The Court of Appeals
of the
State of Washington

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April 18, 2018

The Honorable Chief Justice Mary E. Fairhurst
Washington State Supreme Court
c/o Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

RE: Proposed Amendment to RAP 3.4 - Title of Case & Designation of Parties

Dear Chief Justice Fairhurst:

At the business meeting of the Court of Appeals held on March 27, 2018, it was moved and approved by a voice vote of the members of the Court that we respond to the request for comments on proposed changes to RAP 3.4 by providing the enclosed memorandum. The memorandum was prepared by Judge Lisa Worswick and provides background on matters considered by the Court before adopting its General Order 2017-1. General Order 2017-1 was voted on and approved by the members of the Court at its business meeting in April 2017.

The section of the memorandum entitled State Statutes and Legislative Intent includes the statement, "Despite advocates' desire to restore confidentiality to juvenile records, the legislature has not done so." Judge Worswick confirms that the reference is to proposed S.B. 5694.[1]

Sincerely,

Laurel H. Siddoway
Presiding Chief Judge

LHS/jab
Attachment

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[1] Available at http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Bills/5694.pdf.

Court of Appeals Response to Proposed Amendments to RAP 3.4

April 18, 2018

RAP 3.4 currently states:

> The title of a case in the appellate court is the same as in the trial court except that the party seeking review by appeal is called an "appellant," the party seeking review by discretionary review is called a "petitioner," and an adverse party of review is called a "respondent."
>
> Upon motion of a party or on the court's own motion, and after notice to the parties, the Supreme Court or the Court of Appeals may change the title of a case by order in said case.

The Supreme Court has published for comment amendments to RAP 3.4 requiring the parties in a juvenile offender case to caption the case using the juvenile's initials:

> In a juvenile offender case, the parties shall caption the case using the juvenile's initials. The parties shall refer to the juvenile by his or her initials throughout all briefing and pleadings filed in the appellate court, and shall refer to any related individuals in such a way as to not disclose the juvenile's identity. However, the trial court record need not be redacted to eliminate references to the juvenile's identity.

This amendment conflicts with the Court of Appeals General Order entered May 25, 2017 (General Order) that states:

> [T]he Court of Appeals shall not grant a motion to change the case title for juvenile offender cases on appeal using the juvenile's initials instead of the juvenile's full name, unless the case has been sealed in the juvenile or superior court under RCW 13.50.050, .260, .270 or GR 15.

In 2014, Chief Justice Madsen asked the Court of Appeals to address the use of initials in opinions. The court formed a committee to focus on resolving different practices among the three divisions and adopting a uniform approach for the use of in case titles. The committee researched all case types involving juveniles and all case types where the legislature adopted statutes protecting confidentiality. They examined statutes, legislative history, current case law and the State constitution. The committee's efforts culminated in a General Order adopted by the COA in April 2017 and finalized on May 25, 2017.

The General Order was is based on Washington's constitution, statutes, and cases.

1. *State Constitution*

Article I, section 10 of the Washington Constitution states, "Justice in all cases shall be administered openly, and without unnecessary delay." This provision grants the public an interest in open, accessible proceedings. *State v. Lormor*, 172 Wn.2d 85, 91, 257 P.3d 624 (2011).

2. *State Statutes and Legislative Intent*

There are a number of statutes that address the different case types and protect the identity of a party. As stated in the General Order, these cases types are:

- Adoption, RCW 26.33.330,
- Civil commitment, RCW 71.05.620,
- Dependency, chapter 13.34 RCW and RCW 13.50.100,
- Termination, chapter 13.34 RCW and RCW 13.50.100,
- Truancy, RCW 28A.225.030 and RCW 13.50.100,
- At risk youth, RCW 13.32A.191 and RCW 13.50.100,
- Child in need of services, RCW 13.32A.140 and RCW 13.50.100,
- Parentage, chapter 26.26 RCW and RCW 26.26.610, and
- Juvenile offender, chapter 13.50 RCW and RCW 13.50.050.

These statutes provide that all these case types except parentage and juvenile offender cases are sealed. The parentage statute allows a superior court to seal parentage cases by motion. RCW 26.26.610.

But the legislature clearly provides that juvenile offender records are open to the public except in specifically identified circumstances. RCW 13.50.050 (2) states "[t]he official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to RCW 13.50.260." RCW 13.50.050(2). In its most recent legislation amending chapter 13.50 RCW, the legislature carefully balanced the public's interest in juvenile offender rehabilitation with its interest in the open administration of juvenile justice. The legislature recognized that "the policy of the state of Washington that the interest in juvenile rehabilitation and reintegration into society is a compelling circumstance that outweighs the public interest in continued availability of juvenile court records." LAWS OF 2014, ch. 175, § 1(2). It achieved this balance by providing "that juvenile court proceedings be openly administered but, except in limited circumstances, the records of these proceedings be closed when the juvenile has reached the age of eighteen and completed the terms of disposition." *Id.* Moreover, the legislature has recognized that the "public has an interest in accessing information relating to juvenile records for public safety and research purposes." LAWS OF 2011, ch. 333, § 1(2). The General Order acknowledges the legislature's authority to strike the appropriate balance.

3. *Case Law*

In *Hundtofte v. Encarnación*, 181 Wn.2d 1, 6, 330 P.3d 168 (2014), the court held that the use of initials in a case title is a redaction of a court record. The *Hundtofte* court held that such a redaction could not be made without a serious and imminent threat to the moving parties' interests. *Id*. at 8-9. Despite the parties in that case being unfairly denied housing based on a prior erroneous unlawful detainer, they were not allowed to change the caption in the unlawful detainer case. *Id*. at 10-11.

In *State v. S.J.C.*, 183 Wn.2d 408, 352 P.3d 749 (2015), the court held, "[b]oth experience and logic show that article I, section 10 does not apply and an *Ishikawa*[2] analysis is not needed in order to seal juvenile court records *pursuant to statute*." *Id.*at 435. (Emphasis added.) The *S.J.C* court recognized the legislative intent of public juvenile records, noting, "[t]o protect public safety, juvenile court records are not sealed immediately upon disposition." *Id.* at 434.

More recently, in *John Doe G v. Dep't of Corr.*, 190 Wn.2d 185, 410 P.3d 1156 (2018), the court examined when pseudonymous litigation was appropriate. In dismissing the federal balancing test, the court stated, "We have never used this analysis to determine whether pseudonymous litigation is appropriate. Rather, we rely on GR 15 and *Ishikawa*." *Id*. at 1163.

The Court of Appeals' General Order resolves the problem of inconsistent case titles among the three divisions of the Court. The General Order recognizes the mandate for open, accessible proceedings required by article I, section 10 of the state constitution, the legislative intent of maintaining public juvenile records, and case law.

[2] *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982).