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Subject: FW: Comment re Proposed RAP 18.25 – Use Of Initials - When Required
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From: Richard Lechich <richard@washapp.org>
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To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment re Proposed RAP 18.25 – Use Of Initials - When Required

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I urge the Court to deny adoption of RAP 18.25 – Use of Initials – When Required.

People convicted of crimes in Washington have a state constitutional right to appeal and the right to effective assistance of counsel on appeal. Const. art. I, § 22; *State v. Graham*, 194 Wn.2d 965, 969, 454 P.3d 114 (2019). The exercise of this right may include naming an accuser or alleged victim in an appellate brief. Requiring use of initials waters down advocacy and implies that an accuser is not a false accuser. Restricting counsel's ability to advocate on behalf of their client may deprive a person of due process and their constitutional right to counsel. *See State v. Frost*, 160 Wn.2d 765, 771-73, 161 P.3d 361 (2007).

An accuser or victim does not have a right to anonymity that trumps a person's right to speak their identity. *See The Florida Star v. B.J.F.*, 491 U.S. 524, 526, 109 S. Ct. 2603, 105 L. Ed. 2d 443 (1989); *State v. Coe*, 101 Wn.2d 364, 378, 679 P.2d 353 (1984); *Catlett v. Teel*, 15 Wn. App. 2d 689, 701, 477 P.3d 50 (2020). The proposed rule violates the constitutional right to freedom of speech, including the prohibition against compelled speech. It is also a unreasonable content or viewpoint based restriction that does not survive constitutional scrutiny.

A uniform rule requiring counsel or the defendant to substitute initials in place of the name of the accuser is also a violation of the constitutional right to open court proceedings, including article I, section 10. This Court has held a statute that sought to prohibit the disclosure of the identities of child victims of sexual assault violated article 1, section 10 in *Allied Daily Newspapers of Washington v. Eikenberry*, 121 Wn.2d 205, 209, 848 P.2d 1258 (1993). This Court's opinions "uniformly require an individualized analysis resulting in specific findings in order for court closures to satisfy article I, section 10." *In re Det. of D.F.F.*, 144 Wn. App. 214, 219-20, 183 P.3d 302 (2008) (emphasis added), affirmed, 172 Wn.2d 37, 256 P.3d 357 (2011). "[A]utomatic limitations on the openness of court proceedings violate article I, section 10 because they are not based on a case-specific inquiry." *Id.* at 220 (emphasis added). In short, article I, section 10 requires an individualized inquiry. *D.F.F.*, 172

Wn.2d at 42; *Allied Daily Newspapers of Washington v. Eikenberry*, 121 Wn.2d 205, 211, 848 P.2d 1258 (1993); *D.F.F.*, 144 Wn. App. at 217-18.

If the State believes providing anonymity to an accuser is warranted, it can bring a motion pursuant to *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995). If the factors are met, the Court can redact the brief or seal it.

The rule should not be adopted.

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