LAW OFFICES OF
NIELSEN, BROMAN & KOCH P.L.L.C.

ERIC J. NIELSEN
ERIC BROMAN
DAVID B. KOCH
CHRISTOPHER H. GIBSON
DANA M. NELSON
JENNIFER M. WINKLER

1908 E. MADISON STREET
SEATTLE, WASHINGTON 98122
Voice (206) 623-2373 *Fax* (206) 623-2488
WWW.NWATTORNEY.NET

CASEY GRANNIS
JENNIFER J. SWEIGERT
JARED B. STEED
KEVIN A. MARCH
MARY T. SWIFT

OFFICE MANAGER
JOHN SLOANE

LEGAL ASSISTANT
JAMILA BAKER

OF COUNSEL
K. CAROLYN RAMAMURTI
E. RANIA RAMPERSAD
†BRECK C. TOSTEVIN

†ALSO ADMITTED IN ALASKA

March 30, 2018

The Honorable Justice Charles W. Johnson
Supreme Court Rules Committee Chair
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 Justice Johnson and Members of the Rules Committee:

I write to express my support of the proposed amendment to RAP 3.4, which governs the manner in which a juvenile offender appeal is captioned and the designation of parties to the appeal. The proposed amendment will require juveniles to be designated only by initials in all juvenile offender appeals. The current rule does not address this issue. The proposed amendment makes good policy sense and achieves the legislature's intent to rehabilitate juvenile offenders.

Juveniles who have not been convicted of a most serious offense, a sex offense, or a drug offense are entitled to have their criminal records administratively sealed on their eighteenth birthday, provided they have completed the terms and conditions of disposition. RCW 13.50.260(1)(a) ("[T]he court shall administratively seal an individual's juvenile court record pursuant to the requirements of this subsection . . . ." (emphasis added)); see also State v. S.J.C., 183 Wn.2d 408, 422, 352 P.3d 749 (2015) ("[W]e have always given effect to the statutory procedures and requirements for sealing juvenile records."). Even juveniles who have committed class A felonies are entitled to sealing if they meet certain requirements, including remaining crime-free in the community for five years. RCW 13.50.260(4)(a).

Many juveniles exercise their state constitutional right to appeal. CONST. art. I, § 22. In my own experience as an appellate defender, I have represented several juveniles appealing their convictions and restitution orders. For instance, V.O. appealed a restitution order following her deferred disposition for attempted residential burglary. State v. V.O., No. 73362-1-I, 2016 WL 3579045 (Wn. Ct. App. May 2, 2016).

V.O. successfully complied with the terms of the deferred disposition order and her conviction had been dismissed with prejudice by the time her appeal was considered. Only the restitution order remained in effect. V.O. was therefore statutorily entitled to have her case sealed when she turned 18, provided she paid restitution by that date. RCW 13.50.260(1). Even if V.O. could not complete restitution payments by the time she turned 18, she could move for sealing once she did so. RCW 13.50.260(1)(c)(ii). Or, the juvenile court could waive restitution if reasonably satisfied V.O. did not have the means to pay it, and could thereafter seal her case. RCW 13.40.080(5)(c). Fortunately for V.O., the court of appeals agreed to substitute her full name for her initials in its opinion. V.O., 2016 WL 3579045, at *1.

Unfortunately, many other juveniles have not been so lucky since the court of appeals issued its general order on May 25, 2017 requiring juveniles' full names to be used in case titles and opinions unless their cases have already been sealed in the trial court. General Order of Divisions I, II, and III, "In Re Changes to Case Title." The general order all but guarantees juveniles' full names will be used in court of appeals' decisions and case titles because juveniles are not entitled to administrative sealing until they turn 18. V.O., for instance, had not yet turned 18 by the time her appeal was decided.

As Your Honor is well aware, Washington appellate court opinions are published online, making them readily accessible to the public. If juveniles' full names are used in appellate court decisions, then their names and offenses will remain public record even after their cases are sealed. This defeats the purpose of subsequent administrative sealing and denies juveniles the privacy they are guaranteed under RCW 13.50.260. It also penalizes juveniles for exercising their constitutional right to appeal by making their offenses public record for all time. This essentially renders RCW 13.50.260 a dead letter for juveniles who choose to appeal.

Using juveniles' full names in appellate court decisions may also disincentivize juveniles from paying restitution, because they will no longer be able to obtain the full benefits of sealing. This is contrary to one of the specifically enumerated aims of the

Juvenile Justice Act, chapter 13.40 RCW, which is to "[p]rovide for restitution for victims of crime." RCW 13.40.010(2)(h); see also State v. A.M.R., 108 Wn. App. 9, 12, 27 P.3d 678 (2001) (recognizing the goal of restitution is unique to the Juvenile Justice Act). For the same reason, it may discourage juveniles from complying with the terms of their disposition. This, too, could undermine the legislative goals of providing necessary treatment and supervision, as well as rehabilitating and reintegrating juveniles offenders. RCW 13.40.010(2)(f), (g).

The court of appeals' general order is further contrary to the Washington Supreme Court's recent decision in S.J.C. There, the court concluded that juvenile court records meeting the statutory sealing requirements have historically not been open to the press or general public. S.J.C., 183 Wn.2d at 430. The court recognized the "legislature has always treated juvenile court records as distinctive and as deserving of more confidentiality than other types of records." Id. at 417. Courts must accordingly "give[] effect to the legislature's judgment in the unique setting of juvenile court records." Id. at 422. The legislature's intent is to facilitate juveniles' rehabilitation by sealing and destroying their criminal records upon their eighteenth birthday. Id. at 432 (citing Laws of 2014, ch. 175, § 1). This intent is defeated if juveniles' full names are made public by virtue of appealing their convictions or restitution orders.

The S.J.C. court emphasized the constitutional presumption of openness does not apply to juvenile court proceedings and juvenile court records. 183 Wn.2d at 422. This is so, the court explained, "because of the fundamental differences between a juvenile offender proceeding, which seeks to rehabilitate the juvenile, and an adult criminal proceeding, which seeks to deter and punish criminal behavior." Id. Thus, the importance of openness should not outweigh the importance of rehabilitating juveniles and giving them a chance to thrive even after a criminal conviction.

Juveniles will face numerous hardships that flow from having a public offense record if appellate courts do not redact their names from opinions and case captions. For instance, had the court of appeals not redacted her full name, a quick Google search of V.O.'s name would reveal she committed attempted residential burglary as a juvenile, even though her conviction was ultimately dismissed with prejudice. This could hinder her education, employment, and housing prospects, contrary to the policy of this state and this court's decision in S.J.C. Juveniles are entitled to the privacy the legislature has guaranteed them and the corresponding chance for rehabilitation. They should not be stigmatized because of their decision to exercise their constitutional right to appeal.

The proposed amendment to RAP 3.4 will help protect juveniles' privacy and "give effect" to the legislature's intent. S.J.C., 183 Wn.2d at 422. Juveniles should be given every reasonable opportunity to rehabilitate themselves. Publishing their full names in association with their offenses, to live forever on the internet, does not do that. I, along with my undersigned colleagues at Nielsen, Broman & Koch, respectfully urge you to adopt the proposed amendment to RAP 3.4.

Sincerely,

Mary T. Swift
Attorney at Law

Eric J. Nielsen
Attorney at Law

Eric Broman
Attorney at Law

David B. Koch
Attorney at Law

Christopher H. Gibson
Attorney at Law

Dana M. Nelson
Attorney at Law

Jennifer M. Winkler
Attorney at Law

Casey Grannis
Attorney at Law

Jennifer J. Sweigert
Attorney at Law

Jared B. Steed
Attorney at Law

Kevin A. March
Attorney at Law

E. Rania Rampersad
Attorney at Law

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, March 30, 2018 10:53 AM
To: Tracy, Mary
Subject: FW: Proposed Amendment to RAP 3.4
Attachments: RAP 3.4 Proposed Amendment - NBK Comment.pdf

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From: Mary Swift [mailto:swiftm@nwattorney.net]
Sent: Friday, March 30, 2018 10:47 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Amendment to RAP 3.4

Good Afternoon,

Please find the attached comment in support of the proposed amendment to RAP 3.4, submitted on behalf of myself and my colleagues at Nielsen, Broman & Koch.

Thank you,

Mary T. Swift
Nielsen, Broman & Koch, PLLC
1908 East Madison Street
Seattle, WA 98122

Voice: 206-623-2373
Fax: 206-623-2488