NO. 76113-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

In Re Marriage of LESLIE MCCANN,

Appellant,

v.

JEFFERY MCCANN,

Respondent.

AMICUS CURIAE BRIEF OF DISABILITY RIGHTS WASHINGTON IN SUPPORT OF APPELLANT

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I. INTERESTS AND IDENTITY OF AMICUS CURIAE

Amicus Disability Rights Washington (DRW) is the organization designated by federal law and the Governor of Washington to provide protection and advocacy services to people in Washington with mental, developmental and physical disabilities. *See* Motion to Appear as Amicus Curiae and Declaration of Mark Stroh ¶ 2 [hereinafter "Stroh Decl."].

DRW has been advocating for improving access to judicial proceedings for people with disabilities for over ten years. In 2006, DRW – then known as the Washington Protection and Advocacy System – served on the Washington State Access to Justice Board Impediments Committee and was one of the principal authors of *Ensuring Equal Access for People with Disabilities: A Guide for Washington Courts.*[1] Stroh Decl. ¶ 7. DRW continued to serve on the committee of the Access to Justice Board that drafted GR 33, our state's court rule governing requests for disability accommodations. *Id.* at ¶ 7. DRW also worked closely with others on the subsequent revision of the rule in 2014. *Id.*

In this case, Appellant raises numerous and important issues with the trial court's denials of her GR 33 requests. To evade review of these determinations, Respondent brings a novel argument, asserting that

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[1] *Ensuring Equal Access for People with Disabilities: A Guide for Washington Courts* (2006), *online at* https://www.kingcounty.gov/~/media/exec/civilrights/documents/WAcourtaccess.ashx (last visited January 31, 2018).

appellate courts are precluded from reviewing trial court decisions regarding GR 33. DRW files this brief to address this argument because its constituents would be severely disadvantaged if, as Respondent argues, the sole remedy for GR 33 trial court errors were to pursue a separate action against state courts and judges.

II. STATEMENT OF THE CASE

Amicus Disability Rights Washington joins in Appellant's Statement of the Case.

III. ARGUMENT

As argued by Appellant and Amici, the trial court erred in summarily denying the Appellant's GR 33 requests for reasonable accommodations. DRW further argues that the trial court's GR 33 denials are appealable and subject to this Court's review. Additionally, this brief argues that litigants with disabilities need appellate courts to protect them from the type of discrimination the Appellant faced in her trial.

A. THIS APPEAL IS PROPERLY BEFORE THIS COURT UNDER WASHINGTON COURT RULES

Citing no authority, Respondent argues that this Court lacks jurisdiction to review the trial court's GR 33 decisions because GR 33 does not specifically "provide for a right to appeal." Brief of Resp. at 30. Nothing in the RAPs requires general rules to expressly provide for a

right of appeal in order for appellate courts to review a trial court's application of the rules. *See generally, Wash. State Ct. Rules of App. Procedure.* Instead, the RAPs describe the criteria for the types of decisions appellate courts may review. This appeal, like appeals of other general rules, amply satisfies multiple criteria for reviewing the trial court's decisions.

1. The Rules of Appellate Procedure Provide Authority to Review GR 33.

The RAPs allow this Court to review the trial court's decision regarding a request for reasonable accommodations under GR 33. The rules provide two methods by which a trial court's decision may be reviewed by an appellate court: an appeal, with "review as a matter of right," and discretionary review, which is "review by permission of the reviewing court." RAP 2.1(a).

a. Trial court orders regarding GR 33 are reviewable as part of an appeal under RAP 2.2.

A court's order denying disability accommodations under GR 33 may be subject to review as part of an appeal from an order denying a new trial. RAP 2.2 lists the types of decisions subject to appeal, which includes orders granting or denying motions for new trial. RAP 2.2(a)(9); *see also Lahmann v. Sisters of St. Francis of Philadelphia*, 55 Wn. App. 716, 780 P.2d 868 (1989). The grounds upon which a new trial may be granted are

given in RAP 59(a). A motion for a new trial may be granted when the "substantial rights" of a party are "materially affected" by certain actions, including, "[i]rregularity in the proceedings of the court, . . . or abuse of discretion" that prevent the party from having a fair trial." RAP 59(a)(1).

A party's right to access justice is not only substantial, it is fundamental, *Tennessee v. Lane*, 541 U.S. 509, 524, 124 S. Ct. 1978, 158 L. Ed. 2d 820 (2004). This right is materially affected when a disability prevents a party from having equal, meaningful, and full access, and the court fails to provide a reasonable accommodation. *See id.; see also* GR 33 cmt. 1. Appellant has a substantial and fundamental right to accommodations necessary for a fair trial on the merits, but the trial court denied her requests and her motion for a new trial. Thus, under RAP 2.2 and 59(a), this Court has appellate jurisdiction to review both decisions.

b. GR 33 denials may be reviewed in an appellate court's discretion under RAP 2.3.

Under RAP 2.3(b), a Court of Appeals also has discretion to review an order issued by a trial court for reasons including:

> (1) The superior court has committed an obvious error which would render further proceedings useless;
> (2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;

> (3) The superior court has so far departed from the accepted and usual course of judicial proceedings, . . . as to call for review by the appellate court ….[2]

RAP 2.3(b)(1)-(3). Discretionary review of a trial court's denial of a GR 33 accommodation request is proper under any of the above three grounds.

This Court could, in its sound discretion, review the trial court's denial of Appellant's GR 33 requests because the trial court's failure to follow the procedures set out in the rule far departs "from the accepted and usual court of judicial proceedings." RAP 2.3(b)(3). Specifically, GR 33 requires the trial court, when it denies a GR 33 request, to provide a written decision specifying its reasons for denial. GR 33(d)-(e) ("A written decision *shall* be entered . . . . If a requested accommodation is denied, the court *shall* specify the reasons for the denial (including the reasons the proceeding cannot be continued without prejudice to a party. . . .)") (emphasis added). The trial court did not provide written decisions specifying the reasons for all but one of its denials of multiple reasonable accommodation requests, as required by GR 33. The only written denial stated a failure to serve the opposing party as the basis, which is not required by GR 33(b) or a valid consideration under GR 33(c). CP 778-79.

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[2] RAP 2.3 provides a fourth reason: "that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation." RAP 2.3(b)(4). Discussion of this reason is omitted as it is inapplicable here.

Respondent's argument attempts to read discretion GR 33(d)-(e). *See* Brief of Resp. at 37-41. Yet, the plain language of the rule does not support such an interpretation. Where the language of a rule or statute is unambiguous the court gives effect to that plain meaning. *Matter of K.J.B.*, 187 Wn.2d 592, 596-97, 387 P.3d 1072 (2017). GR 33 is unambiguous in its requirement for a written decision in case of a denial. The rule reads, "A written decision *shall* be entered . . . . If a requested accommodation is denied, the court *shall* specify the reasons for the denial. . . ." GR 33(d)-(e) (emphasis added). The word "shall" is "presumptively imperative and operates to create a duty, rather than to confer discretion." *Matter of K.J.B.*, 187 Wn.2d. at 601. But in this case, the trial court did not issue such a written decision, in contravention of GR 33. This failure presents a significant departure from the accepted course of judicial proceedings, subjecting the denial to discretionary review. RAP 2.3(b)(3).

2. Orders pursuant to General Rules are subject to review.

Nothing in GR 33 gives any indication that aggrieved litigants may not seek appellate review of trial court orders denying GR 33 requests. None of the other General Rules reviewed by Washington State Courts of Appeals specify that they may be subject to appellate review. Yet appellate courts have reviewed trial court orders pursuant to several

General Rules. For instance, appellate courts routinely review trial court rulings on GR 15 and GR 22 requests to seal court records. *See, e.g.*, *State v. Parvin*, 184 Wn.2d 741, 364 P.3d 94 (2015)*; Hundtofte v. Encarnacion*, 181 Wn.2d 1, 330 P.3d 168 (2014)*; State v. Richardson*, 177 Wn.2d 351, 302 P.3d 156 (2013)*; State v. Waldon*, 148 Wn. App. 952, 202 P.3d 325 (2009); *In re Marriage of R.E.*, 144 Wn. App. 393, 183 P.3d 339 (2008); *Woo v. Fireman's Fund Ins. Co.*, 137 Wn. App. 480, 154 P.3d 236 (2007). Similarly, in *State v. Russell*, the Court of Appeals reviewed and affirmed the trial court's order regarding the use of photography in the courtroom under GR 16. 141 Wn. App. 733, 172 P.3d 361 (2007). Finally, in an appeal of a GR 34 ruling, the Washington Supreme Court pronounced: "[w]e review a trial court's interpretation of a court rule de novo." *Jafar v. Webb*, 177 Wn.2d 520, 527, 303 P.3d 1042, 1045 (2013). In that matter, the Supreme Court directed the trial court to waive all filing fees and surcharges based on the Supreme Court's own analysis of GR 34 and conclusion that the trial court had erred in interpreting the general rule to authorize partial fee waivers. *Id.* at 532.

Like GR 33, all of these general rules are silent on whether appellate review is available. Nevertheless, appellate courts exercised their review authority to interpret and enforce them just as they exercise authority to ensure consistent application of other court rules. *Accord* GR

9. As this Court has already anticipated, the proper place for defining the scope of GR 33 is through appellate review. *See Matter of Dependency of Lee*, 200 Wn. App. 414, 448, 404 P.3d 575, 592 (2017) (noting scope of GR 33 has yet to be "fully fleshed out in appellate case law").

3. GR 33(e) does not preclude appellate review.

Respondent's arguments for why this Court should not review the trial court's denial of Appellant's accommodations requests misapply GR 33(e). *See* Br. of Resp. at 28. Paragraph (e) of the rule requires courts to do two things when they deny accommodation requests: 1) "specify the reasons for the denial," and 2) "*also* ensure the person requesting the accommodation is informed of his or her right to file an ADA complaint with the United State Department of Justice Civil Rights Division." GR 33(e) (emphasis added). The use of the word "also" in GR 33(e), which Respondent's citation omits, indicates that the requirements for notice regarding ADA complaints are cumulative to other remedies. Furthermore, reading paragraph (e) as an expansion is consistent with this Court's determination that GR 33 "plainly exists to complement or expand upon those rights already guaranteed. . ." *Matter of Dependency of Lee*, 200 Wn. App. at 448. Contrary to Respondent's reading, nothing in GR 33(e) suggests that ADA complaints should be the exclusive cure or denies this Court jurisdiction to review GR 33 determinations. *See* RCW 2.06.030.

The history of this section and Comment 1 to GR 33 likewise demonstrate that GR 33(e) was intended to expand rather than restrict the available remedies improper denials of accommodation requests. This provision was added to GR 33 as part of the 2014 amendments to the rule, which the Access to Justice Board proposed in response to concerns raised by the U.S. Department of Justice (DOJ). *See* Washington State Access to Justice Board, *GR 9 COVER SHEET Suggested Change, GENERAL RULE 33 Requests for Accommodation by Persons with Disabilities* (2014), *online at* https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplayArchive&ruleId=347 (last visited Jan. 31, 2018) (hereinafter, "2014 Cover Sheet"). In addition to eliminating the distinctions between litigants and public applicants and clarifying the permissible bases for denials, these amendments added paragraph (e) to references DOJ complaints. Washington State Access to Justice Board, *Proposed Changes to GR 33 – Request for Accommodations by Persons with Disabilities* (2014), *online at* https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplayArchive&ruleId=347 (last visited Jan. 30, 2018). The purpose in proposing these amendments was to ensure consistency between GR 33 and the federal Americans with Disabilities Act (ADA), not to create a barrier for appellate review by giving DOJ exclusive enforcement authority. 2014 Cover Sheet. Accordingly,

Comment 1 to GR 33 states: "Nothing in this rule shall be construed to limit or invalidate the remedies, rights, and procedures accorded to any person with a disability under local, state, or federal law." Based on this broad statement, GR 33(e) should not be construed to limit or invalidate the state appellate court "procedures" for reviewing trial court denials.

Finally, the full text of GR 33, when read as a whole, demonstrates the drafters' intent for GR 33 rulings to be appealable like other trial court orders implementing other general rules. A court rule, which courts must interpret like a statute, should be read "as a whole, harmonizing its provisions and using related rules." *State v. Chhom*, 162 Wn.2d 451, 458, 173 P.3d 234, 237 (2007); *see also Jafar*, 177 Wn.2d. at 527. In construing statutes, a well-established rule of interpretation is to give effect to all language in the statute or rule, so that no provision is meaningless or "superfluous." *State v. Keller*, 143 Wn.2d 267, 277, 19 P.3d 1030 (2001). Respondent's interpretation of GR 33(e) does not harmonize with the other parts of the rule that would be unnecessary or irrational if GR 33(e) were construed to preclude appellate review.

First, GR 33(c) provides a mandatory set of factors that courts "shall" consider and limits the reasons courts may invoke to deny GR 33 applications. Rather than listing factors to serve as mere guidelines or suggestions, GR 33(c) sets forth explicit parameters to dictate court

determinations. GR 33's mandatory standards would serve no clear purpose if they did not afford litigants an opportunity to seek review of trial courts' decisions. Further, the GR 33(d)-(e) requirements to provide a rationale for denials and to enter a written decision in the court file, discussed above, would be unjustifiably burdensome, if not superfluous. Respondent admits that the purpose of a written decision is to "facilitate review," but strains logic and credulity in suggesting that a written decision is required for the purposes of an administrative review or separate lawsuit. Br. of Resp. at 41. GR 33 denials must be filed with the other court records maintained for appellate review because these decisions are squarely within the purview of appellate courts.

The unambiguous language and contextual analysis of GR 33 do not support Respondent's argument that Appellant must seek an external judicial review of the trial court's denial of her requests. No language in GR 33 bars appellate review, and nothing in GR 33 indicates that the Supreme Court intended to deprive itself of the ability to review the courts' application of the very rule the Court promulgated to facilitate equal access to the courts for individuals with disabilities.

B. APPELLATE REVIEW OF GR 33 IS NECESSARY TO PREVENT DISCRIMINATION

Respondent's proposition that litigants should be required to enforce GR 33 by bringing a separate action is impracticable and advocates for a policy counter to principles of judicial efficiency and consistency. *See* Br. of Resp. at 28. Citing a pre-GR 33 federal case regarding the ADA and Washington Law Against Discrimination (WLAD), Respondent argues that using federal lawsuits to sort out disagreements about GR 33 requirements "makes sense." *Id.* at 28-30. However, for several legal and practical reasons, it does not.

1. Lawsuits about lawsuits are impracticable.

To carve out GR 33 from other court rules subject to appellate review, this Court would have to take an unprecedented approach of abdicating its authority to interpret a state court rule, which would then be subject only to interpretation within the context of other causes of action. As a court rule created by the Washington Supreme Court, GR 33 does not create or imply its own cause of action in federal courts, and the U.S. DOJ does not enforce state law. *See, e.g.*, *Save Our Valley v. Sound Transit*, 335 F.3d 932, 939 (9th Cir. 2003) (determining that non-statutory requirements do not create enforceable rights because under the Constitution, Congress "is the lawmaker in our democracy"); *Winchester v. Yakima Cty. Super. Ct.*, 2011 WL 133017, at *1 & n.1 (E.D. Wash. Jan. 14, 2011) (no federal jurisdiction to review application of GR 33); *see also*

28 C.F.R. § 0.50(a). Therefore, under Respondent's proposed approach to reviewing, interpreting, and enforcing GR 33 through federal complaints or litigation, the rule would be relegated to serving an advisory function in federal cases alleging discrimination under other enacted statutes such as the ADA.

Secondly, requiring separate actions against state courts and judges in order to seek redress for GR 33 violations would defeat the original core purpose of GR 33 to "facilitate access to the justice system by persons with disabilities at all levels of court systems in the State of Washington." Washington State Access to Justice Board, *GR 9 COVER SHEET, Suggested Amendment GENERAL RULES (GR) New Rule 33 – Requests for Accommodation by Persons with Disabilities* (2007), *online at* https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=92 (last visited Jan. 30, 2018) (hereinafter "2007 Cover Sheet"). While it is true that the ADA, as well as the state WLAD, were enacted to protect people with disabilities from discrimination in various settings, including courts, private enforcement of civil rights is rarely practicable for the majority of DRW's constituents. *See Duvall v. Cty. of Kitsap*, 260 F.3d 1124, 1138 (9th Cir. 2001); *Lane*, 541 U.S. at 524.

Poverty and disability have long been closely linked, making access to legal representation all too often cost-prohibitive for people with

highly limited resources. *See e.g.* Sagit Mor, *Disability and the Persistence of Poverty: Reconstructing Disability Allowances*, 6 Nw. J. L. & Soc. Pol'y 178, 182–83 (2011); Jennifer Pokempner & Dorothy E. Roberts, *Poverty, Welfare Reform, and the Meaning of Disability*, 62 Ohio St. L.J. 425 (2001). According to the "2015 Washington State Civil Legal Needs Study Update," the number of civil legal problems for low income Washingtonians has increased dramatically since the original study was first conducted in 2003. Civil Legal Needs Study Update Committee for Washington State Supreme Court, *2015 Washington State Civil Legal Needs Study Update* at 5, *available online* at http://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf (last visited Jan. 30, 2018) (hereinafter, "Civil Legal Needs Update"). According to the Civil Legal Needs Update, legal problems are often compounding - with one problem leading to another. *Id.* Having a disability was among several traits that doubled the likelihood of discrimination or unfair treatment as compared to other low-income individuals. *Id.* at 13. Yet, the study found that many low-income citizens do not know how to access legal representation, and that, of those who try to find a lawyer, a significant percentage cannot afford one. *Id.* at 15-16.

The Appellant's experience in this case reflects the difficult reality documented in the Civil Legal Needs Study Update. Like many others,

Appellant's family law matter compounded into a disability discrimination problem. Litigants like the Appellant face financial challenges in affording legal representation for their underlying civil matters, and are even less likely to successfully retain counsel to assist them in bringing a new lawsuit against a judge or court for violating the ADA. Even if Appellant were advised of her rights to file a new case, the odds are farcically low that she would have been able to file a separate complaint to access accommodations in her divorce trial, which was already underway.

2. This Court can most effectively redress the trial court's discrimination.

Yet, despite the unlikelihood of litigants with disabilities having the capacity to bring a new lawsuit while another lawsuit is pending, the risk of courts erroneously denying reasonable accommodations is significant. As the U.S. Supreme Court noted in its decision about courtroom accommodations, there exists "pervasive unequal treatment in the administration of state services and programs, including systematic deprivations of fundamental rights." *Lane*, 541 U.S. at 524. State entities have a long history of depriving people with disabilities basic liberties like the ability to vote, marry, or serve as jurors. *See id.* The Supreme Court noted that many of its own decisions demonstrated a pattern of unconstitutional treatment of people with disabilities by states in the

administration of justice. *Id.* at 525. Indeed, GR 33 was originally proposed "[i]n order to address significant barriers experienced by persons with disabilities." 2007 Cover Sheet.

This case illustrates why GR 33 remains an important tool for Washington appellate courts to use in combating discrimination in the judicial system. Specifically, the trial court's order denying the Appellant's GR 33 request was based on the court's lay opinion that the Appellant did not seem to have a qualifying disability, despite clinical evidence stating otherwise. *See e*.g. CP 2535-36, 2548. As New York Law School Professor Michael Perlin has explained in numerous writings,[3] this is an example of a form of discrimination he calls "sanism." The legal system, write Professor Perlin, "makes assumptions about persons with mental disabilities—who they are, how they got that way, what makes them different, what there is about them that lets us treat them differently, and whether their conditions are immutable." Perlin, *"Half-Wracked*

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[3] *See, e.g.*, Michael L. Perlin, "*Simplify You, Classify You": Stigma, Stereotypes and Civil Rights in Disability Classification Systems*, 25 Ga. St. U. L. Rev 607 (2009); Michael L. Perlin, *"Things Have Changed:" Looking at Non-Institutional Mental Disability Law Through the Sanism Filter*, 46 N.Y.L. Sch. L. Rev. 535 (2003) [hereinafter Perlin, *"Things Have Changed"*]; Michael L. Perlin, *"Half-Wracked Prejudice Leaped Forth": Sanism, Pretextuality, and Why and How Mental Disability Law Developed As It Did*, 10 J. Contemp. Legal Issues 3 (1999) [hereinafter Perlin, *"Half-Wracked Prejudice Leaped Forth"*]; Michael L. Perlin, *On "Sanism,"* 46 SMU L. Rev. 373 (1992). Although Perlin has written extensively on sanism, he attributes the term to Dr. Morton Birnbaum. Perlin, *"Half-Wracked Prejudice Leaped Forth,"* at 4 n.15 (citing Morton Birnbaum, *The Right to Treatment: Some Comments on its Development*, in Medical, Moral and Legal Issues in Health Care 97, 106-07 (Frank J. Ayd ed., 1974)).

Prejudice Leaped Forth," supra n.3, at 17. He calls this decision-making based on discriminatory myths the use of "ordinary common sense." *Id* at 16. For instance, Professor Perlin notes a popular myth that mental disabilities can be identified by laypeople relying on media depictions and stereotypes. Perlin, *On "Sanism,"* 46 SMU L. Rev. at 395.

Professor Perlin explains that "[j]udges are not immune from sanism," and citing several examples, he points to legal decisions that demonstrate judges' "contempt for the mental health profession." *Id.* at 17-18. He contends that when courts rely on "ordinary common sense" instead of evidence, they subvert statutory and case law standards. Perlin, *"Half-Wracked Prejudice Leaped Forth," supra* n.3, at 14. In this case, the trial court subverted the requirements of GR 33 by repeatedly substituting its own observations of Appellant for the conclusions of a mental health professional. On the first day of trial, the trial court stated: "I have also had the opportunity to interact with you in court and receive your written material, which is of high quality in advocating your position." Tr. 8:15–20. Later, when the Appellant renewed her requests for accommodations, the court stated it was denying her request based on its observations of her "high end" self-advocacy. Tr. 343:04–344:10. Although GR 33(b)(5) allows courts to require individuals to submit further information regarding the disability to "help assess the appropriate

accommodation," the trial court placed a burden of proof on the Appellant to provide satisfactory clinical evidence without seeking additional information or advising Appellant of what evidence it would need to assess an appropriate accommodation. Ultimately, unconvinced by the documentation Appellant provided on her own, the trial court said that it had concluded Appellant did not have a disability based on "personal observations of her functioning and proficiency here in the courtroom and in her written materials." Tr. 346:23–347:05.

While none of these statements provide a rationale or written decision as required by GR 33(d) and (e), they do provide abundant insight into the trial court's underlying assumptions about people with mental health conditions. His conclusion about Appellant's abilities illustrated his presumption that if she had a disability, her abilities would be static. The trial court disregarded a clinical explanation that PTSD results in "inconsistent" symptoms that may or may not be apparent. *See* CP 2551. Instead, the trial court assumed that if Appellant had a disability, she would not have been able to competently communicate and form coherent arguments under any circumstances. In essence, the trial court's explanations were focused on ways the Appellant did not seem to fit the court's "ordinary common sense" idea of how a person with a mental

health condition is likely to present. This is precisely the type of "sanism" that courts should avoid.

Appellate courts are uniquely positioned to redress discrimination fueled by commonly held misconceptions, stereotypes, and myths. A court rule that appellate courts have authority to implement offers an alternative to separate litigation to enforce anti-discrimination laws. It provides a clean pathway for erroneous decisions to be promptly corrected, rather than requiring additional lengthy court processes for compensatory relief, or putting courts in the awkward position of determining an injunctive remedy for another court's error. Importantly, unless litigants are able to secure preliminary injunctions or temporary restraining orders to suspend their original case, judicial and quasi-judicial immunity as well as the *Rooker-Feldman* doctrine could serve as significant barriers for federal litigants seeking post-litigation remedies for discriminatory state court rulings. *See Duvall*, 260 F. 3d at 1133 (finding judicial immunity for state court denial of disability accommodation request)*; Carmona v. Carmona*, 603 F.3d 1041, 1050 (9th Cir. 2010) (citing *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L.Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L.Ed.2d 206 (1983)) (finding "federal district courts do not have jurisdiction to hear de facto appeals from state court judgments"). Thus, even if another

court were to agree Appellant was denied a fair trial, its authority to efficiently fashion a remedy is likely to be limited, if it exists at all.

Appellant submitted her request using the required court form, and went well above and beyond what GR 33(b) requires. CP 2535-36. She described the accommodation, the reasons, and her disability, and provided personal health records that the court had not even requested. CP 2537- 2562. Nevertheless, the trial court denied her requests without providing written orders identifying any reason to explain why her request should be denied under the GR 33(c) factors and considerations. If this Court declines to review the trial court's non-compliant GR 33 rulings, Appellant will be left with limited and imperfect recourses. By contrast, this Court, under the Rules of Appellate Procedure, may review a trial court's orders denying a GR 33 request in its discretion or as an appeal.

IV. CONCLUSION

Amicus Disability Rights Washington respectfully requests that this Court exercise its appellate jurisdiction to review the trial court's erroneous GR 33 determinations. The trial court's order should be vacated, and remanded to appropriately apply GR 33.

Respectfully submitted this 2nd day of February, 2018.

/s Meghan Apshaga
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DISABILITY RIGHTS WASHINGTON

Certificate of Service

I, Mona Rennie, certify that on February 2, 2018, a true and correct copy of the foregoing document was served by electronic mail on the following counsel of record:

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