From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Proposed RAP 18.25
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From: Greg Link <greg@washapp.org>
Sent: Monday, April 29, 2024 9:05 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed RAP 18.25

I urge the Court to reject proposed Rule 18.25 in light of this Court's long-standing concern with open access to the courts and its interpretation of article I, section 10.

Thirty years ago, this Court found a statute barring the use of the names of child victims of sex crimes in court documents containing violated article 1, section 10. *Allied Daily Newspapers of Washington v. Eikenberry*, 121 Wn.2d 205 (1993). The Court concluded the statute's failure to mandate the analysis of *Seattle Times v. Ishikawa,* 97 Wn.2d 30 (1982) prior to requiring omission of that information from court documents rendered the statute unconstitutional. More recently this Court held its own court rules must comport with the requirements of *Ishikawa*. *State v. Richardson*, 177 Wn.2d 351 (2012). *Richardson* concluded the sealing and unsealing provisions of GR 15 had to comport with article I, section 10 and *Ishikawa* in each instance, even if the rule did not say so. Finally, this Court has held that pseudonymity or the use of initials in litigation implicates article I, section 10 and requires compliance with *Ishikawa*. *Doe G. v. Dep't of Corrections*, 190 Wn.2d 185 (2018); *Hundtofte v. Encarnacion*, 181 Wn.2d 1 (2014).

Without any acknowledgment of this history, or the constitutional requirement itself, proponents of this new rule urge this Court to adopt an even broader rule than the statute at issue in *Allied Daily Newspapers*. Unlike that statute, the proposed rule is not limited to child victims, to victims, or even to sex cases. But just like that statute, the proposed rule dispenses with the requirements of *Ishikawa*.

As an analog for the proposed change, the proponents point to the requirement of RAP 3.4 that parties use initials for juveniles in offender proceedings. However, that rule does not present the same constitutional concern. This Court has long held juvenile proceedings are not subject to Article I, section 10. *In re Lewis*, 51 Wn.2d 193 (1957); *State v. S.J.C.*, 183 Wn.2d 408 (2015); *In re the Dependency of E.H.*, 191 Wn.2d 587 (2018). *Ishikawa*, itself, recognized its analysis did not apply to

juvenile proceedings. 97 Wn.2d at 36. Criminal proceedings and most other court matters, however, are subject to the open-courts requirements and the mandate of *Ishikawa.*
The proponents point to the lack of a statewide standard as demonstrating the need for this rule. First, the absence of a statewide rule is the direct result of *Allied Daily Newspapers*, which struck down the statute creating that very statewide standard. Second, since 1982, *Ishikawa* has provided clear guidance to parties and courts who wish to withhold or shield specific information from public view. *Ishikawa* provides a statewide framework and the proponents do not offer any explanation of why it is inadequate, even as they seek to circumvent it.

In *Richardson*, the Court made clear its own rules must meet the requirements of article I, section 10 and *Ishikawa*. The proposed rule does not do that. As the Court made clear in *Allied Daily Newspapers,* the policy considerations offered by proponents of thia proposed rule change may well counsel in favor of requiring the use of initials *after* an *Ishikawa* analysis. But those policy considerations cannot justify dispensing with that required analysis altogether.

This Court should not adopt a rule which contradicts its long-settled precedent and seeks to avoid the requirements of *Ishikawa*.

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