead to recidivism. *S.J.C.*, 183 Wn. 2d. at 433; *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 107 (1979) (Rehnquist, J., concurring). Using juvenile initials on appeal will limit broad dissemination of a juvenile’s criminal history, enabling reintegration and rehabilitation.

Experience and Logic Do Not Require This Court to Use Full Names in Captions of Juvenile Appellate Cases

The proposed amendments to RAP 3.4 are consistent with this Court’s jurisprudence on juvenile records. A test of experience and logic determines whether a right of public access attaches to court proceedings or records. *State v. Sublett*, 176 Wn.2d 58, 72-73 (2012). When either experience or logic demonstrates that the presumption of public access does not apply to a particular judicial proceeding or record, a “closure” has not occurred. *Id.* at 73. “In the case of juvenile courts, there are plain distinctions between the openness of proceedings, which provide valuable public oversight, and the statutory sealing of records, which promote the rehabilitative purpose of the juvenile justice system.” *S.J.C.*, 183 Wn. 2d at 431.

The experience prong does not clearly counsel either the use of full names or initials, because appellate courts have historically used both in juvenile case captions.² This Court has used initials in juvenile offender cases dating from 1984 through 2016. *See, e.g., State v. Q.D.*, 102 Wn.2d 19 (1984) *State v. Shawn P.*, 122 Wn. 2d 533 (1993); *State v. M.L.*, 134 Wn.2d 657 (1998); *State v. A.M.R.*, 147 Wn.2d 91 (2002); *State v. K.H.H.*, 185 Wn.2d. 745 (2016).

² The absence of statutory authorization for using initials to caption juvenile appellate records does not prevent this Court from adopting the proposed amendments to RAP 3.4. This Court’s decision in *S.J.C.* recognized that categories of juvenile records could be sealed by *either* statute *or* court rule. *See S.J.C.* 183 Wash. 2d at 423 (“[W]e have also recognized the possibility of a statutory remedy where sealing was not otherwise available under court rule or *Ishikawa*.”)

The logic prong, though, strongly counsels that a presumption of public access should not apply to juvenile case captions on appeal. Under the logic prong of the “experience and logic” test, public access is favored when it would play “a significant positive role in the functioning of the particular process in question.” *Sublett*, 176 Wn.2d at 73. Public access to the full names of juveniles appealing criminal cases would undermine the primary purpose behind creating and operating a separate juvenile justice system – the rehabilitation and reintegration of juveniles. In addition, public access to the full names of juveniles in appellate case captions would fail to enhance the “basic fairness” or “appearance of fairness” of appellate proceedings. Under the proposed amendments to RAP 3.4, the entire record of the appellate proceeding, including the briefs, recording of argument, and decision on appeal would remain fully available, as would the records of proceedings below. This is sufficient to promote public oversight of the judicial system.

Conclusion

This Court has a long history of ensuring that the juvenile justice system operates consistent with a rehabilitative purpose. The proposed amendments to RAP 3.4 would further that purpose. We appreciate the opportunity to comment.

Sincerely,

/s/ Vanessa T. Hernandez
Vanessa Torres Hernandez
Youth Policy Director
ACLU of Washington

/s/ Antonio Ginatta
Antonio Ginatta
Policy Director
Columbia Legal Services

/s/ Rick Eichstadt
Rick Eichstadt, Executive Director
Claire Carden, Staff Attorney
Center for Justice

/s/ Anita Khandelwahl
Policy Director
King County Department of Public
Defense

/s/ Anne Lee
Executive Director
Team Child

/s/ Travis Stearns
Travis Stearns, Staff Attorney
Greg Link, Staff Attorney
Washington Appellate Project

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, October 11, 2017 3:25 PM
To: Tracy, Mary
Subject: FW: ATJ Board Comments Regarding RAP 3.4
Attachments: ATJ Board Letter re RAP 3.4 final.pdf

From: Bonnie Sterken [mailto:bonnies@wsba.org]
Sent: Wednesday, October 11, 2017 3:20 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Diana Singleton <dianas@wsba.org>; Geoffrey Revelle <geoff.revelle@FisherBroyles.com>; 'SMungia@gth-law.com' <SMungia@gth-law.com>
Subject: ATJ Board Comments Regarding RAP 3.4

Good afternoon,

Attached, please find a comment from the Access to Justice Board regarding the proposed changes to RAP 3.4.

Thank you,



Bonnie Middleton Sterken | Justice Programs Coordinator
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Pronouns: She/Her

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