upon them. On November 21, 2013, Judge Armstrong issued a written decision denying both post-conviction relief motions.

A timely Notice of Appeal was filed by John Menzel, Esq. on January 21, 2014 and a Substitution of Attorney was filed by present counsel for purposes of appeal. Briefs have been filed by both the defense and State and the appeal is pending as Docket No. A-2284-13T2.

This motion to seal the decision or to use defendant's initials for good cause shown pursuant to R. 1:38-11 follows.

STATEMENT OF FACTS

Defendant's instant appeal seeks to vacate two guilty pleas to DWI in which defendant received ineffective assistance of plea counsel and the pleas were not voluntary or intelligent given the actions of the court and defense counsel.

While the instant appeal was pending, defendant became aware of the fact that any written decision of this court would be published on this court's website pursuant to R. 1:38-11 as a public document and pursuant to R. 1:36-3 as an unpublished opinion of this court. To verify that this court's decision would be affirmatively published on the court's website and that the decision would be available on an internet "Google" search, the unpublished 2005 case of Kim Boggio was found with a name search

and was available on the internet. Boggio is a DWI unpublished decision of this court.

Upon realizing the ultimate publication and public availability of the Appellate Decision of her case, defendant became highly anxious. Defendant had already been seeing a therapist and was referred to Psychiatrist [redacted], MD, for consultation and treatment. The attached letter from Dr. [redacted] explains the emotional and psychological state of defendant relating to her appeal and to her fear of Internet publication of this court's Appellate Division decision. (Pa-1) More specifically, Dr. [redacted] recounts defendant's depression form 2006 to the present and, more importantly, her suicidal thoughts which resulted in a recent hospitalization in [redacted] County. See attached Hospital discharge document. (Pa-3) Dr. [redacted] opines in his professional medical opinion that publication of the Appellate decision on the Internet "will cause serious psychological/psychiatric injury." (Pa-2) Such publication would "increase the risk of suicidal thoughts and actions." (Pa-2)

Exacerbating her serious psychiatric problems is defendant's vocation as a [redacted] official and the intense competition therein. Moreover, defendant's vocation may take her to other states and even countries under the [redacted] where DWI is considered a crime and not a motor

vehicle offense as in New Jersey. This increases the anxiety as to publication of the decision.

LEGAL ARGUMENT

POINT I

PURSUANT TO R.1:38-11, THIS COURT SHOULD SEAL OR USE INITIALS IN THE INSTANT APPELLATE DECISION BECAUSE DEFENDANT HAS SHOWN GOOD CAUSE BY A PREPONDERANCE OF THE EVIDENCE THAT PUBLICATION OF THE DECISION ON THE COURT'S WEBSITE AND THE INTERNET IS LIKELY TO CAUSE HER SERIOUS INJURY AND HER INTEREST IN PRIVACY SUBSTANTIALLY OUTWEIGHS THE PRESUMPTION OF PUBLIC OPENNESS.

Defendant submits that under the unique circumstances of this case, the requirements of R. 1:38-11 have been satisfied and this court should therefore seal the Appellate decision or use defendant's initials.

While R. 1:38-1 provides a general policy of public access to court records, several exceptions exist based upon the need for confidentiality and privacy. As such, R. 1:38-3 and other sources of law, limit public disclosure of family law, domestic violence, Juvenile, Megan's Law and in other contexts. Moreover, our Rules of Court recognize that there may be other specific instances in

which the sealing of a court decision or use of defendant's initials comports with public policy. Thus, R. 1:38-11 provides "good cause" to seal a record or maintain confidentiality if "(1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and (2) The person's or entity's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38."

With regard to the initial requirement of a clearly defined serious injury, the defense submits that this standard has been met under the unique circumstances presented. There is no indication in the Rule itself or in the case law that "serious injury" is limited to physical or economic injury. Indeed, psychiatric injury has long been recognized by our law in a host of contexts as constituting "serious injury". See eg., Saunderlin v. E. I. DuPont Co., 102 N.J. 402, 412-14 (1986)(psychiatric disability compensable under workers' compensation statute); Pushko v. Bd of Tr. Of Teachers' P & A, 202 N.J. Super. 98 (App. Div. 1985)(psychiatric disability qualified under a teacher's accidental disability pension); and Eyrich for Eyrich v. Dam, 193 N.J. Super. 244, 253 (App. Div. 1984)(emotional disturbance compensable in that Restatement was followed).

In the instant case, the professional medical opinion of Dr. [redacted] and the [redacted] County discharge document clearly

demonstrate by more than a preponderance of the evidence that publication of the Appellate decision is likely to cause defendant serious injury. (Pa-1 to 3) Potential suicide is extremely serious and the resulting harm is irreversible. Thus, defendant has satisfied the first prong of R. 1:38-11.

With regard to the second requirement of R. 1:38-11, the defense submits that when the weighing process is considered, defendant has shown that her interest in privacy substantially outweighs the general policy of public access to court records. Initially, the defendant stresses that she is not attempting to "expunge" her record or to preclude use of such records under any acceptable current purpose such as employment checks; rather, she only seeks to preclude the use of her full name in the affirmative publication of this court's decision on its website.

Given the narrowly tailored request and the established serious potential harm to defendant, the need for publication of the instant decision is diminished. The actual issues on appeal involve the propriety of DWI guilty pleas that are eight years old. Moreover, the issues are not likely to warrant formal publication given that State v. O'Donnell, 435 N.J. Super. 351 (App. Div. 2014) recently explained the requirements of and distinctions between ineffective assistance of counsel motions and motions to withdraw guilty pleas under the respective Rules of Court and case law. As such, the instant decision is only an