March 17, 2018

SCHOOL OF
LAW

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 by email to
supreme@courts.wa.gov.
RE: Proposed amendment to RAP 3.4 – Title of Case and Designation of Parties

Dear Justice Johnson:

I write to urge the Court to adopt the proposed amendment to RAP 3.4 (Title of Case and Designation of Parties) to require the use of a juvenile's initials in the caption as well as in the briefing and the opinion of juvenile offender appeals.

This proposed amendment is necessary to supersede a general court rule adopted recently in the Court of Appeals requiring the use of full names of juvenile appellants. This recent rule changes many years of practice in which juveniles' names were not used in briefs and opinions.

It makes sense not to use the young persons' names. Certainly, for those youths who win their appeals and whose convictions are reversed and the charges against them ultimately dismissed, it is even more unfair and detrimental to have their names associated with the cases. Using initials would shield all youth from the embarrassment, stigma, and indignity that accompany a conviction. A good example of that is the case of the 12-year-old child in State v. A.N.J., 168 Wn.2d 91 (2010), a case in which the Court reversed a conviction and on remand the case was dismissed.

The GR 9 statement discusses the harmful impact that an easily discoverable criminal record can have on a juvenile's ability to compete for jobs, housing, and employment.

As the ACLU Foundation wrote in its May 30, 2017, letter:

> 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. The risk of additional exposure will chill juveniles from bringing appeals....

The Court is familiar with the importance of protecting children from unnecessary publicity about their juvenile records. In a case addressing what requirements applied to sealing of juvenile records, the Court wrote, "the law has constructed a constitutional wall around juveniles, maintaining its integrity through a continuous process of refining its contours and repairing its cracks." State v. S.J.C., 183 Wn.2d 408, 413 (2015). The Court added, "A publicly available juvenile court record has very real and objectively observable negative consequences, including denial of 'housing, employment, and education opportunities.'" Id, at 432. The Court outlined concerns that apply to the issue here:

> Finally, an open juvenile record makes it more difficult to obtain even a high school diploma, much less postsecondary education.... Juvenile courts are intended to prevent adult recidivism, but lack of housing, employment, and education all increase the likelihood of recidivism....
> 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 a juvenile or adolescent is measurably and materially different from the mind of an adult, and juvenile offenders are usually capable of rehabilitation if given the opportunity.

State v. S.J.C., 183 Wn.2d 408, 433, citations omitted).

I have a case in Division Two, for an 11-year-old girl, in which the Court of Appeals issued the following directive:

> Under **General Order 2017-1**, "the 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." Accordingly, if counsel wishes to have the case title changed, he or she must work with the trial counsel to obtain an order sealing the file in the juvenile or superior court, and then transmit that order to this court along with a motion to change case title **within 20 days** of this letter.

The order was dated August 29, 2017. I did ask the trial attorney to obtain an order sealing the file, but on September 29, 2017, after the deadline set by the appellate court, the trial judge ordered: "Defense motion to seal or redact respondents [sic] name to initials is denied." The order contained no reasoning. The trial lawyer sent it to me by email on October 6, 2018.

What possible public interest is served by splashing the name of an 11-year-old girl across the pages of appellate briefs and opinions and as a result, the internet? Appellate opinions are far more discoverable by schools and employers than trial court records which themselves can be sealed. Even if a child's conviction is ultimately reversed and the underlying charges dismissed, the appellate opinion will be discoverable for all time.

I urge the Court to adopt the proposed amendment to RAP 3.4.

Thank you for your consideration.

Sincerely,

Robert C. Boruchowitz

Robert C. Boruchowitz
Professor from Practice

THE DEFENDER INITIATIVE
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Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, March 19, 2018 9:42 AM
To: Tracy, Mary
Subject: FW: RAP 3.4
Attachments: to justice johnson on 3.4 title.pdf

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From: Boruchowitz, Robert [mailto:boruchor@seattleu.edu]
Sent: Saturday, March 17, 2018 6:07 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: RAP 3.4

Greetings. Please find attached my comment on the proposed amendment to RAP 3.4.
Thank you.
Sincerely,

Bob Boruchowitz

Professor from Practice
Seattle University School of Law
206 398 4151