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LISA A. HENDERSON
SAN JUAN COUNTY, WASHINGTON

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6 **SUPERIOR COURT OF THE STATE OF WASHINGTON**
7 **FOR SAN JUAN COUNTY**

8 THE LAW OFFICE OF JAMES P. GRIFO,
9 LLC; a Washington State Limited Liability
10 Company; and, THE LAW OFFICE OF
11 NICHOLAS POWER, PLLC, a Washington
12 State Professional Limited Liability Company,

13 **Plaintiffs,**

14 v.

15 AMERICAN FEDERATION OF STATE,
16 COUNTY AND MUNICIPAL EMPLOYEES, a
17 labor union; WALTER BLAIR, as purported
18 administrator of Local 114; COLIN MAYCOCK,
19 as a member of Local 1849, President of Local
20 1849, and as a member of American Federation
21 of State, County, & Municipal Employees; JAEL
22 KOMAC, a member of Local 114, as former
23 President of Local 114, and a member of
24 American Federation of State, County, &
Municipal Employees; LOCAL 1849, a labor
union operating in the State of Washington; and
LOCAL 114, a labor union operating in the State
of Washington,

Defendants.

NO. 19-2-0517928

**MOTION TO FILE RECORDS
UNDER SEAL**

20 **INTRODUCTION**

21 COME NOW, Plaintiffs, The Law Office of James P. Grifo, LLC and the Law Office of Nicholas
22 Power, PLLC ("Law Firms") and hereby move this Court for an order authorizing the filing of a copy of
23 the client file generated during Law Firms' representation of Local 1849, Local 114, Colin Maycock and
24 Jael Komac against Defendant, American Federation of State, County & Municipal Employees
("AFSCME") in internal AFSCME administrative appeals and a federal court litigation, under seal.

Motion to File Records Under Seal
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1 Because this client file is confidential pursuant to the Rules of Professional Conduct regardless of this
2 Court's eventual determination of ownership and right to the file's contents, and because the Court's
3 custody of the file is essential to the orderly adjudication of this interpleader action, the Motion should be
4 granted.

5 AUTHORITY

6 GR 15 provides that the "uniform procedure for the . . . sealing and redaction of court records."
7 GR 15(a). Court records include exhibits. GR 31(c)(4). Under the rule, the Court may seal or redact
8 court records if the Court finds that "the specific sealing or redaction is justified by identified compelling
9 privacy or safety concerns that outweigh the public interest in access to the court record." GR 15(c)(2).

10 The Washington State Constitution guarantees that "[j]ustice in all cases shall be administered
11 openly, and without delay." Wash. Const. Art. 1, § 10. This constitutional provision entitles the public
12 to openly-administered justice. *Cohen v. Everett City Council*, 85 Wn.2d 385, 388, 535 P.2d 801 (1975).

13 We adhere to the constitutional principle that it is the right of the people to access
14 open courts where they may freely observe the administration of civil and criminal
15 justice. Openness of courts is essential to the courts' ability to maintain public
16 confidence in the fairness and honesty of the judicial branch of government as being
17 the ultimate protector of liberty, property, and constitutional integrity.

18 *Allied Daily Newspapers of Wash. v. Eikenberry*, 121 Wn. 2d 205, 211, 848 P.2d 1258 (1993). "Proceedings
19 cloaked in secrecy foster mistrust and, potentially, misuse of power." *Dreiling v. Jain*, 151 Wn.2d 900, 908-
20 09, 93 P.3d 861 (2004).

21 In order to protect the public's right to open justice, the Washington Supreme Court has created
22 a list of five steps that a Court must apply to a motion to seal court records. *See, State Times Co. v. Ishikawa*,
23 97 Wn.2d 30, 37-39, 640 P.2d 716 (1982). The five *Ishikawa* steps are:

- 24 1. The proponent of sealing must make some showing of the need for doing so, and where that
need is based on a right other than an accused's right to a fair trial, the proponent must show a
"serious and imminent threat" to that right.
2. Anyone present when the sealing motion is made must be given an opportunity to object to
the closure.
3. The proposed method for curtailing open access must be the least restrictive means available
for protecting the threatened interests.
4. The court must weigh the competing interests of the proponent of closure and the public.

1 5. The order must be no broader in its application or duration than necessary to serve its
2 purpose.

3 *Eikenberry*, 121 Wn.2d at 210–11 (citing *Ishikawa*, 97 Wn.2d at 36–39). These steps apply to both civil and
4 criminal cases. *Dreiling*, 151 Wn.2d at 908. This analysis starts with the presumption of openness. *Rufer*
5 *v. Abbott Labs.*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005). The burden is on the proponent of the sealing
6 to show that public access must be restricted. *Ishikawa*, 97 Wn.2d at 37.

7 The first *Ishikawa* step requires the proponent of the sealing to make a showing of the need for
8 the sealing. *Ishikawa*, 97 Wn.2d at 37. The proponent “should state the interests or rights which give rise
9 to that need as specifically as possible without endangering those interests.” *Id.* Where the interests at
10 stake do not involve a criminal defendant’s Sixth Amendment rights, the showing must be of “a serious
11 and imminent threat” to these interests. *Id.* This high threshold is required due to the importance of the
12 constitutional guarantees that would be threatened by restricting public access. *Id.*

13 The third *Ishikawa* step requires the court to analyze carefully whether the requested sealing “would
14 be both the least restrictive means available and effective in protecting the interests threatened.” *Ishikawa*,
15 97 Wn.2d at 38. No presumption can be made that, if a portion of a record should be sealed, the rest of
16 the record presumptively should be sealed. *Parvin*, 84 Wn.2d at 741. “Courts must start with the
17 presumption that a court record should not be sealed and then seal or redact only what is necessary to
18 protect the interests at stake.” *Id.*

19 When weighing the competing interests in the fourth *Ishikawa* step, the Court must articulate its
20 findings and conclusions with as much specificity as possible. *Ishikawa*, 97 Wn.2d at 38. Then, in the last
21 step, the Court must fashion an order no broader in application or duration than is necessary. *Id.*, at 39.

22 When a Court considers a motion to unseal records previously sealed, it applies the same *Ishikawa*
23 steps to the then-current circumstances. *State v. Richardson*, 177 Wn.2d 351, 359, 302 P.3d 156 (2013). The
24 proponent of the continued sealing must prove that there is still an ongoing need for the sealing. *Id.* at
25 360.

26 The *Ishikawa* steps apply to records filed in anticipation of any decision of the court, whether
27 dispositive or not. *Bennett v. Smith Bundy Berman Britton, PS*, 176 Wn.2d 303, 309, 291 P.3d 886 (2013)
28 (citing *Rufer*, 154 Wn.2d at 549). These records include court exhibits. *Seattle Times Co. v. Serko*, 170 Wn.2d
29 581, 598, 243 P.3d 919 (2010). Submissions wholly irrelevant to any determination by the Court do not
30 implicate the public’s constitutional right to open proceedings. *Bennett*, 176 Wn.2d at 311. However, any
31 record that becomes “part of the court’s decision-making process” requires the Court’s analysis under
32 *Ishikawa* before sealing. *Id.* at 310.

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ARGUMENT

Plaintiffs Law Firms have represented four of the six named Defendants in prior litigation. In that prior litigation, Plaintiffs Law Firms' clients were adverse to Defendant, AFSCME. On November 13, Plaintiffs Law Firms received communication purportedly on behalf of AFSCME requesting a copy of Law Firms' file, claiming to be a client/former client of Plaintiffs Law Firms. Since Plaintiffs Law Firms' representation of several Defendants in the Federal litigation, one of the four clients (Defendant Local 114) has purportedly been put into an "Administratorship" by AFSCME, and therefore, according to AFSCME, the Administrator of Local 114 (read: AFSCME) is entitled them to the client file. Plaintiffs Law Firms have never knowingly or voluntarily entered into an attorney client relationship with AFSCME.

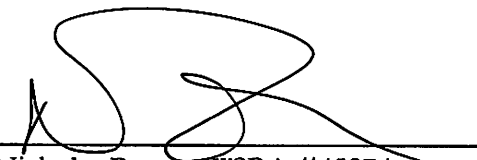
Because of inconsistent interests claimed between Law Firms' established clients and self-asserted clients, the Law Firms seek to interplead the client file maintained by the Law Firms into the Court, since the client file is unquestionably the confidential property of some permutation of the Defendants named herein. Law Firms do not have an ownership interest in the client file, and by tendering the same to the Court disclaim the same. Accordingly, an interpleader action pursuant to Chapter 4.08 RCW is appropriate to determine the respective ownership and rights of access to the client file.

The file which is being tendered to the Court contains confidential client information (including communications that are subject to the attorney-client privilege), which is protected by the Rules of Professional Conduct. The public has no interest in the contents of the client file, and the same should be protected from general disclosure. Disclosure of the contents of the file may prejudice one or more of the six named Defendants. The contents of the client file has no relevancy to the analysis of the rights and obligations to be determined by this Court, and there is no lesser restrictive means that will adequately protect the true owner(s)' interest, and privileged materials, from disclosure.

CONCLUSION

19 Accordingly, Plaintiffs respectfully request that this Court grant Plaintiff's prayer that they be
20 allowed to submit to this Court a copy of a thumb drive containing the client file, and which will be placed
21 under seal until further order of this Court.

22 Signed this 22 day of Nov, 2019.

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