

WSR 23-15-067
RULES OF COURT
STATE SUPREME COURT
[July 13, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED NEW RULE OF) NO. 25700-A-1529
APPELLATE PROCEDURE (RAP))

The King County Prosecuting Attorney's Office, having recommended the suggested new Rule of Appellate Procedure (RAP), and the Court having approved the new rule for publication; Now, therefore, it is hereby

ORDERED:

- (a) That pursuant to the provisions of GR 9(g), the new rule as shown below is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2024.
(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.
(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2024. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 13th day of July, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 Cover Sheet

A) Proponent: King County Prosecuting Attorney's Office, 516 3rd Ave, Seattle, WA 98104.

B) Spokesperson: Senior Deputy Prosecuting Attorney Gavriel Jacobs (gavriel.jacobs@kingcounty.gov).

C) Purpose: Unlike most superior court documents, appellate briefs and opinions are easily accessible and may be indexed by popular Internet search engines like Google. While RAP 3.4 currently mandates the use of initials when referring to juvenile defendants, this requirement does not extend to either juvenile or adult victims. This proposed rule will protect the privacy and psychological wellbeing of both minors and victims of sexual abuse by limiting the online exposure of these vulnerable populations.

This rule will also promote uniformity in Washington's appellate courts.1 The use of initials is currently governed by a patchwork of general orders, potentially leading to confusion and disparate outcomes between jurisdictions. For example, Division Two requires that initials be used for all juvenile witnesses "in sex crime cases." Division II General Order No. 2011-1. Division Three requires the use of initials for "all child witnesses or any victims," regardless of the underlying offense. Division III General Order In RE the Use of Initials or Pseudonyms for Child Victims or Child Witnesses. Division One

has not issued any orders regarding the use of initials. Thus, all three divisions have taken different approaches to this issue, and none of the existing orders contemplates adult victims of sexual abuse.

¹ The proposed rule will also conform court practice with the intent of the legislature as stated in RCW 10.52.100 ("Identify of child victims of sexual assault not to be disclosed").

The proposed rule also comports with article I, section 12, of the Washington constitution. The rule does not permit any person to testify anonymously, and anyone who wishes to know the name of a witness can do so by attending the trial or reviewing the superior court record. Based on this reasoning, the Court of Appeals has correctly held on numerous occasions that using initials in filed documents is constitutionally permissible. State v. Mansour, 14 Wn. App. 2d 323, 332, 470 P.3d 543 (2020); State v. Williams, No. 53518-1, 2021 WL 1382609 (2021 Unpublished); State v. Streiff, No. 54170-0, 2021 WL 872691 (2021 Unpublished); State v. De Los Santos-Matuz, No. 79849-9, 2020 WL 5759769 (2020 Unpublished); State v. Ventar, No. 79178-8, 2020 WL 5759773 (2020 Unpublished); State v. Airhart-Bryon, No. 78805-1, 2020 WL 1853477 (2020 Unpublished); State v. Staples, 78460-9, 2019 WL 7373500 (2019 Unpublished).

Finally, Washington courts routinely use initials when referring to minors and adult victims of sexual abuse, and thus the proposed rule is largely codifying existing practice. See, e.g., State v. Tesfasilasye, 200 Wn.2d 345, 518 P.3d 193, 194 (2022) (referring to rape victim by initials); Haley v. Medical Disciplinary Bd., 117 Wn.2d 720, 722, n.1, 818 P.2d 1062 (1991) (referring to minor by initials in disciplinary review matter); State v. Corey, 181 Wn. App. 272, 273, n.1, 325 P.3d 250 (2014) (referring to juvenile witness using initials).

D) **Hearing:** The proponent does not request a public hearing.

E) **Expedited Consideration:** The proponent is not requesting expedited consideration.

Proposed Rule of Appellate Procedure

a) Except as provided in subsection (d), minors shall be referred to by their initials in all documents filed for the public record in criminal proceedings and civil commitment actions pursuant to Chapter RCW 71.09.

b) For purposes of this rule, "minor" means any person under the age of eighteen (18) at the time that any portion of the relevant crime occurred, regardless of their age when the document is filed for the public record.

c) Except as provided in subsection (d), all victims and alleged victims of the following offenses shall be referred to by their initials in all criminal proceedings and civil commitment actions pursuant to Chapter RCW 71.09: (1) any offense contained in Chapter 9A.44 RCW; (2) any offense contained in Chapter 9A.88 RCW; (3) any offense contained in Chapter 9A.86 RCW, (4) any offense alleged to have been committed with sexual motivation as defined in RCW 9.94A.030(48); (5) a violation of RCW 9A.56.120 or RCW 9A.56.130 when the threat is based on exposing past sexual conduct, or if the victim was being extorted to commit sexual acts; (6) a violation of RCW 9A.40.100 based on causing the victim to engage in either a sexually explicit act or a commercial sex act; or (7) any other offense defined as a "sex offense" under RCW 9A.44.128 or RCW 9.94A.030.

d) This rule does not apply:

i. If the appellate court determines that using a minor or victim's full name is necessary to uphold a constitutional right.

- ii. To minor defendants in either adult court criminal proceedings or civil commitment proceedings under RCW 71.09.
- iii. To documents filed under seal.
- iv. In non-criminal proceedings, except civil commitment actions pursuant to Chapter 71.09 RCW.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the state supreme court and appears in the Register pursuant to the requirements of RCW 34.08.040.