WASHINGTON
COURTS

DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION

BOARD MEETING

SUNDAY, SEPTEMBER 22, 2013

2013 ANNUAL JUDICIAL CONFERENCE
WENATCHEE, WASHINGTON

WASHINGTON COURTS

DMCJA BOARD MEETING
SUNDAY, SEPTEMBER 22, 2013
9:00 A.M. – 12:00 P.M.
2013 ANNUAL JUDICIAL CONFERENCE
WENATCHEE, WA

PRESIDENT JUDGE DAVID SVAREN AGENDA	TAB
Call to Order	
Minutes – August 9, 2013	1
Treasurer's Report – *Judge Marinella* 1. Recommendation regarding pro-rata dues.	2
Special Fund Report – *Judge David Steiner*	
Action A. Rules Committee Items – *Judge Garrow* 1. *SCJA Electronic Warrant Rule Proposal CrR 2.3 and CrR 3.2.1* 2. *ER 1101(c)(4) – Protection Order Rules* 3. *Proposed GR 15 request sought by Data Dissemination Committee before proposal to JISC* 4. *CJC 2.2 Comment 4* 5. *Proposed Changes to CJC Rules* B. Presiding Judges Conference Budget Request – *Ms. Judith Anderson*	3
Discussion A. Review of DUI Sentencing Grid, etc pattern forms – *possible action* B. Judicial College Reception Annual Contribution (Judicial College) C. Joint Judicial College Reception Proposal (SCJA & DMCJA) D. Annual Review of DMCJA Dues – *Judge Svaren* E. Nominating Committee Members – *Judge Derr* F. System Improvement Committee – *Judge Svaren*	4
Liaison Reports DMCMA MCA SCJA WSBA WSAJ AOC BJA	

Standing Committee Reports A. Therapeutic Courts Committee – *Judge Finkle & Judge Hayes* B. Legislative Committee – *Judge Meyer* C. Technology Committee – *Judge Walden* D. Rules Committee – *Judge Garrow*	**5**
Other Business	
Adjourn	

DMCJA Board of Governors Meeting

Friday, August 9, 2013, 12:30 p.m. – 3:30 p.m.
AOC SeaTac Office

MEETING MINUTES

Members:
Chair, Judge Svaren
Judge Alicea-Galvan
Judge Allen
~~Judge Burrowes~~
Judge Derr
Judge Garrow (non-voting)
Judge Jahns
~~Judge Jasprica (non-voting)~~
~~Judge Lambo (non-voting)~~
Judge Logan
Judge Marinella
Judge Olwell
Judge Ringus (non-voting)
Judge Robertson
Commissioner Smiley
Judge Smith
Judge Steiner
Judge Svaren

Guests:
Ms. Katrin Johnson, OPD
Ms. Joanne Moore, OPD
Ms. Nicole Nyblod, MCA
Mr. David Speikers, WSAJ
Ms. Aimee Vance, DMCMA

AOC Staff:
Mr. David Elliott
Ms. Shannon Hinchcliffe
Ms. Charlotte Jensen
Ms. J Krebs
Ms. Vicky Marin
Mr. Dirk Marler
Dr. Carl McCurley

President Svaren called the meeting to order at 12:33 p.m. and noted there was a quorum present.

ASSOCIATION BUSINESS

Minutes
M/S/P to approve June 9, 2013, minutes.

Treasurer's Report
Judge Marinella discussed the reports which are included in the supplemental packet. He also explained that he received two checks, one from Pierce County who appointed a judge prior to June 30th and sent $750, and the second from Grant County who appointed a judge after June 30th and sent half the amount. Although historically the association has not accepted pro rata dues, Judge Marinella suggested creating a policy. He will bring back a draft for discussion at the September Board meeting.

There was a motion and second to draft a policy which applies pro rata dues by quarter, the motion was tabled due to the complexity of breakdown and agreement to bring back the draft next to the Board next month.
M/S/P to approve the Treasurer's Report.

Special Fund Report
Judge Steiner reported that we earned .05 cents this last month on checking account and .20 was earned on the savings account. The paperwork was just signed to transfer the funds into Judge Steiner's name.
M/S/P to approve the Special Fund Report.

JISC Status Update
Ms. Marin reviewed the status on several pending IT Governance Requests for the courts of limited jurisdiction and filed a written report. She also mentioned that MCA has requested a probation case management system. Ms. Marin advised the Board that as a result of the letter submitted by DMCJA and other comments, the Data Dissemination Committee formed a workgroup to review the comments in light of the new proposed record retention policy. The workgroup has met once and will meet again to discuss the comments before they are set to discuss it at the September JISC meeting.

Ms. Hinchcliffe reminded the Board that they will not be meeting prior to the September JISC meeting and asked if they wanted an opportunity to review the workgroup's recommendation subsequent to the comments and prior to the JISC meeting. The Board answered in the affirmative. Ms. Hinchcliffe will reach out to workgroup staff on behalf of the Board and request the final recommendations prior to the JISC meeting.

ACTION

A. Rules Committee Items

1. GR 31.1 Recommendation-comment period ends August 26, 2013

Judge Garrow commented that this document is the third version that has been proposed. The Supreme Court did not incorporate all the suggestions in the last revision but they did remove the bad faith decision language and other substantial suggestions were incorporated. This revision still does not exempt misdemeanor probation records exemption and the Rules Committee advises that a comment letter be sent specifically in support of this.
M/S/P to unanimously adopt the Rules Committee recommendation and send a comment letter to the Supreme Court Rules Committee in support of an exemption for misdemeanor probation records.

2. SCJA Electronic Warrant Rule Proposal CrR 2.3 and CrR 3.2.1

Judge Garrow gave a brief history of the SCJA proposal and revisions since the original proposal. In the packet is SCJA's latest revision that is still being edited and the DMCJA Rules Committee proposal. Since SCJA continues to edit their proposed rule and Judge Robertson reported that the SCJA Board had taken some editing steps which reflected the DMCJA"s proposal, the final product may address the DMCJA's concerns.

Judge Garrow suggests that the DMCJA propose CLJ rules regardless of the SCJA's final outcome and will prepare GR 9 coversheets and draft rules for the next meeting.

DISCUSSION

A. Judicial Needs Estimate

Mr. McCurley discussed the Judicial Needs Estimate (JNE) and re-capped the summary of his December presentation. Ms. Jensen discussed the plans for the JNE workgroup which are included in the materials. She would like to convene the group as soon as possible. Judge Jahns, Judge Burrowes, and Judge Logan volunteered for the workgroup.

B. Indigent Defense Case Weighting Study

Ms. Moore gave a history of the Supreme Court rule requiring indigent defense standards and case weighting. She explained that the Office of Public Defense (OPD) is looking to get input from the courts regarding the local factors which impact cases. They are currently setting up two seminars through the DMCJA via webinar in October. They have asked Judge Meyer and Judge Logan to participate in these webinars.

OPD is currently conducting a time study to collect data on the amount of time that defense attorneys spend on their cases. Ms. Johnson explained that they have worked with those who have existing records and have recruited 50 attorneys around the state and worked with a vendor to create an online program for keeping track of their time. They are recording time lawyers have spent on cases and time spent on dockets. They are tracking by three categories 1) client communication, 2) case preparation, and 3) court time. Data received is not specific, but are tracking the most serious offense how much is being spent from start to finish. Members had many questions about what constitutes a "case" and how certain situations are being considered.

C. Regional Courts Committee

Judge Svaren re-introduced this topic as a product of the May Board Retreat now that the NCSC report has been finalized and distributed. The Board has identified the need to create an internal committee to evaluate the need for regionalization and preparing to respond to the need for legislation. He would like to take comments from the membership about what they think its goals should be.

Members suggested several goals for the new committee including: 1) Look at the history of the regionalization effort, 2) look at data related to operations and practices of courts, 3) look at funding information, identify funding sources, 4) create a vision for the future of the trial courts, 5) create policies or legislation that would satisfy a high percentage of the membership since unanimity is unlikely, 6) identify baseline services for regional courts.

Judge Svaren will work further on the charges for this committee and will bring it back next month. He has tapped Judge Allen to head the committee.

D. Rules Committee Report

Aside from the Action items, the committee has included their minutes which show that they are still working on proposed GR 15, CJC 2.2 Comment 4, and newly proposed CJC rules.

E. Proposed Changes to CJC Rules

See *D. Rules Committee Report*

F. Municipal Court Swearing-In Budget Request

Judge Ringus explained that this was done during the last election cycle and the intent last time was to promote judicial independence by having the Chief swear the judges in instead of a member from another branch.

M/S/P to move agenda item to Action
M/S/P to approve $500 from the President's Line Item to fund the event. Board members want to add commissioners to the event.

G. Presiding Judges Conference Budget Request

Members had several questions about what the conference would look like and what would be presented. Judge Svaren will ask Judge Larkin to attend the next Board meeting to answer questions.

LIAISONS

DMCMA – Ms. Vance talked about the proposed Mandatory Education Rule for court administrators and how they have been working hard on reaching out to all groups that are impacted for support.

MCA – Ms. Nyblod reported that MCA is also very concerned about exempting misdemeanant probation records and wrote a letter in support of the DMCJA's concerns.

AOC – Mr. Marler reported that people are gearing up for fall conference, particularly the GR 31.1 overview that will be offered at the business meeting. Also, the CLJ groups are going to have an opportunity to engage the SC CMS folks when they start working on the financial piece of the project. It is important to keep an eye out for any conflicting issues in case the product becomes in the running for the CLJ CMS project.

BJA - Judge Ringus reported on the re-structure process. He referred to the 2008 strategic plan to improve the quality and consistency and services of the courts of limited jurisdictions among other components of the plan. They have been working on several things including a federal mandate regarding the interpretation services.

STANDING COMMITTEE REPORTS

A. Therapeutic Courts Committee – an email is included from Judge Finkle. Judge Meyer also contacted Judge Finkle in anticipation of the Legislative Committee meeting. Judge Finkle explained that they had been working on the SB 5797 mandates.
B. Legislative Committee – Judge Meyer reported that the committee met this morning and starting to research legislative proposals solicited from members. The legislative committee also has a representative on the Impaired Driving Workgroup created by 2ESSB 5912. The committee is planning to bring recommendations to the November Board meeting for approval.
C. Education Committee – *email from Judge Burrowes and Judith Anderson*
D. Technology Committee – Judge Walden reported that they have been working on getting the DMCJA website up and running. They have been working with AOC to create a sub-site on the Washington Courts website.
E. Diversity Committee – *email from Judge Gregory and Pam Dittman*

INFORMATION

A. Public Records Requests – Judge Svaren updated the Board on the status of public records requests to the Association.
B. GR 31.1 Committee – The Core Work Committee is set to meet on August 28th and DMCMA members Commissioner Smiley and Judge Ahlf have been asked to work on the Executive Oversight Committee.

OTHER BUSINESS

Meeting Adjourned at 3:40 p.m.

WASHINGTON COURTS

District and Municipal Court Judges' Association

September 11, 2013

To: President Svaren, DMCJA Officers; DMCJA Board of Governors;
From: G. Scott Marinella, DMCJA Treasurer
Subject: Monthly Treasurer's Report for September, 2013

Dear President Svaren, Officers and Members of the DMCJA Board of Governors,

The following is a summary of the total DMCJA accounts, expenditures and deposits, as well as an update regarding the finances of our association.

ACCOUNTS

DMCJA Special Fund (controlled by Vice President Judge David A. Steiner):
Checking Account with a balance of - $6,364.95, as of May 31, 2013.
Savings Account with a balance of - $42,169.59, as of May 31, 2013.
(no statement for August, 2013)

US Bank Platinum Business Money Market Account
Fund Balance - $100,306.34, as of August 31, 2013.

Bank of America Accounts
Investment Account - $140,869.68, as of August 30, 2013.
Checking Account - $7,574.01, as of August 30, 2013.

Total for all Accounts: $297,284.57

EXPENDITURES

Total 2013/2014 adopted budget:	$223,900.00
Total expenditures to date:	$ 8,874.61
Total remaining budget as of 09/11/2013:	$215,025.39

DEPOSITS

Total deposits 2013/2014:	$750.00

DMCJA 2013-2014 Budget

	ITEM COMMITTEE	Beginning Balance	Total Costs	Ending Balance
1	Access to Justice Liaison	$500.00		$500.00
2	Audit	$2,000.00		$2,000.00
3	Bar Association Liaison	$5,000.00		$5,000.00
4	Board Meeting Expense	$30,000.00	$2,735.75	$27,264.25
5	Bookeeping Expense	$3,000.00		$3,000.00
6	Bylaws Committee	$250.00		$250.00
7	Conference Committee	$3,500.00		$3,500.00
8	Conference Incidental Fees For Members Spring Conference 2012 & 2013	$40,000.00		$40,000.00
9	Diversity Committee	$2,000.00	$24.30	$1,975.70
10	DMCMA Education	$5,000.00		$5,000.00
11	DMCMA Liaison	$500.00		$500.00
12	DOL Liaison Committee	$500.00	$27.32	$472.68
13	Education Committee**	$8,500.00		$8,500.00
14	Educational Grants	$5,000.00		$5,000.00
15	Judicial Assistance Committee	$5,000.00	$1,211.62	$3,788.38
16	Legislative Committee	$6,000.00	$274.79	$5,725.21
17	Legislative Pro-Tem	$2,500.00		$2,500.00
18	Lobbyist Expenses	$1,000.00		$1,000.00
19	Lobbyist Contract	$55,000.00	$2,000.00	$53,000.00
20	Long-Range Planning Committee	$1,500.00		$1,500.00
21	MCA Liaison	$1,500.00	$373.26	$1,126.74
22	National Leadership Grants	$3,000.00		$3,000.00
23	Nominating Committee	$400.00		$400.00
24	President Expense	$7,500.00	$251.56	$7,248.44
25	Reserves Committee	$250.00		$250.00
26	Rules Committee	$1,000.00	$15.45	$984.55
27	Rural Courts Committee	$0.00	Not Funded	$0.00
28	Salary and Benefits Committee	$0.00	***Not Funded	$0.00
29	SCJA Board Liaison	$1,000.00	$10.74	$989.26
30	Technology Committee	$5,000.00		$5,000.00
31	Therapeutic Courts	$2,500.00		$2,500.00
32	Treasurer Expense and Bonds	$1,000.00		$1,000.00
33	Judicial Community Outreach	$3,000.00		$3,000.00
34	Uniform Infraction Committee	$1,000.00		$1,000.00
35	Regional Courts (ad hoc to 2015)	$5,000.00		$5,000.00
36	Professional Services	$15,000.00	$1,949.82	$13,050.18
	TOTAL	**$223,900.00**	**$8,874.61**	**$215,025.39**
37	**TOTAL DEPOSITS MADE**	**$750.00**		
	***funding will come from special funds			

SCJA Electronic Warrant Rule Proposal CrR 2.3 and CrR 3.2.1

KING COUNTY DISTRICT COURT
East Division – Bellevue Courthouse

Judge Janet E. Garrow

585 112th Avenue SE
Bellevue, WA 98004
206-205-5702

Josie Jimenez
Court Manager

TO: President David Svaren and DMCJA Board

FROM: Judge Janet E. Garrow, Chair DMCJA Rules Committee

SUBJECT: Proposed Amendments to CrRLJ 2.2, CrRLJ 2.3, and CrRLJ 3.2.1 (Search Warrant and Probable Cause Determinations)

DATE: September 6, 2013

The DMCJA Rules Committee has been working on these proposed rule amendments for several months, largely in response to proposed amendments by the Superior Court Judges' Association (SCJA). The DMCJA Board has been periodically updated on the progress as representatives from both Associations' Rules Committees discussed harmonizing the proposed language. The Rules Committee is pleased to report that we have reached agreement with Judge Cozza on amended language for these rules.

The significant difference between these versions and the previous versions is the clarification that search warrants and probable cause determinations can be submitted to and issued by the court through "any reliable method". The attached GR 9 coversheet explains the proposed amendments in greater detail. It is anticipated that the SCJA will submit similar proposed amendments for the Superior Court rules.

The Rules Committee unanimously recommends adoption of these proposed amendments. A copy of the GR 9 coversheet and proposed amendments was provided to Judge Cozza.

Attachments:
GR 9 Cover Sheet for CrRLJ 2.2
Proposed Amendment to CrRLJ 2.2
GR 9 Cover Sheet for CrRLJ 2.3
Proposed Amendment to CrRLJ 2.3
GR 9 Cover Sheet for CrRLJ 3.2.1
Proposed Amendment to CrRLJ 3.2.1

GR 9 COVER SHEET

Suggested Amendments to
CRIMINAL RULES FOR THE COURTS OF LIMITED JURISDICTION

Amend CrRLJ 2.2: Warrant of Arrest or Summons Upon Complaint;
CrRLJ 2.3: Search and Seizure;
CrRLJ 3.2.1: Warrantless Arrest-Preliminary Appearance

Submitted by the District & Municipal Courts Judges Association

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A. **Name of Proponent:** District & Municipal Courts Judges Association

B. **Spokesperson:** Judge David Svaren, President
DMCJA
[ ]

C. **Background and Purpose:** In the fall of 2012, the Superior Court Judges Association [SCJA] submitted proposed amendments to Superior Court rules CrR 2.3 [Search Warrants] and CrR 3.2.1 [Procedure Following Warrantless Arrest-Preliminary Appearance]. No amendments were proposed for the analogous rules for courts of limited jurisdiction [CLJ] at that time. As a result, an inherent conflict was potentially created between the CLJ and Superior Court rules. The DMCJA expressed concerns to the SCJA regarding the proposed amendments. Thereafter, the SCJA requested that the Supreme Court defer action on its proposed rule amendments to allow the two Associations to confer and try and reach consensus on proposed language. The Supreme Court deferred action on the SCJA's proposal until September 30, 2013. In the meantime, representatives from the SCJA and the DMCJA have discussed the overall purpose of the SCJA proposal and have come to consensus on language that addresses the concerns of both Associations. As a result of those discussions, the DMCJA hereby submits proposed amendments to three CLJ rules: CrRLJ 2.2 [Warrant of Arrest or Summons Upon Complaint]; CrRLJ 2.3 [Search and Seizure], and CrRLJ 3.2.1 [Warrantless Arrest-Preliminary Appearance].

The purpose of the proposed amendments is to acknowledge that the technology utilized by courts, law enforcement and attorneys for transmitting and preserving documents and recorded testimony has significantly evolved over the years and will continue to evolve. For over a decade, CLJ and Superior Courts in Washington have been receiving and approving search warrants and probable cause determinations via telephone, facsimile and email. The rules continue to require that the court receive the sworn evidence in support of the probable cause determination or warrant application

from the prosecuting authority or police officer through reliable methods. Because technology continues to evolve, the various methods of transmitting sworn evidence and issuing probable cause determinations and warrants are not specified in these rules. The rules continue to require preservation of the sworn evidence considered by the court in making the probable cause determinations and issuing warrants.

A minor amendment is proposed to CrRLJ 2.2 to acknowledge evolving technology for recording information. In CrRLJ 2.3 the reference to CrRLJ 8.10 is deleted because GR 31 contains the provisions for public review of court records. The sentences in CrRLJ 3.2.1 were rearranged for clarity.

Because the proposed amendments are part of a three-rule package, this GR 9 Cover Sheet is being submitted with each rule proposal.

D. Hearing: A hearing is not recommended.

E. Expedited Consideration: Expedited consideration is requested to allow consideration of these rule amendments with the analogous rule amendments proposed by the SCJA.

Proposed Amendment:

CrRLJ 2.2
WARRANT OF ARREST OR SUMMONS
UPON COMPLAINT

(a) Issuance of Warrant of Arrest.

(1) Generally. If a complaint is filed and if the offense charged may be tried in the jurisdiction in which the warrant issues, and if the sentence for the offense charged may include confinement in jail, the court may direct the clerk to issue a warrant for the arrest of the defendant unless the defendant has already been arrested in connection with the offense charged and is in custody or has been released on obligation to appear in court.

(2) Probable Cause. A warrant of arrest must be supported by an affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony establishing the grounds for issuing the warrant. Sworn testimony shall be recorded electronically, ~~or~~ stenographically or by any reliable method. The evidence shall be preserved. The court must determine there is probable cause to believe that the defendant has committed the crime alleged before issuing the warrant. The evidence shall be subject to constitutional limitations for probable cause determinations and may be hearsay in whole or in part.

(3) Ascertaining Defendant's Current Address.

(i) Search for Address. The court shall not issue a warrant unless it determines that the complainant has attempted to ascertain the defendant's current address by searching the following: (A) the District Court Information system database (DISCIS), (B) the driver's license and identicard database maintained by the Department of Licenses; and (C) the database maintained by the Department of Corrections listing persons incarcerated and under supervision. The court in its discretion may require that other databases be searched.

(ii) Exemptions from Address Search. The search required by subdivision (i) shall not be required if (A) the defendant has already appeared in court (in person or through counsel) after filing of the same case, (B) the defendant is known to be in custody, or (C) the defendant's name is unknown.

(iii) Effect of Erroneous Issuance. If a warrant is erroneously issued in violation of this subsection (a)(3), that error shall not affect the validity of the warrant.

(b) Issuance of Summons in Lieu of Warrant.

(1) Generally. If a complaint is filed, the court may direct the clerk to issue a summons commanding the defendant to appear before the court at a specified time and place.

(2) When Summons Must Issue. The court shall direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant (i) will not appear in response to a summons, (ii) will commit a violent offense, (iii) will interfere with witnesses or the administration of justice, or (iv) is in custody.

(3) Summons for Felony Complaint. If the complaint charges the commission of a felony, the court may direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant will not appear in response to a summons, or that arrest is necessary to prevent bodily harm to the accused or another, in which case it may issue a warrant.

(4) Summons. A summons shall be in writing and in the name of the charging jurisdiction, shall be signed by the clerk with the title of that office, and shall state the date when issued. It shall state the name of the defendant and the nature of the charge, and shall summon the defendant to appear before the court at a stated time and place. The summons shall inform the defendant that failure to appear as commanded may result in the issuance of a warrant for the arrest of the accused.

(5) Failure To Appear on Summons. If a person fails to appear in response to a summons, or if delivery is not effected within a reasonable time, a warrant of arrest may issue, if the sentence for the offense charged may include confinement in jail.

(c) Requisites of a Warrant. The warrant shall be in writing and in the name of the charging jurisdiction, shall be signed by the judge or clerk with the title of that office, and shall state the date when issued. It shall specify the name of the defendant, or if his or her name is unknown, any name or description by which he or she can be identified with reasonable certainty. The warrant shall specify the offense charged against the defendant and that the court has found that probable cause exists to believe the defendant has committed the offense charged and shall command the defendant be arrested and brought forthwith before the court issuing the warrant. If the offense is not a capital offense, the court shall set forth in the order for the warrant, bail and/or other conditions of release.

(d) Execution; Service.

(1) Execution of Warrant. The warrant shall be directed to all peace officers in the state and shall be executed only by a peace officer.

(2) Delivery of Summons. The summons may be served any place within the state. It may be served by a peace officer, who shall deliver a copy of the same to the defendant personally, or it may be delivered by the court mailing the same, postage prepaid, to the defendant at his or her last known address.

(e) Return. The officer executing a warrant shall make return thereof to the court before whom the defendant is brought pursuant to these rules. At the request of the prosecuting authority any unexecuted warrant shall be returned to the issuing court to be canceled. The peace officer to whom a summons has been given for service shall, on or before the return date, file a return thereof with the court before whom the summons is returnable. For reasonable cause, the court may order that the warrant be returned to it.

(f) Defective Warrant or Summons.

(1) Amendment. No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any irregularity in the warrant or summons, but the warrant or summons may be amended so as to remedy any irregularity.

(2) Issuance of New Warrant or Summons. If during the preliminary examination of any person arrested under a warrant or appearing in response to a summons, it appears that the warrant or summons does not properly name or describe the defendant or the offense with which he or she is charged, or that although not guilty of the offense specified in the warrant or summons, there is reasonable ground to believe that he or she will be charged with some other offense, the judge shall not discharge or dismiss the defendant but may allow a new complaint to be filed and shall thereupon issue a new warrant or summons.

(g) Failure to Issue Warrant---Dismissal. Upon five days' notice to the prosecuting attorney, the court shall dismiss a charge without prejudice if (i) 90 days have elapsed since the citation or complaint was filed and (ii) on the date that the order of dismissal is entered, no warrant has been issued and the defendant has not appeared in court.

[Amended effective September 1, 1991; September 1, 1995; September 1, 2003; September 1, 2006.]

GR 9 COVER SHEET

Suggested Amendments to
CRIMINAL RULES FOR THE COURTS OF LIMITED JURISDICTION

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CrRLJ 2.3: Search and Seizure;
CrRLJ 3.2.1: Warrantless Arrest-Preliminary Appearance

Submitted by the District & Municipal Courts Judges Association

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B. **Spokesperson:** Judge David Svaren, President
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from the prosecuting authority or police officer through reliable methods. Because technology continues to evolve, the various methods of transmitting sworn evidence and issuing probable cause determinations and warrants are not specified in these rules. The rules continue to require preservation of the sworn evidence considered by the court in making the probable cause determinations and issuing warrants.

A minor amendment is proposed to CrRLJ 2.2 to acknowledge evolving technology for recording information. In CrRLJ 2.3 the reference to CrRLJ 8.10 is deleted because GR 31 contains the provisions for public review of court records. The sentences in CrRLJ 3.2.1 were rearranged for clarity.

Because the proposed amendments are part of a three-rule package, this GR 9 Cover Sheet is being submitted with each rule proposal.

D. **Hearing:** A hearing is not recommended.

E. **Expedited Consideration:** Expedited consideration is requested to allow consideration of these rule amendments with the analogous rule amendments proposed by the SCJA.

Proposed Amendment:

CrRLJ 2.3
SEARCH AND SEIZURE

(a) Authority To Issue Warrant. A search warrant authorized by this rule may be issued by the court upon request of a peace officer or the prosecuting authority.

(b) Property or Persons Which May Be Seized With a Warrant. A warrant may be issued under this rule to search for and seize any (1) evidence of a crime; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) Issuance and Contents. A search warrant may be issued only if the court determines there is probable cause for the issuance of a warrant. ~~There must be a~~An affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony establishing the grounds for issuing the warrant, must be provided or transmitted to the court by any reliable method. ~~The sworn testimony may be an electronically recorded telephonic statement. The~~ sSworn testimony must be in writing, recorded ~~electronically~~, or otherwise preserved. The record shall include any additional evidence relied upon by the court. The recording, or a duplication of the recording, shall be a part of the court record and shall be provided if requested ~~by a party~~ or if ordered by the court~~, subject to the provisions of rule 8.10~~. The evidence in support of the finding of probable cause shall be preserved and shall be subject to constitutional limitations for such determinations and may be hearsay in whole or in part. If the court finds that probable cause for the issuance of a warrant exists, it shall issue a warrant or direct an individual whom it authorizes for such purposes to affix the court's signature to a warrant. The authorization of the warrant may be done through any reliable method. The warrant may be directed to any peace officer. The warrant shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place or thing named for the property or person specified. ~~It~~ The warrant shall designate the court to which the warrant ~~it~~ shall be returned. ~~It~~ The warrant shall be returned to the issuing court, ~~and~~ filed in the ~~public files of the~~ court record and available for public review unless ordered sealed by the court. Unless otherwise designated by the issuing court, the warrant may be served at any time of day or night.

(d) Execution and Return With Inventory. The peace officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken. If no such person is present, the officer may post a copy of the search warrant and receipt. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person from whose possession or premises the property is taken, or in the presence of at least one person other than the officer. The court shall upon request ~~deliver~~ provide a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for Return of Property. A person may move the issuing court for the return of the property seized under the warrant on the ground that the property was illegally seized, or does not appear relevant or reasonably calculated to lead to the discovery of relevant evidence, and that the person is lawfully entitled to possession of the property. The motion shall be filed in the court which issued the warrant and a copy served upon the chief executive of the law enforcement agency that obtained the warrant. Proof of service shall be filed with the court. The prosecuting authority's assertion that property lawfully seized is relevant or reasonably calculated to lead to the discovery of relevant evidence shall be binding on the court.

(1) Procedure if Charges Pending. If a motion based on the ground that property was illegally seized is made or comes on for hearing after a complaint or citation and notice is filed in the court in which the motion is pending, it shall be treated as a motion to suppress. If charges are pending in another court at the time a motion made upon any ground is filed or comes on for hearing, the motion shall be transferred to the other court and subject to its rules of procedure.

(2) Procedure if No Charges Pending. If no charges are pending in any court at the time the motion is made, the issuing court shall set the motion for hearing not less than 30 days from the date of the filing or service of the motion, whichever is later.

(3) Procedure if Motion Granted. If the motion is granted, the property shall be returned unless the prosecuting authority seeks review within 14 days.

(f) Searches of Media.

(1) Scope. If an application for a search warrant is governed by RCW 10.79.015(3) or 42 U.S.C. subsection 2000aa et seq., this section controls the procedure for obtaining the evidence.

(2) Subpoena Duces Tecum. Except as provided in subsection (3), if the court determines that the application satisfies the requirements for issuance of a warrant, as provided in section (c) of this rule, the court shall issue a subpoena duces tecum in accordance with CRLJ 45~~(b)~~.

(3) Warrant. If the court determines that the application satisfies the requirements for issuance of a warrant and that RCW 10.79.015(3) and 42 U.S.C. subsection 2000aa et seq. permit issuance of a search warrant rather than a subpoena duces tecum, the court may issue a warrant.

(g) Motion for Suppression. Absent prejudice to the defendant, procedural noncompliance with rules of execution and return does not compel invalidation of a warrant or suppression of its fruits.

Comment: CrRLJ 2.3 was adopted in 1987. The technology utilized by courts, law enforcement and attorneys for transmitting and preserving documents and recorded testimony has significantly evolved. Telephone, facsimile, electronic mail and digital recording methods are widely used. Statute and court rule allow for the use of digital signatures. The rule continues to require that the court receive the sworn evidence from the prosecuting authority or police officer and issue the warrant through any reliable method that preserves the evidence and the warrant. Because technology continues to evolve, the various methods of transmitting the sworn evidence and issuing the warrant are not specified in the rule. General Rule 31, Access to Court Records, sets forth the provisions for public review of court records.

GR 9 COVER SHEET

Suggested Amendments to
CRIMINAL RULES FOR THE COURTS OF LIMITED JURISDICTION

Amend CrRLJ 2.2: Warrant of Arrest or Summons Upon Complaint;
CrRLJ 2.3: Search and Seizure;
CrRLJ 3.2.1: Warrantless Arrest-Preliminary Appearance

Submitted by the District & Municipal Courts Judges Association

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A. **Name of Proponent:** District & Municipal Courts Judges Association

B. **Spokesperson:** Judge David Svaren, President
DMCJA
[ ]

C. **Background and Purpose:** In the fall of 2012, the Superior Court Judges Association [SCJA] submitted proposed amendments to Superior Court rules CrR 2.3 [Search Warrants] and CrR 3.2.1 [Procedure Following Warrantless Arrest-Preliminary Appearance]. No amendments were proposed for the analogous rules for courts of limited jurisdiction [CLJ] at that time. As a result, an inherent conflict was potentially created between the CLJ and Superior Court rules. The DMCJA expressed concerns to the SCJA regarding the proposed amendments. Thereafter, the SCJA requested that the Supreme Court defer action on its proposed rule amendments to allow the two Associations to confer and try and reach consensus on proposed language. The Supreme Court deferred action on the SCJA's proposal until September 30, 2013. In the meantime, representatives from the SCJA and the DMCJA have discussed the overall purpose of the SCJA proposal and have come to consensus on language that addresses the concerns of both Associations. As a result of those discussions, the DMCJA hereby submits proposed amendments to three CLJ rules: CrRLJ 2.2 [Warrant of Arrest or Summons Upon Complaint]; CrRLJ 2.3 [Search and Seizure], and CrRLJ 3.2.1 [Warrantless Arrest-Preliminary Appearance].

The purpose of the proposed amendments is to acknowledge that the technology utilized by courts, law enforcement and attorneys for transmitting and preserving documents and recorded testimony has significantly evolved over the years and will continue to evolve. For over a decade, CLJ and Superior Courts in Washington have been receiving and approving search warrants and probable cause determinations via telephone, facsimile and email. The rules continue to require that the court receive the sworn evidence in support of the probable cause determination or warrant application from the prosecuting authority or police officer through reliable methods. Because technology continues to evolve, the various methods of transmitting sworn evidence and

issuing probable cause determinations and warrants are not specified in these rules. The rules continue to require preservation of the sworn evidence considered by the court in making the probable cause determinations and issuing warrants.

A minor amendment is proposed to CrRLJ 2.2 to acknowledge evolving technology for recording information. In CrRLJ 2.3 the reference to CrRLJ 8.10 is deleted because GR 31 contains the provisions for public review of court records. The sentences in CrRLJ 3.2.1 were rearranged for clarity.

Because the proposed amendments are part of a three-rule package, this GR 9 Cover Sheet is being submitted with each rule proposal.

D. Hearing: A hearing is not recommended.

E. Expedited Consideration: Expedited consideration is requested to allow consideration of these rule amendments with the analogous rule amendments proposed by the SCJA.

Proposed Amendment:

CrRLJ 3.2.1
PROCEDURE FOLLOWING
WARRANTLESS ARREST--PRELIMINARY HEARING

(a) Probable Cause Determination. A person who is arrested shall have a judicial determination of probable cause no later than 48 hours following the person's arrest, unless probable cause has been determined prior to such arrest.

(b) How Determined. The court shall determine probable cause on evidence presented by a peace officer or prosecuting authority in the same manner as provided for a warrant of arrest in CrRLJ~~rule~~ 2.2~~(a)~~. In making the probable cause determination, the court may consider an affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony, and further may examine under oath the affiant and any witnesses the affiant may produce. Sworn testimony, including telephonic statements, shall be recorded electronically, stenographically, or by any reliable method. The written or recorded evidence considered by the court may be hearsay in whole or part. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations~~ may consist of an electronically recorded telephonic statement~~. The court's probable cause determination may be recorded through any reliable method. If the court finds that release without bail should be denied or that conditions should attach to the release on personal recognizance, other than the promise to appear for a court hearing~~trial~~, the court shall proceed to determine whether probable cause exists to believe that the accused committed the ~~offense charged~~crime alleged, unless this determination has previously been made by a court. ~~Before making the determination, the court may consider an affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony, and further may examine under oath the affiant and any witnesses the affiant may produce. Sworn testimony shall be electronically or stenographically recorded. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations, and may be hearsay in whole or in part.~~

(c) Court Days. For the purpose of section (a), Saturday, Sunday and holidays may be considered judicial days.

(d) Preliminary Appearance.

(1) Adult. Unless an accused has appeared or will appear before the superior court for a preliminary appearance, any accused detained in jail must be brought before a court of limited jurisdiction as soon as practicable after the detention is commenced, but in any event before the close of business on the next court day.

(2) Juveniles. Unless an accused has appeared or will appear before the superior court for a preliminary appearance, any accused in whose case the juvenile court has

entered a written order declining jurisdiction and who is detained in custody, must be brought before a court of limited jurisdiction as soon as practicable after the juvenile court order is entered, but in any event before the close of business on the next court day.

(3) Unavailability. If an accused is unavailable for preliminary appearance because of physical or mental disability, the court may, for good cause shown and recorded by the court, enlarge the time prior to preliminary appearance.

(e) Procedure at Preliminary Appearance.

(1) At the preliminary appearance, the court shall provide for a lawyer pursuant to rule 3.1 and for pretrial release pursuant to rule 3.2, and the court shall orally inform the accused:

(i) of the nature of the charge against the accused;

(ii) of the right to be assisted by a lawyer at every stage of the proceedings; and

(iii) of the right to remain silent, and that anything the accused says may be used against him or her.

(2) If the court finds that release should be denied or that conditions should attach to release on personal recognizance, other than the promise to appear in court at subsequent hearings, the court shall proceed to determine whether probable cause exists to believe that the accused committed the offense charged, unless this determination has previously been made by a court. Before making the determination, the court may consider affidavits filed or sworn testimony and further may examine under oath the affiant and any witnesses he or she may produce. Subject to constitutional limitations, the finding of probable cause may be based on evidence which is hearsay in whole or in part.

(f) Time Limits.

(1) Unless a written complaint is filed or the accused consents in writing or on the record in open court, an accused, following a preliminary appearance, shall not be detained in jail or subjected to conditions of release for more than 72 hours after the accused's detention in jail or release on conditions, whichever occurs first. Computation of the 72-hour period shall not include any part of Saturdays, Sundays, or holidays.

(2) If no complaint, information or indictment has been filed at the time of the preliminary appearance, and the accused has not otherwise consented, the court shall either:

(i) order in writing that the accused be released from jail or exonerated from the conditions of release at a time certain which is within the period described in subsection (f)(1); or

(ii) set a time at which the accused shall reappear before the court. The time set for reappearance must also be within the period described in subsection (f)(1). If no complaint, information or indictment has been filed by the time set for release or reappearance, the accused shall be immediately released from jail or deemed exonerated from all conditions of release.

(g) Preliminary Hearing on Felony Complaint.

(1) When a felony complaint is filed, the court may conduct a preliminary hearing to determine whether there is probable cause to believe that the accused has committed a felony unless an information or indictment is filed in superior court prior to the time set for the preliminary hearing. If the court finds probable cause, the court shall bind the defendant over to the superior court. If the court binds the accused over, or if the parties waive the preliminary hearing, an information shall be filed without unnecessary delay. Jurisdiction vests in the superior court at the time the information is filed.

(2) If at the time a felony complaint is filed with the district court the accused is detained in jail or subjected to conditions of release, the time from the filing of the complaint in district court to the filing of an information in superior court shall not exceed 30 days plus any time which is the subject of a stipulation under subsection (g)(3). If at the time the complaint is filed with the district court the accused is not detained in jail or subjected to conditions of release, the time from the accused's first appearance in district court which next follows the filing of the complaint to the time of the filing of an information in superior court shall not exceed 30 days, excluding any time which is the subject of a stipulation under subsection (g)(3). If the applicable time period specified above elapses and no information has been filed in superior court, the case shall be dismissed without prejudice.

(3) Before or after the preliminary hearing or a waiver thereof, the court may delay a preliminary hearing or defer a bind-over date if the parties stipulate in writing that the case shall remain in the court of limited jurisdiction for a specified time, which may be in addition to the 30-day time limit established in subsection (g)(2).

(4) A preliminary hearing shall be conducted as follows:

(i) the defendant may as a matter of right be present at such hearing;

(ii) the court shall inform the defendant of the charge unless the defendant waives such reading;

(iii) witnesses shall be examined under oath and may be cross-examined;

(iv) the defendant may testify and call witnesses in the defendant's behalf.

(5) If a preliminary hearing on the felony complaint is held and the court finds that probable cause does not exist, the charge shall be dismissed, and may be refiled only if a motion to set aside the finding is granted by the superior court. The superior court shall determine whether, at the time of the hearing on such motion, there is probable cause to believe that the defendant has committed a felony.

(6) If a preliminary hearing is held, the court shall file the record in superior court promptly after notice that the information has been filed. The record shall include, but not be limited to, all written pleadings, docket entries, the bond, and any exhibits filed in the court of limited jurisdiction. Upon written request of any party, the court shall file the recording of any testimony.

[Amended effective September 1, 2002.]

ER 1101(c)(4)
Protection Order Rules

KING COUNTY DISTRICT COURT
East Division – Bellevue Courthouse

Judge Janet E. Garrow

585 112th Avenue SE
Bellevue, WA 98004
206-205-5702

Josie Jimenez
Court Manager

TO: President David Svaren and DMCJA Board
FROM: Judge Janet E. Garrow, Chair DMCJA Rules Committee
SUBJECT: Comments on Proposed Amendment to ER 1101(c)(4)
DATE: August 30, 2013

In 2013, the Legislature passed ESHB 1383, creating a new protection order addressing stalking conduct. Protection orders are the subject of ER 1101(c)(4), which specifically states that the rules of evidence need not be applied in certain types of protection order proceedings. ER 1101(c)(4) contains a list of protection order proceedings where the Rules of Evidence need not apply The creation of a new statutory protection order involving stalking suggests that Evidence Rule 1101 should be amended to incorporate the new stalking protection order.

The Rules Committee considered the issue and voted unanimously to recommend that ER 1101(c)(4) be amended as proposed and that the DMCJA Board forward the proposal to the Supreme Court Rules Committee.

Attachments:
GR 9 Cover Sheet
Proposed Amendment to ER 1101(c)(4)

GR 9 COVER SHEET

Suggested Amendments to
WASHINGTON STATE COURT RULES: RULES OF EVIDENCE

Amend ER 1101(c)(4): Applicability of Rules, Applications for Protection Orders

Submitted by the District & Municipal Courts Judges Association

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A. **Name of Proponent:** District & Municipal Courts Judges Association

B. **Spokesperson:** Judge David Svaren, President
DMCJA

C. **Purpose:** In 2013, the Legislature passed ESHB 1383, creating a new protection order addressing stalking conduct. Protection orders are the subject of ER 1101(c)(4), which specifically states that the rules of evidence need not be applied in certain types of protection order proceedings.

ER 1101(c)(4) contains a list of protection order proceedings where the Rules of Evidence need not apply The creation of a new statutory protection order involving stalking suggests that Evidence Rule 1101 should be amended to incorporate the new stalking protection order. The Code Reviser's Office has indicated that the new stalking protection order will be codified under a new Chap. 7.94 RCW. The proposed amendment to ER 1101(c)(4) contains the anticipated reference for the new stalking protection order.

D. **Hearing:** A hearing is not recommended.

E. **Expedited Consideration:** Expedited consideration is requested to eliminate any confusion as to whether Evidence Rules apply to stalking protection order proceedings. The effective date of the new stalking protection order was July 28, 2013.

Proposed Amendment:

EVIDENCE RULE 1101
APPLICABILITY OF RULES

(a) Courts Generally. Except as otherwise provided in section (c), these rules apply to all actions and proceedings in the courts of the state of Washington. The terms "judge" and "court" in these rules refer to any judge of any court to which these rules apply or any other officer who is authorized by law to hold any hearing to which these rules apply.

(b) Law With Respect to Privilege. The law with respect to privileges applies at all stages of all actions, cases, and proceedings.

(c) When Rules Need Not Be Applied. The rules (other than with respect to privileges, the rape shield statute and ER 412)) need not be applied in the following situations:

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a).

(2) Grand Jury. Proceedings before grand juries and special inquiry judges.

(3) Miscellaneous Proceedings. Proceedings for extradition or rendition; detainer proceedings under RCW 9.100; preliminary determinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise; contempt proceedings in which the court may act summarily; habeas corpus proceedings; small claims court; supplemental proceedings under RCW 6.32; coroners' inquests; preliminary determinations in juvenile court; juvenile court hearings on declining jurisdiction; disposition, review, and permanency planning hearings in juvenile court; dispositional determinations related to treatment for alcoholism, intoxication, or drug addiction under RCW 70.96A; and dispositional determinations under the Civil Commitment Act, RCW 71.05.

(4) Applications for Protection Orders. Protection order proceedings under RCW 7.90, 7.94, 10.14 , 26.50 and 74.34. Provided when a judge proposes to consider information from a criminal or civil database, the judge shall disclose the information to each party present at the hearing; on timely request, provide each party with an opportunity to be heard; and, take appropriate measures to alleviate litigants' safety concerns. The judge has discretion not to disclose information that he or she does not propose to consider.

(d) Arbitration Hearings. In a mandatory arbitration hearing under RCW 7.06, the admissibility of evidence is governed by MAR 5.3.

[Amended September 2, 1999; January 2, 2008; September 1, 2008, September 1, 2010]

Comment 1101

[Deleted effective September 1, 2006]

Proposed GR 15 Request Sought by Data Dissemination Committee Before Proposal of JISC

KING COUNTY DISTRICT COURT
East Division – Bellevue Courthouse

Judge Janet E. Garrow

585 112th Avenue SE
Bellevue, WA 98004
206-205-5702

Josie Jimenez
Court Manager

TO: President David Svaren and DMCJA Board
FROM: Judge Janet E. Garrow, Chair DMCJA Rules Committee
SUBJECT: Comments on Proposed GR 15
DATE: August 30, 2013

The Data Dissemination Committee (DDC) of the JISC has proposed certain changes to GR 15. These amendments have not yet been presented to the Supreme Court, and the DDC has requested comment on the current draft. A Subcommittee of the Rules Committee considered the proposed amendments and set forth their recommendation in the attached memo. The Rules Committee voted unanimously to adopt the memo of the Subcommittee as its recommendation.

If you have any questions regarding this recommendation, please let me know.

Attachments:
August 15, 2013 Memo to DMCJA Rules Committee
August 9, 2013 draft amendments to GR 15, with margin comments
Seattle Times v. Ishikawa, 97 Wn. 2d 30 (1982)
Bennett v. Smith Bundy German Britton, 176 Wn. 2d 303, 291 P.3d 886 (2013)

Memorandum

To: DMCJA Rules Committee

From: Judges Janet Garrow and Tracy Staab

Date: 8/15/2013

Re: Proposed Amendments to GR 15

Background

The DMCJA Rules Committee was asked to review proposed amendments to General Rule (GR) 15 and provide initial feedback to the DMCJA Board. The draft proposal, dated August 9, 2013, is attached. We had a phone conference with Judge James Heller and Judge Steve Rosen, both of whom sit on the Data Dissemination Committee (DDC), and discussed the draft amendments and the intent and purpose in preparing it. It is our understanding that some member(s) of the Supreme Court requested the DDC to draft proposed amendments to GR 15 to help clarify the process for sealing and redacting court records.

Analysis

There has been substantial case law over the past thirty years discussing the substantive and procedural issues involving the sealing and redacting of court records. It appears the proposed amendments to GR 15 are an attempt to incorporate specific factors contained in case law. *Seattle Times Co., v. Ishikawa, 97 Wn. 2d (1982); Dreiling v. Jain, 151 Wn. 2d 900 (2004); Rufer v. Abbott Labs., 154 Wn 2d 530 (2005).* For example, the amendments attempt to incorporate provisions of the recent decision in *Bennett v. Smith Bundy Berman Britton*, 176 Wn.2d, 303, 291 P.3rd 886 (2013). The majority's opinion was written by Justice Chambers with three justices joining. However, *Bennett* contains a strong dissent by four justices and a concurrence in the result only by Justice Madsen, which J. Johnson also joined. There is a question whether the *"uber dicta"* of the majority opinion in *Bennett* is truly the opinion of the majority of the Supreme Court and should be incorporated into GR 15. GR 15 was substantially amended in 2006. Given some of the statements contained in the concurrence and dissent, and the extensive case law that already exists in this area, it's unclear whether there is need for an amendment to GR 15 at this time.

These reviewers appreciate the effort the DDC has gone to into drafting amendments to GR 15 to incorporate the Supreme Court's opinions on the issues related to sealing and redaction. Whether GR 15 conflicts or replaces the *Ishikawa* factors was addressed in State v. Waldon, 148 Wn. App. 952 (2009), *rev. denied* 166 Wn. 2d 1026 (2009). In *Waldon*, the court held: "In sum, revised GR 15 does not fully comply with the constitutional benchmark defined

in *Ishikawa.* But it can be harmonized with *Ishikawa* to preserve its constitutionality. We conclude that GR 15 and *Ishikawa* must be read together when ruling on a motion to seal or redact court records. Many of the appellate cases on this topic reveal that parties have not presented and discussed the *Ishikawa* factors to the trial court and trial judges have consequently failed to apply the factors when deciding motions to seal or redact. Hence, many appellate decisions remand the case to the trial court to apply the *Ishikawa* factors and GR 15 provisions to the motion and enter an order specifically setting forth the court's findings and conclusions

The currently case law in this area is clear that the *Ishikawa* factors, along with other provisions of GR 15 must be used. The amendments attempt to incorporate the factors into GR 15, but due to the numerous comments inserted between various sections of the rule, the amendments are difficult to follow.

One of the changes proposed to GR 15 is the mandatory requirement for an expiration date in the order sealing or redacting. See GR 15(c)(5): "Every order sealing or redacting material in the court file, except for sealed juvenile offenses, shall specify a time period, after which, the order shall expire." It appears that this provision seeks to implement the fifth *Ishikawa* factor that he order be no broader in its application or duration than necessary to serve its purpose and that the order apply for a specific time period with a burden on the proponent to come before the court at a time specified to justify continued sealing. *Id. at 39.* The majority in *Bennett* noted that "with or without an expiration date, an order to seal is always subject to challenge consistent with our open administration of justice jurisprudence." *Bennett* at 893. The requirement for an explicit expiration date raises several issues for trial courts.

Notably, Courts of Limited Jurisdiction are allowed to destroy court records after a period of time, maintaining only the index. If an order sealing a record is set to expire after the document would otherwise be destroyed, is the CLJ required to maintain the sealed record?

It has been noted that the Judicial Information System (JIS) does not currently have the ability to include an expiration date on an order to seal or redact. Would the document(s) remain sealed in JIS until a request to unseal is made?

Another question is whether the proposed amendments are prospective or retrospective? If the amendments to GR 15 are intended to simply incorporate existing appellate case law on this topic, it is assumed its application is retrospective. However, if there are substantive amendments that affect sealing or redaction orders previously entered, there may be significant ramifications on trial courts if there is an expectation trial courts will go back and review formerly sealed or redacted records absent a motion.

There are several concerns with proposed language. For instance, the rule seems unorganized when determining which factors to consider on a motion to seal or redact. Subsection (c) provides the factors a court should consider in deciding a motion to seal or redact. The factors to consider vary depending on when the motion to seal is filed, and what it attempts to protect. Subsection (c)(2)(A) provides factors to consider when a court record was considered by a court in reaching a decision, whereas (c)(2)(B) provides factors to consider when a court record was not considered by a court in reaching a decision. In subsection (c)(8), the rule sets

forth the procedure to follow when a motion to seal is made at the same time as the documents proposed to be sealed are filed. For clarity, perhaps these three sections should be closer together as they cover the three possible scenarios.

The proposed rule, under GR 15(c)(2), requires a court to "enter specific findings on the record to justify any sealing or redaction." For purposes of appellate review, it would seem the court should also enter specific findings when it denies a motion to seal or redact. The lack of a record and detailed findings have been an issue in several reported cases.

Subsection (c)(4) sets forth the privacy or safety concerns that may be weighed against the public interest in open files. While the rule provides factors a court may consider, it does not provide guidance on the weight these factors carry. The parties and the court need to look at case law for this information. *E.g.*, *Waldon* at 334.

Language in two of the subsections is ambiguous, and it is not clear whether the subsections apply only to juvenile offenses or whether they also apply to adult convictions. See GR 15(c)(4)(C) and (D). Likewise, the language in subsection (c)(4)(D)(iii) regarding restitution is confusing.

> (4) Sufficient privacy or safety concerns that may be weighed on a case by case basis against the public interest in the open administration of justice include findings that:
>
> ...
>
> (C) A criminal conviction or an adjudication or deferred disposition for a juvenile offense has been vacated; or
>
> (D) A criminal charge or juvenile offense has been dismissed, and:
>
> ...
>
> (iii) Restitution has not been ordered paid on the charge in another cause number as part of a plea agreement.

The proposed addition of GR 15(c)(4)(I) appears to be redundant: "The redaction includes only restricted personal identifiers contained in the court record." By their nature, restricted personal identifiers are already redacted. Does this mean that before a court can redact something that is already supposed to be redacted under court rule, it must go through the analysis to redact any "restricted personal identifiers"?

It is unclear how the following terms are used in the rule, as their usage is not always consistent: "juvenile proceedings", "court files", court records". It is also unclear how someone is to apply the provisions of GR 15 in relationship to the sealing provisions of GR 22.

We are also providing some "margin" comments to the proposed GR 15 amendments which address specific questions or concerns.

GENERAL RULE 15 As Of 0809013

Draft Amendment

DESTRUCTION, SEALING, AND REDACTION OF COURT RECORDS

(a) **Purpose and Scope of the Rule.** This rule sets forth a uniform procedure for the destruction, sealing, and redaction of court records. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record.

(b) **Definitions.**

(1) "Court file" means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated cause number(s).

(2) "Court record" is defined in GR 31(c)(4).

(3) "Destroy". ~~To destroy~~ means to obliterate a court record or file in such a way as to make it permanently irretrievable. A motion or order to expunge shall be treated as a motion or order to destroy.

(4) "Dismissal" means dismissal of an adult criminal charge or juvenile offense by a court for any reason, other than a dismissal pursuant to RCW 9.95.240, or RCW 10.05.120, RCW 3.50.320, or RCW 3.66.067.

(5) ~~(4) Seal. To s~~"Seal" means to protect from examination by the public and unauthorized court personnel. A motion or order to delete, purge, remove, excise, or erase, or redact shall be treated as a motion or order to seal.

(6) ~~(5) Redact. To r~~"Redact" means to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.

(7) ~~(6)~~ "Restricted Personal Identifiers" are defined in GR 22(b)(6).

(8) ~~(7)~~ "Strike" applies to ~~. Aa~~ motion or order to strike and ~~is~~ not a motion or order to seal or destroy.

(9) ~~Vacate. To v~~"Vacate" means to nullify or cancel.

(c) **Sealing or Redacting Court Records.**

(1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceedings, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal

Comment [jeg1]: What is the difference between "court file" and "court record"? It would seem that "court record" includes the "case file". In proposed GR 31.1 there is a definition of "case records", which includes "case files". Consistent terminology would be nice.

Comment [jeg2]: Does examination by the public include attorneys to the case? Is it "protecting from examination" or "restricting public access"?

Comment [jeg3]: Why does this reference only GR 22, as redaction of personal identifiers are also mentioned in other court rules?

Comment [jeg4]: Should an interested person be permitted to file a motion in a civil case?

Comment [jeg5]: Should this clarify "an adult criminal case"? A "juvenile proceeding" is not necessarily a juvenile offense proceeding, but it's implied in the way this sentence is drafted..

case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile. No such notice is required for motions to seal documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).

(2) ~~After~~ At the hearing, the court ~~may order the court files an and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety~~ concerns ~~that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:~~ shall consider the applicable factors and enter specific findings on the record to justify any sealing or redaction.

(A) For any court record that has become part of the court's decision-making process, the court must consider the following factors:

(i) Has the proponent of sealing or redaction established a compelling interest that gives rise to sealing or redaction, and if it is based upon an interest or right other than an accused's right to a fair trial, a serious and imminent threat to that interest or right; and

(ii) Has anyone present at the hearing objected to the relief requested; and

(iii) What is the least restrictive means available for curtailing open public access to the record; and

(iv) Whether the competing privacy interest of the proponent seeking sealing or redaction outweighs the public's interest in the open administration of justice; and

(v) Will the sealing or redaction be no broader in its application or duration than necessary to serve its purpose.

Comment [jeg6]: This sentence implies that it's an "adult" criminal case, but then notice must be given to a person/agency having custody of the juvenile. Would this just be in decline cases?

Comment [jeg7]: Delete?

Comment [jeg8]: Establishing the basis for

Comment [jeg9]: Or denial

Comment [jeg10]: The distinction of records the court has reviewed and relied upon in its decision-making process [announced in the Bennett case] is an awkward standard. If something has been filed in the court file, without a contemporaneous motion to seal, it would seem that the document is open for public review. Will judges be required to go through the court file and determine which pieces of paper the judge considered in making a decision? If a document wasn't considered in a decision, but was not filed under seal, is public access restricted?

Comment [jeg11]: Odd word choice. Recognized that the language comes from caselaw. Suggest rewording: e.g., What is the least restrictive means available to protect the identified interest while allowing public access to the record.

COMMENT

GR 15(c)(2)(A) does not address Juvenile Offender records sealed pursuant to RCW 13.50.050. This section does apply to Juvenile Offender records sealed under the authority of GR 15, only. The applicable factors the court shall consider in a Motion to Seal or Redact incorporate current Washington caselaw, including:

~~*Federated Publications v. Kurtz, 94 Wn.2d 51 (1980)*~~

~~*Seattle Times v. Ishikawa, 97 Wn.2d 30 (1982)*~~
~~*Allied Daily Newspapers v. Eikenberry, 121 Wn.2d 205 (1993)*~~
~~*State v. Boneclub, 128 Wn.2d 254 (1995)*~~
~~*Rufer v. Abbot Laboratories, 154 Wn.2d 530 (2005)*~~
~~*Dreiling v. Jain, 151 Wn.2d 900 (2004)*~~
~~*State v. Waldon, 148 Wn. App. 952 (2009)*~~
~~*State v. Coleman, 151 Wn. App. 614, at FN 13 (2009)*~~
~~*Tacoma News v. Cayce, 172 Wn.2d 58 (2011)*~~

(B) For any court record that was not a part of the court's decision-making process, the court must consider the following:

(i) Has the proponent of the sealing or redaction established good cause; and

(ii) Has any nonparty with an interest in nondisclosure been provided notice and an opportunity to be heard.

Comment [jeg12]: This is really an awkward standard.

Comment [jeg13]: Good cause for what?

Comment [jeg14]: It may impossible to determine who is a nonparty with an interest.

COMMENT

In Bennett et al v. Smith Bunday Berman Britton, PS, 176 Wn.2d 303 (2013), the State Supreme Court held that documents obtained through discovery that are filed with a court in support of a motion that is never decided are not part of the administration of justice and therefore may be sealed under a good cause standard.

(3) Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records.

(4) Sufficient privacy or safety concerns that may be weighed on a case by case basis against the public interest in the open administration of justice include findings that:

Comment [jeg15]: Does this mean that any of these concerns will always weigh against the public interest such that sealing or redaction is allowed?

(A) The sealing or redaction is permitted by statute; or

(B) The sealing or redaction furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or

(C) A criminal conviction or an adjudication or deferred disposition for a juvenile offense has been vacated; or

(D) A criminal charge or juvenile offense has been dismissed, and:

(i) The charge has not been dismissed due to an acquittal by reason of insanity or incompetency to stand trial; or

(ii) A guilty finding does not exist on another count arising from the same incident or within the same cause of action; or

(iii) Restitution has not been ordered paid on the charge in another cause number as part of a plea agreement.

or

(E) A defendant or juvenile respondent has been acquitted, other than an acquittal by reason of insanity or due to incompetency to stand trial; or

(F) A pardon has been granted to a defendant or juvenile respondent; or

(G) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or

(H) The sealing or redaction is of a court record of a preliminary appearance, pursuant to CrR 3.2.1, CrRLJ 3.2.1, or JUCR 7.3 or a probable cause hearing, where charges were not filed; or

(I) The redaction includes only restricted personal identifiers contained in the court record; or

(J) Another identified compelling circumstance exists that requires the sealing or redaction.

COMMENT

Additional privacy or safety concerns that may be weighed against the public interest are included based upon the deliberations at the Joint Legislative Court Records Privacy Workgroup in 2012. In Allied Daily Newspapers v. Eikenberry, 121 Wn.2d 205 (1993), the court held that the presumptive right of public access to the courts is not absolute and may be outweighed by some competing interest as determined by the trial court on a case by case basis, according to the Ishikawa guidelines.

(5) Every order sealing or redacting material in the court file, except for sealed juvenile offenses, shall specify a time period after which the order shall expire. The proponent of sealing or redaction has the burden of coming back before the court and justifying any continued sealing or redaction beyond the initial specified time period. Any request for public access to a sealed or redacted court record received by the custodian of the record after the expiration of the Order to Seal or Redact shall be granted as if the record were not sealed, without further notice. Thereafter, the record will remain unsealed. The Court, in its discretion, may order a court record sealed indefinitely if the court finds that the circumstances and reasons for the sealing will not change over time.

COMMENT

*Requiring a time period, after which the order sealing or redacting expires, implements the Ishikawa factor that the order must be no broader in its duration than necessary to serve its purpose. The critical distinction between the adult criminal system and the juvenile offender system lies in the ~~policy of the 1977 Juvenile Justice Act's~~ policy of responding to the needs of juvenile offenders. Such a policy has been found to be **rehabilitative** in nature, whereas the criminal system is punitive. State v. Rice, 98 Wn.2d 384 (1982); State v. Schaaf, 109 Wn.2d 1,4; Monroe v. Soliz, 132 Wn.2d 414, 420 (1997); State*

Comment [jeg16]: This subsection does not make sense. If restitution was paid, is this still a factor?

Comment [jeg17]: And criminal charges were not subsequently filed

Comment [jeg18]: Why is this needed if the personal identifier redaction rule applies?

Comment [jeg19]: Note that the term "court file" is used here, not "court record".

Comment [jeg20]: This provision applies in adult criminal cases and all civil cases, including family law, adoption, etc?

Comment [jeg21]: Is it intended that this provision will be prospective?

Comment [jeg22]: Does this mean that CLJ will have to maintain sealed records until the expiration of the sealing order to allow public access? Will CLJ be permitted to destroy sealed records in conjunction with the usual destruction schedule?

Comment [jeg23]: There should be no current support for the proposition that the policy underlying the adult criminal system is simply punitive.

v. Bennett, 92 Wn. App. 637 (1998). Legacy JIS systems do not have the functionality to automatically unseal or unredact a court record upon the expiration of an Order to Seal or Redact.

(6) The name of a party to a case may not be redacted, or otherwise changed or hidden, from an index maintained by the Judicial Information System or by a court. The existence of a court file containing a redacted court record is available for viewing by the public on court indices, unless protected by statute.

COMMENT

Existence of a case can no longer be determined for the purpose of public access and viewing, if the case cannot be found by an index search. Redacting the name of a party in the index would prevent the public from moving for access to a redacted record under section (f). The policy set forth in this section is consistent with existing policy when the entire file is ordered sealed, as reflected in section (c) (9).

(7) ~~(3)~~ No court record shall be sealed under this rule when redaction will adequately protect the interests of the proponent.

(8) Motions to Seal/Redact when Submitted Contemporaneously with Document Proposed to be Sealed or Redacted - Not to be Filed.

(A) The document sought to be sealed or redacted shall not be filed prior to a court decision on the motion. The moving party shall provide the following documents directly to the court that is hearing the motion to seal or redact:

(i) The original unredacted document(s) the party seeks to file under seal shall be delivered in a sealed envelope for in camera review.

(ii) A proposed redacted copy of the subject document(s), if applicable.

(iii) A proposed order granting the motion to seal or redact, with specific proposed written findings and conclusions that establish the basis for the sealing and redacting and are consistent with the five factors set forth in subsection (2)(a).

(B) If the court denies, in whole or in part, the motion to seal, the court will return the original unredacted document(s) and the proposed redacted document(s) to the submitting party and will file the order denying the motion. At this point, the proponent may choose to file or not to file the original unredacted document.

Comment [jeg24]: This is a big concern. How will courts keep track of this information?

Comment [jeg25]: This prohibition conflicts with the opinions in *Indigo Real Estate v. Rousey*, 151 Wn.941 App (2009) and *Hundtofte v. Encarnacion*, 169 Wn. App. 498 (2013), which provide that the trial court must do a GR 15 and *Ishikawa* factor analysis on such requests. The Supreme Court has granted review in *Hundtofte*.

Comment [jeg26]: This paragraph is confusing. It seems to refer to an "index" maintained by JIS or a court. Court file available for public viewing on "court indices". Does this include the "court record" and the "court file"? Unless protected by statute....What if the court ordered the redaction of a name and use of initials for some compelling reason? Is the use of a initials or "Janeor John Doe" allowed?

Comment [jeg27]: Is this all done exparte or is opposing counsel provided a copy of the motion and document sought to be sealed or redacted?

Comment [jeg28]: Given the developing caselaw, the number of factors could change.

Comment [jeg29]: Or redact?

Comment [jeg30]: If the documents are returned there is no record for appellate review.

Comment [jeg31]: Must the order of denial contain specific findings and conclusions

Comment [jeg32]: How would there ever be a record for appellate review if the documents are returned?

Comment [jeg33]: Is this sentence necessary? The order may have allow some redaction.

(C) If the court grants the motion to seal, the court shall file the sealed document(s) contemporaneously with a separate order and findings and conclusions granting the motion. If the court grants the motion by allowing redaction, the judge shall write the words "SEALED PER COURT ORDER DATED [insert date]" in the caption of the unredacted document before filing.

Comment [Jeg34]: Is the sealing order available for public review?

COMMENT

The rule incorporates the procedure established by State v. McEnroe, 174 Wn.2d 795 (2012). for ~~withdrawal of documents filed contemporaneously with a Motion to Seal or Redact is incorporated in the rule.~~

(9) ~~(4)~~ Sealing of Entire Court File. When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. Except for sealed juvenile offenses, the existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices. The information on the court indices is limited to the case number, names of the parties, the notation "case sealed," the case type and cause of action in civil cases and the cause of action or charge in criminal cases, except where the conviction in a criminal case has been vacated, the charge has been dismissed, the defendant has been acquitted, the governor has granted a pardon, or the order is to seal a court record of a preliminary appearance or probable cause hearing; then section (d) shall apply. Except for sealed juvenile offenses, the order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.

Comment [Jeg35]: Court file is used here.

Comment [Jeg36]: Court file is used here.

Comment [Jeg37]: Court records is used here.

Comment [Jeg38]: Court file vs. court record

Comment [Jeg39]: The findings and order will have to generic, otherwise the purpose of protecting the proponent's privacy is circumvented.

(10) ~~(5)~~ Sealing of Specified Court Records. When the clerk receives a court order to seal specified court records the clerk shall:

(A) On the docket, preserve the docket code, document title, document or subdocument number and date of the original court records; and

(B) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the court record ordered sealed exists in a microfilm, microfiche or other storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and

(C) File the order to seal and the written findings supporting the order to seal. Except for sealed

Comment [SUH40]: DDC requested further review and discussion regarding (9) and asked for comments from interested parties.

Comment [SUH41]: Possible comment added after subsection discussing financial restraints/computer system upgrades.

Comment [Jeg42]: It becomes confusing when court file, index and court records are used somewhat interchangeably in this rule.

Comment [Jeg43]: This section assumes old technology and paper records.

Comment [Jeg44]: How is this accomplished with electronic court records?

juvenile offenses, both shall be accessible to the public; and

(D) Before a court file is made available for examination, the clerk shall prevent access to the sealed court records.

(11) ~~(6)~~ Procedures for Redacted Court Records. When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original unredacted court record shall be sealed following the procedures set forth in (c)(5).

(d) Procedures for Vacated Criminal Convictions, Dismissals and Acquittals, Pardons and Preliminary Appearance Records.

(1) In cases where a criminal conviction has been vacated and an order to seal entered, the information in the public court indices shall be limited to the case number, case type ~~with the notification "DV" if the case involved domestic violence~~, the ~~adult's~~ defendant's ~~or juvenile's~~ name, and the notation "vacated."

(2) In cases where a defendant has been acquitted, a charge has been dismissed, a pardon has been granted, or the subject of a motion to seal or redact is a court record of a preliminary appearance, pursuant to CrR 3.2.1 or CrRLJ 3.2.1, or a probable cause hearing, where charges were not filed, and an order to seal entered, the information in the public indices shall be limited to the case number, case type ~~with the notification "DV" if the case involved domestic violence~~, the ~~adult's~~ defendant's ~~or juvenile's~~ name, and the notation "non conviction."

(e) Procedures for Sealed Juvenile Offender Adjudications, Deferred Dispositions, and Diversion Referral Cases. In cases where an adjudication for a juvenile offense, a juvenile diversion referral, or a juvenile deferred disposition has been sealed pursuant to the provisions of RCW 13.50.050 (11) and (12), the existence of the sealed juvenile offender case shall not be accessible to the public.

COMMENT

GR 15(e) does not address whether the applicable factors identified in Section (c)(2)(A)(i)-(v) must be considered by the court before sealing Juvenile Offender records pursuant to RCW 13.50.505.
RCW 13.50.050 (11) addresses sealing of juvenile offender court records in cases referred for diversion.
RCW 13.40.127 prescribes the eligibility requirements and procedure for entry of a deferred disposition in juvenile offender cases, and the process for subsequent dismissal and vacation of juvenile offender cases in which a deferred disposition was completed. Records sealing provisions for deferred dispositions are contained in RCW 13.50.050. RCW 13.40.127(10)(a)(ii) provides for administrative sealing of deferred disposition in certain circumstances. RCW 13.50.050(14)(a) states that:
"Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual."

Comment [jeg45]: Juvenile offense and juvenile proceedings are used in the rule, and the distinction is not always clear.

Comment [jeg46]: Is this COMMENT really needed?

Comment [jeg47]: The Court is not an agency.

This remedial statutory provision is a clear expression of legislative intent that the existence of juvenile offender records that are ordered sealed by the court not be made available to the public. Records sealed pursuant to RCW 13.40.127 have the same legal status as records sealed under RCW 13.50.050. RCW 13.40.127(10)(c). The statutory language of 13.50.050(14)(a), included above, differs from statutory provisions governing vacation of adult criminal convictions, reflecting the difference in legislative intent found in RCW 9.94A.640, RCW 9.95.240, and RCW 9.96.060.

~~(e)~~ (f) **Grounds and Procedure for Requesting the Unsealing of Sealed Court Records or the Unredaction of Redacted Court Records.**

(1) Order Required. Sealed or redacted court records may be examined by the public only after the court records have been ordered unsealed or unredacted pursuant to this section ~~or~~, after entry of a court order allowing access to a sealed court record or redacted portion of a court record, or after an order to seal or redact the record has expired. Compelling circumstances for unsealing or unredaction exist when the proponent of the continued sealing or redaction fails to overcome the presumption of openness under the factors in section (c)(2). The court shall enter specific findings on the record supporting its decision.

(2) Criminal Cases. A sealed or redacted portion of a court record in a criminal case shall be ordered unsealed or unredacted only upon proof of compelling circumstances, unless otherwise provided by statute, and only upon motion and written notice to the persons entitled to notice under subsection (c)(1) of this rule except:

(A) If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecuting attorney the court shall nullify the sealing order in the prior sealed case(s).

(B) If a petition is filed alleging that a person is a sexually violent predator, upon application of the prosecuting attorney the court shall nullify the sealing order as to all prior criminal records of that individual.

(C) If the time period specified in the Order to Seal or Redact has expired, the sealed or redacted court records shall be unsealed or unredacted without further order of the court in accordance with this rule.

(3) Civil Cases. A sealed or redacted portion of a court record in a civil case shall be ordered unsealed or unredacted only upon stipulation of all parties or upon motion and written notice to all parties and proof that identified

Comment [jeg48]: Unredaction...awkward word choice. Grounds and Procedure for Requesting the Recission of an Order Sealing or Redacting Court Records [Court files?].

Comment [jeg49]: Court files too?

Comment [jeg50]: So this would allow a motion to rescind an order sealing or redacting soon after the original sealing/redaction order was entered. Is the burden shifting with this provision? Is this language needed given section 2 [below].

Comment [SUH51]: DDC requested further review as it relates to the *Bennett* case.

Comment [jeg52]: Note: court record is used here.

Comment [jeg53]: If there is a time period in the order, isn't the order self-executing? Should this sentencet say the "records are available for public access without further court order"?

Comment [jeg54]: It seems that the provisions of this section conflict with the provisions of GR 22, Access to Family Law and Guardianship Court Records.

Comment [jeg55]: Note: court record is used here.

compelling circumstances for continued sealing or redaction no longer exist, or pursuant to ~~RCW~~ chapter 4.24 RCW or CR 26 (j). If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

COMMENT

In State v. Richardson, 177 Wn.2d 351(2013), there was a motion in the trial court to unseal a 1993 criminal conviction, which had been sealed in 2002, under an earlier version of GR 15. The State Supreme Court remanded to the trial court for further proceedings, because there was no record of considering the Ishikawa factors. The Supreme Court held that "compelling circumstances" for unsealing exist under GR 15 (e) when the proponent of sealing fails to overcome the presumption of openness under the five factor Ishikawa analysis. In either case, the trial court must apply the factors.

(4) Juvenile Proceedings. Inspection of a sealed juvenile court record is permitted only by order of the court upon motion made by the person who is the subject of the record, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(23). Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order, pursuant to RCW 13.50.050(16). Unredaction of the redacted portion of a juvenile court record shall be ordered only upon the same basis set forth in section (2), above.

~~(f)~~ (g) **Maintenance of Sealed Court Records.** Sealed court records are subject to the provisions of RCW 36.23.065 and can be maintained in mediums other than paper.

~~(g)~~ (h) **Use of Sealed Records on Appeal.** A court record, or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.

~~(h)~~ (i) **Destruction of Court Records.**

(1) The court shall not order the destruction of any court record unless expressly permitted by statute. The court shall enter written findings that cite the statutory authority for the destruction of the court record.

(2) In a civil case, the court or any party may request a hearing to destroy court records only if there is express statutory authority permitting the destruction of the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to destroy the court records only if there is

Comment [jeg56]: It seems that this burden differs from (f) (1), i.e., compelling circumstances for unsealing exist when the proponent of sealing fails to overcome the presumption of openness under the factors.

Comment [jeg57]: CRLJ 26 as well?

Comment [jeg58]: CLJ Rules?

Comment [jeg59]: Or sworn declaration?

Comment [jeg60]: Do juvenile proceedings include: juvenile offenses, truancy, alternative placement, dependency, etc?

Comment [jeg61]: And Redacted?

Comment [jeg62]: And redacted?

Comment [jeg63]: Court files?

Comment [jeg64]: And Redacted?

Comment [jeg65]: And redacted?

Comment [jeg66]: Any court record, any court file?

Comment [jeg67]: Definition of "juvenile proceeding"

express statutory authority permitting the destruction of the court records. Reasonable notice of the hearing to destroy must be given to all parties in the case. In a criminal case, reasonable notice of the hearing must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile.

(3) When the clerk receives a court order to destroy the entire court file the clerk shall:

(A) Remove all references to the court records from any applicable information systems maintained for or by the clerk except for accounting records, the order to destroy, and the written findings. The order to destroy and the supporting written findings shall be filed and available for viewing by the public.

(B) The accounting records shall be sealed.

(4) When the clerk receives a court order to destroy specified court records the clerk shall:

(A) On the automated docket, destroy any docket code information except any document or sub-document number previously assigned to the court record destroyed, and enter "Order Destroyed" for the docket entry; and

(B) Destroy the appropriate court records, substituting, when applicable, a printed or other reference to the order to destroy, including the date, location, and document number of the order to destroy; and

(C) File the order to destroy and the written findings supporting the order to destroy. Both the order and the findings shall be publicly accessible.

(5) Destroying Records.

(A) This subsection shall not prevent the routine destruction of court records pursuant to applicable preservation and retention schedules.

~~(i)~~ (B) Trial Exhibits. Notwithstanding any other provision of this rule, trial exhibits may be destroyed or returned to the parties if ~~all parties so stipulate in writing and~~ the court so orders.

(j) **Effect on Other Statutes.** Nothing in this rule is intended to restrict or to expand the authority of clerks under existing statutes, nor is anything in this rule intended to restrict or expand the authority of any public auditor in the exercise of duties conferred by statute.

Comment [jeg68]: Court file is used here and the subsection A uses court records.

Comment [jeg69]: Why the exception for accounting records?

Comment [jeg70]: Public access.

Comment [jeg71]: Is this because of the Auditor? If they are sealed, the Auditor cannot see them.

Comment [jeg72]: Available for public access.

Comment [jeg73]: Does this include court files?

Comment [jeg74]: Where are these preservation and retention schedules found? Are courts relying upon schedules set for in the PRA? Is there a statute or court rule establishing these schedules?

Comment [jeg75]: After any applicable appeal period has expired or appeals exhausted?

Supreme Court of Washington, En Banc.
SEATTLE TIMES COMPANY, Petitioner,
v.
The Honorable Richard M. ISHIKAWA, Judge of the Superior Court, King County, Respondent.
The HEARST CORPORATION, Petitioner,
v.
The Honorable Richard M. ISHIKAWA, Judge of the Superior Court, King County, Respondent.

Nos. 47604-7, 47623-3.
Feb. 11, 1982.

Newspapers brought original mandamus action against superior court judge who closed a pretrial hearing involving a criminal defendant's motion to dismiss, sealed the record of that proceeding, and continued to refuse to open the record to the public. The Supreme Court, Brachtenbach, C. J., held that: (1) criminal defendant waived her right to intervene in the proceeding by waiting over eight weeks after argument on the petitions to file her request for intervention, and (2) the trial court erred by failing to inform petitioners at the preclosure hearing of the interests sought to be protected by defendant's motion, erred in failing to explicitly outline nature of the interests protected and in failing to detail factual basis for its conclusion regarding the need for secrecy and suitability of the methods chosen, erred in failing to demonstrate at the motion to unseal after jury selection that it had considered the need for continued secrecy, and erred at the motion to unseal after trial by failing to indicate that it had weighed the relevant interests and in accepting the conclusory allegations of the prosecutor rather than determining for itself the sufficiency of the need for continued secrecy.

Remanded.

Dolliver, J., concurred and filed opinion in which Utter, J., joined.

Dore, J., concurred and filed opinion.

West Headnotes

[1] Mandamus 250 ⚿61

250 Mandamus
250II Subjects and Purposes of Relief
250II(A) Acts and Proceedings of Courts, Judges, and Judicial Officers
250k61 k. Criminal Prosecutions. Most Cited Cases

Mandamus by an original action in Supreme Court is a proper form of action for third-party challenges to closure orders in criminal proceedings. RAP 16.2.

[2] Mandamus 250 ⚿153

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k153 k. New Parties. Most Cited Cases

Criminal defendant waived any right to intervene in mandamus action brought by newspapers challenging trial judge's order closing pretrial hearing by waiting over eight weeks after argument on the petitions to file her request for intervention. RAP 16.2.

[3] Criminal Law 110 ⚿635.5(1)

110 Criminal Law

110XX Trial
110XX(B) Course and Conduct of Trial in General
110k635 Public Trial
110k635.5 Limitations on Power to Close Proceedings
110k635.5(1) k. In General. Most Cited Cases
(Formerly 110k635, 110k1226(3))

Criminal Law 110 ⚿635.6(3)

110 Criminal Law
110XX Trial
110XX(B) Course and Conduct of Trial in General
110k635 Public Trial
110k635.6 Considerations Affecting Propriety of Closure
110k635.6(3) k. Overriding Interest; Necessity. Most Cited Cases
(Formerly 110k635, 110k1226(3))

Criminal Law 110 ⚿635.12

110 Criminal Law
110XX Trial
110XX(B) Course and Conduct of Trial in General
110k635 Public Trial
110k635.12 k. Objections to Closure and Proceedings Thereon. Most Cited Cases
(Formerly 110k635, 110k1226(3))

Each time restrictions on access on criminal hearings or records from hearings are sought, courts must follow these steps: first, proponent of closure and/or sealing must make some showing of the need therefor; second, anyone present when closure motion is made must be given an opportunity to object; third, court, proponents and objectors should carefully analyze whether requested method for curtailing access would be both the least restrictive means available and effective in protecting the interests threatened; fourth, court must weigh competing interests of defendant and the public and consider the alternative method suggested; and fifth, order must be no broader in its application or duration than necessary to serve its purpose. West's RWCA Const.Art. 1, § 10.

[4] Criminal Law 110 ⚿635.11(3)

110 Criminal Law
110XX Trial
110XX(B) Course and Conduct of Trial in General
110k635 Public Trial
110k635.11 Proceedings on Request for Closure
110k635.11(3) k. Hearing. Most Cited Cases
(Formerly 110k635, 110k1226(3.1), 110k1226(3))

An in camera hearing during closed session in judge's chambers on defendant's request to restrict access to criminal hearings may be proper when very argument on closure may jeopardize defendant's right to a fair trial. West's RWCA Const.Art. 1, § 10.

[5] Criminal Law 110 ⚿635.7(3)

110 Criminal Law
110XX Trial
110XX(B) Course and Conduct of Trial in General
110k635 Public Trial
110k635.7 Nature of Proceeding Affecting Propriety of Closure
110k635.7(3) k. Pretrial Proceedings. Most Cited Cases
(Formerly 110k635)

Criminal Law 110 ⚿1226(2)

110 Criminal Law
110XXVIII Criminal Records
110k1226 In General
110k1226(2) k. Access and Dissemination, and Limitations Thereon. Most Cited Cases

Records 326 ⚿32

326 Records
326II Public Access
326II(A) In General
326k32 k. Court Records. Most Cited Cases
(Formerly 110k635)

In proceedings in which trial judge closed pretrial hearing involving criminal defendant's motion to dismiss, sealed record of that proceeding and refused to open record to the public, trial judge erred by failing to inform petitioning newspapers of interests sought to be protected by defendant's motion, in failing to explicitly outline nature of the interests protected and in failing to detail factual basis for conclusions, in failing to demonstrate at hearing on motion to unseal after jury selection that he had considered the need for continued secrecy, and in failing to indicate at motion to unseal after trial that he had weighed the relevant interests and in accepting conclusory allegations of prosecutor rather than determining sufficiency of the need for continued secrecy. West's RWCA Const.Art. 1, § 10.

***31** ****717** Davis, Wright, Todd, Riese & Jones, P. Cameron DeVore, Marshall J. Nelson, Daniel M. Waggoner, Foster, Pepper & Riviera, Camden M. Hall, G. ***32** Richard Hill, Seattle, for petitioner.

Norm Maleng, King County Prosecutor, Fred A. Kaseburg, Deputy Pros. Atty., Seattle, for respondent.

BRACHTENBACH, Chief Justice.

The issue is whether a superior court judge was justified in closing a pretrial hearing involving a motion to dismiss. A corollary question is presented by the judge's sealing of the record of that proceeding and his continued refusal to open the record to the public.

This action arose out of the case of State v. Marler, a murder trial conducted in the King County courtroom of Judge Richard Ishikawa. Two Seattle daily newspapers, the Seattle Times and the Seattle Post-Intelligencer (P-I), separately filed in this court original mandamus actions against Judge Ishikawa. Those actions, brought pursuant to RAP 16.2 were consolidated. Petitioners ask this court to direct Judge Ishikawa to unseal the records of the pretrial hearing. The P-I also contends that the closure of the pretrial hearing was improper. On this record, for the reasons discussed below, we find that the judge erred in closing the hearing. We emphasize that it is on this record that we find error. We remand the issue of the continued sealing of the records for reconsideration in accordance with this opinion.

I

As noted above, this action arose out of a criminal prosecution. In August 1980, Cynthia Marler was charged with the murder of Wanda Touchstone. Her trial was set for February 1981.

Just prior to trial, Marler's counsel moved to dismiss the charges against her. Counsel also moved to exclude the public from the courtroom while the motion to dismiss was being argued. The prosecutor concurred in this motion to close.

On February 24, 1981, the prosecutor's office notified attorneys for the Seattle Times and the P-I that a motion to exclude ****718** the public from the courtroom during the argument***33** on the motion to dismiss would be presented to the court on the next day. On February 25, defense counsel presented to the court pleadings in support of the motion to close. In the judge's chambers the trial judge, defense counsel and the prosecutor discussed the pleadings and the

need for closure. Following these discussions, those parties returned to the courtroom. The trial judge announced that a motion to close the hearing had been made and that he would entertain objections from the press on the issue of closure.

Representatives of the Times and the P-I objected. Without explaining what had been discussed during the in camera session, the trial judge heard argument on the issue of closure. The judge allowed the press to suggest alternatives to closure. For reasons described in detail later in this opinion, the trial judge ruled that the pretrial hearing would be closed.

Argument on the motion to dismiss was heard in closed session on the afternoon of February 25 and the morning of the 26th. Defense counsel presented evidence and argument on its theory of why the case against Ms. Marler should be dismissed. The prosecutor introduced rebuttal testimony and the motion to dismiss was denied. The transcript of the hearing, related pleadings, exhibits and briefs were then sealed.

On March 2 and 3, the jury was selected. Following selection, the press moved to have opened the records of the pretrial hearing of the motion to dismiss. This motion was denied.

The trial commenced on March 5 and concluded on March 11, 1981. The jury convicted Cynthia Marler of murder in the first degree. That conviction is on appeal.

On March 13, the press once again moved to have the records of the pretrial hearing unsealed. Once again the motion was denied. The records and transcript have remained sealed since that time and have been transmitted to this court for review as Exhibit X.

A description of the procedures on appeal is necessary to ***34** put the issues in perspective. The King County Prosecutor, representing Judge Ishikawa, made alternative procedural motions. He first asked (1) that Exhibit X be made available to all counsel but that petitioners' attorneys be prohibited from disclosing the contents to anyone, including their clients; (2) that the briefs as to the sealed record be filed as sealed matters; and (3) that oral argument relative thereto be closed. The alternative motion requested (1) that the materials in Exhibit X remain sealed and unavailable to petitioners; (2) that the prosecutor's brief in reference thereto be sealed; and (3) that the prosecutor alone would present oral argument relating thereto in a closed session with the court.

The P-I moved that the court be limited to consideration only of those matters in the public record, thereby prohibiting access by the court to the contents of Exhibit X.

After argument of these motions before the Chief Justice, the Chief Justice referred the motions to the Court en banc. After consideration, the Court entered the following order:

(1) The respondent's brief shall be an open public record of this Court and shall not be sealed.

(2) The respondent's brief should include statements which identify the interest or interests which respondent contends require protection in this matter, both prior to the trial in King County Cause No. 80-1-03129-1 and at present, and shall include argument relative to those interests.

(3) Exhibit "X" shall remain sealed at this time, subject to review by members of this Court. The respondent's counsel may also review Exhibit "X".

(4) Respondent's counsel's request for closed oral argument is denied at this time.

The matters contained in Exhibit X have re-

mained sealed except for review by the Court. Defendant Marler's appellate counsel were not trial counsel. We are informed that Marler's appellate counsel have been allowed access to the sealed records. While **719 appellate counsel were appointed on May 11, 1981, they did not move to intervene in these actions until August 12, 1981, oral argument having been *35 held on June 16, 1981.

II

Respondent argued that the present mandamus actions were defective because the real parties in interest, Marler and the prosecutor, were not parties. As noted, on August 12, 1981, Marler, herself, filed a motion to intervene.

[1][2] We reject respondent's argument and deny Marler's untimely motion. Mandamus by an original action in this court is a proper form of action for third party challenges to closure orders in criminal proceedings. State v. Bianchi, 92 Wash.2d 91, 593 P.2d 1330 (1979); Federated Publications, Inc. v. Kurtz, 94 Wash.2d 51, 615 P.2d 440 (1980). As a general rule those public officials are the only necessary respondents to the action (52 Am.Jur.2d Mandamus s 397), even when others might be affected by the outcome. State ex rel. Brown v. Warnock, 12 Wash.2d 478, 122 P.2d 472 (1942). While Marler might have been permitted to intervene earlier (on which issue we do not rule), she waived any such right by waiting over 8 weeks after argument on these petitions to file her request for intervention. Besides, her interests were presented to this Court by the respondent in order to justify his acts of closing the hearing and sealing the records thereof.

III

Petitioners rely upon both federal and state constitutional grounds to justify their right of access to this pretrial hearing. They claim no special right of access but equate their right with that of the public. We have recognized that standing. Cohen v. Everett City Council, 85 Wash.2d 385, 388, 535 P.2d 801 (1975). Turning to the federal constitution, the Supreme Court recently held in Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980), that the First and Fourteenth Amendments protect the public's right of access to criminal trials. While not specifically addressing whether this right extends to pretrial proceedings, the court, in part, premised its holding on the following factors:

*36 (1) the tradition of open criminal trials which preceded the drafting of the Bill of Rights;

(2) "the common core purpose" of the rights of press, speech, assembly and petition "of assuring freedom of communication on matters relating to the functioning of government," Richmond Newspapers at 575, 100 S.Ct. at 2826; and

(3) the specific reference to the right of assembly in the First Amendment.

While these factors might suggest that the Richmond rationale applies with equal force to suppression hearings, the Supreme Court has not specifically and definitively so held. Because we rely upon our State constitutional provision, we decline to speculate what might be the substance of a holding by the United States Supreme Court on this precise point.

The Washington Constitution clearly establishes a right of access to court proceedings. It states in part as follows:

"Justice in all cases shall be administered openly ..." Const. art. 1, s 10. This "separate, clear and specific provision entitles the public, and ... the press is part of that public, to openly administered justice." Cohen v. Everett City Council, supra 85 Wash.2d at 388, 535 P.2d 801.

However, it is equally clear that the public's right

of access is not absolute, and may be limited to protect other interests. Richmond Newspapers, 448 U.S. at 580-82, 100 S.Ct. at 2829-2830; In re Lewis, 51 Wash.2d 193, 198-200, 316 P.2d 907 (1957) (juvenile proceedings not constitutionally required to be open); Federated Publications, Inc. v. Kurtz, supra 94 Wash.2d at 65, 615 P.2d 440 (pretrial hearings may be closed upon showing of some likelihood of prejudice to defendant's fair trial rights). See also Cohen 85 Wash.2d at 388-89, 535 P.2d 801.

****720** In Kurtz, a newspaper was excluded from a pretrial suppression hearing. The publisher petitioned this Court to vacate the closure order and unseal the records. We ruled that the public and press could be excluded from criminal proceedings under certain limited circumstances to protect the accused's Sixth Amendment right to a fair trial.

Closure and sealing in the present case was premised in ***37** part on the protection of the defendant's fair trial rights, as in Kurtz. However, Judge Ishikawa restricted public access to protect other interests here, too. Because we believe that closure to protect the defendant's right to a fair trial should be treated somewhat differently from closure based entirely on the protection of other interests, we will expand upon the framework adopted in Kurtz to cover such motions.

IV

[3] Each time restrictions on access to criminal hearings or the records from hearings are sought, courts must follow these steps:

1. The proponent of closure and/or sealing must make some showing of the need therefor. Kurtz 94 Wash.2d at 62, 615 P.2d 440. In demonstrating that need, the movant should state the interests or rights which give rise to that need as specifically as possible without endangering those interests.

The quantum of need which would justify restrictions on access differs depending on whether a defendant's Sixth Amendment right to a fair trial would be threatened. When closure and/or sealing is sought to protect that interest, only a "likelihood of jeopardy" must be shown. Kurtz 94 Wash.2d at 62, 593 P.2d 1330. See Gannett Co. v. DePasquale, 443 U.S. 368, 400, 99 S.Ct. 2898, 2916, 61 L.Ed.2d 608 (1979) (Powell, J., concurring). However, since important constitutional interests would be threatened by restricting public access (Cohen; Richmond 448 U.S. at 575-578, 100 S.Ct. at 2826-2828, 65 L.Ed.2d at 988-90), a higher threshold will be required before court proceedings will be closed to protect other interests. If closure and/or sealing is sought to further any right or interest besides the defendant's right to a fair trial, a "serious and imminent threat to some other important interest" must be shown.

The burden of persuading the court that access must be restricted to prevent a serious and imminent threat to an important interest shall be on the proponent unless closure is sought to protect the accused's fair trial right. Because courts are presumptively open, the burden of justification should rest on the parties seeking to infringe the public's ***38** right. See Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 558-59, 569-70, 96 S.Ct. 2791, 2802-2803, 2807-2808, 49 L.Ed.2d 683 (1976). From a practical standpoint, the proponents will often be in the best position to inform the court of the facts which give rise to the alleged need for closure or sealing. For example, the prosecutor in the Marler case had knowledge of matters such as ongoing investigations, safety of witnesses and the possibility that other defendants might be charged. It is alleged that these interests have been served by secrecy in this case.

2. "Anyone present when the closure (and/or sealing) motion is made must be given an opportunity to object to the (suggested restriction)". Kurtz 94 Wash.2d at 62, 615 P.2d 440.

For this opportunity to have meaning, the proponent must have stated the grounds for the motion with reasonable specificity, consistent with the protection of the right sought to be protected. At a minimum, potential objectors should have sufficient information to be able to appreciate the damages which would result from free access to the proceeding and/or records. This knowledge would enable the potential objector to better evaluate whether or not to object and on what grounds to base its opposition.

3. The court, the proponents and the objectors should carefully analyze whether the requested method for curtailing access would be both the least restrictive means **721 available and effective in protecting the interests threatened. See Kurtz at 63-64, 615 P.2d 440. If limitations on access are requested to protect the defendant's right to a fair trial, the objectors carry the burden of suggesting effective alternatives. If the endangered interests do not include the defendant's Sixth Amendment rights, that burden rests with the proponents.

4. "The court must weigh the competing interests of the defendant and the public," Kurtz at 64, 615 P.2d 440, and consider the alternative methods suggested. Its consideration of these issues should be articulated in its findings and conclusions, which should be as specific as possible rather than conclusory. See People v. Jones, 47 N.Y.2d 409, 415, 391 N.E.2d 1335, 418 N.Y.S.2d 359 (1979).

*39 5. "The order must be no broader in its application or duration than necessary to serve its purpose...." Kurtz 94 Wash.2d at 64, 615 P.2d 440. If the order involves sealing of records, it shall apply for a specific time period with a burden on the proponent to come before the court at a time specified to justify continued sealing.

In the Marler case, the issue of the public's right to the information presented at the pretrial hearing was raised three times: at the motion to close the initial hearing, at the motion to unseal the records after the jury was selected, and at the motion to unseal at the conclusion of the criminal trial. We will proceed to analyze the judge's specific actions at each of these stages in light of the aforementioned standards.

V

A. INITIAL ORDER TO CLOSE AND SEAL (February 25, 1981).

[4] Under the standards derived from Kurtz, the proponent of closure must show some "likelihood of prejudice" to the accused's fair trial right, or a "serious and imminent threat to some other important interest." In this case the defendant made her showing of the likelihood of prejudice during the closed session in the judge's chambers. Such an in camera hearing may be proper when the very argument on closure may jeopardize the defendant's right to a fair trial. Richmond Newspapers v. Virginia, 222 Va. 574, 281 S.E.2d 915 (1981).

[5] As a result, however, petitioning newspapers had no idea why the parties requested secrecy. They knew only that a motion to close the hearing had been made. Their lack of knowledge prevented them from making informed objections. For their right to object to have had practical meaning, the court should have informed petitioners of the interests sought to be protected by defendant's motion.

Respondent argued that he could not reveal any information about the in camera session because to do so would have jeopardized the very interests threatened. However, *40 upon order of this court dated May 6, 1981, respondent identified the following interests which were protected by his February 25 order:

(1) the fair trial rights of defendant Marler;

(2) the ongoing criminal investigation of the

murder of Wanda Touchstone; and

(3) the safety of witnesses.

Presumably this public articulation could have been made at the preclosure hearing without endangering these interests. The judge erred by failing to do so.

The consideration of alternatives to closure and sealing was understandably marred because the petitioners did not know what interests needed protection. The burden of coming forward with alternatives to closure was properly placed on the newspapers rather than the defendant because her right to a fair trial was endangered. However, in light of the petitioners' inability to intelligently formulate alternatives, the prosecutor and the court should have also shared the burden of suggesting other effective methods.

It is unclear to what extent the court weighed the competing interests and the alternative methods. The judge only said that

> **722 the dissemination ... of the information adduced at this hearing by the news media would ... have the effect of depriving the defendant of her Sixth Amendment right to a trial by a fair and impartial jury.
>
> In addition there are, the Court feels, exceptional circumstances in this case.

(Transcript of February 24, 1981, Hearing, at 13-14). The court continued:

> I might indicate for the record that the court has already reviewed the matters pertaining to this issue in chambers, and I do feel that this is an exceptional case under exceptional circumstances.
>
> I would also find that any other alternatives to closure are not available in this case, that is practical alternatives as indicated in the Federated Publications v. Kurtz, case.

*41 Other than acknowledging that petitioner-newspapers had covered the murder itself (some 6 months earlier) the court included no other factual findings or legal conclusions in the record.

The court erred in failing to explicitly outline the nature of the interests protected. Its reference to "exceptional circumstances" was clearly inadequate. As previously noted, the statement of interests made in response to this Court's May 6, 1981, order should have been promulgated in time for the February 25, 1981, hearing.

The court's legal conclusions were not substantiated by the factual findings. The factual basis for its conclusions regarding the need for secrecy and the suitability of the methods chosen should have been detailed. For example, there is no evidence that the judge considered the actual impact of publicity on potential jurors and the possibility of having a fair trial as was done in Kurtz. Before approving the court's closure order in that case, we noted that the judge found that that murder trial had been the repeated subject of publicity, that there had already been one change of venue, and that the homicide was considered "sensational". In contrast, the trial judge in the Marler case seems to have assumed that publishing the information presented at the motion to dismiss would make it difficult or impossible to obtain a fair jury. The fact that the murder prosecution in Marler produced far less publicity than that of Kurtz, and that a much larger jury pool was available to the trial judge suggests the opposite conclusion. But regardless of the conclusion reached, the court's underlying findings should have been recorded.

Petitioners suggested the following alternative methods for protecting the allegedly endangered interests: that the hearing be delayed a few days until the

jury was sequestered, that the trial venue be changed, or that a careful voir dire screen out biased veniremen. The judge should have made findings outlining why reasonable alternatives would have been ineffective. Instead the court rejected all alternatives in one sweeping, unsupported conclusion. Thus, the ***42** public had no basis for believing that total closure and sealing was the least restrictive method available. They were left to speculate.

The court's order was broad in its application and of indefinite duration. The judge ruled:

> (T)he pretrial hearing dealing with this specific motion of the defendant (will) be closed to the public and news media.
>
> I will further order that the pretrial briefs, together with any affidavits or supporting documents, any testimony or any exhibits which may be made part of the hearing on this motion, will be sealed until further order of this court.

(Transcript of February 25, 1981, Hearing at 14). The following dialogue helped to clarify the duration of the order:

> Mr. Waggoner: ... I wish some indication whether the court in fact intends the sealing will be permanent in nature or whether it's simply a temporary sealing.
>
> The Court: I anticipate at this point in time, if this is of any value to you, that it would be more permanent than temporary;

(Transcript of February 25, 1981, Hearing at 16).

****723** The order applied broadly to all members of the public and press and imposed secrecy on all information related to the motion to dismiss. Rather than ordering a temporary sealing of the records, subject to a later showing of continued need for total secrecy, the order was to last indefinitely. The judge erred in failing to narrowly tailor the protective restriction on access to suit the specific needs of this case.

B. MOTION TO UNSEAL AFTER JURY SELECTION (March 3, 1981).

After impaneling the jury, petitioners moved to unseal the record of the February 25, 1981, proceedings on the motion to dismiss. There is no indication that the proponents of continued sealing made any showing of the ongoing need therefor. The petitioners challenged the necessity of secrecy to protect the defendant's fair trial right. That ***43** right could be adequately protected, they argued, by sequestering the jury. Neither the court nor the prosecutor suggested any other alternatives.

In response to petitioners' motion and argument, the court stated in part:

> The Court is satisfied that from the original documents that were filed in regard to the hearing and at the close of the hearing as such that there are still unique circumstances and also to grant the defendant a fair trial in this instance. I am still adhering to that order and I have thus signed the findings of facts and conclusions of law. I feel that it would be absolutely necessary at this point to keep the closure order in effect at least until the closure of the trial and that is what I am ordering at this point.

(Transcript of March 3, 1981, Hearing at 9-10).

The court repeated its earlier error by failing to demonstrate that it had considered the need for continued secrecy. To do this, the court should have articulated factual findings which form the basis for its conclusions regarding the precise interests to be served by keeping the records sealed. It is unclear why the defendant's right to a fair trial would have been affected by public access at this juncture. If this in-

terest were no longer endangered, the proponents would have had to show that access would have created a "serious and imminent threat" to the ongoing investigation and the witnesses' safety. If the defendant's right to a fair trial were still threatened, only a showing of "likelihood of jeopardy" to that interest would have been required to justify some restriction on access.

The court again failed to show that it considered all reasonable alternatives to total secrecy. Petitioners' suggestion, that the court sequester the jury, would have substantially eliminated the danger of prejudice from publicity. The court should have entered findings why this and other reasonable alternatives would have failed to protect the defendant's fair trial right, the integrity of the ongoing investigation and the witnesses' safety.

*44 C. MOTION TO UNSEAL AFTER TRIAL (March 13, 1981).

After the trial had been completed, petitioners again moved to unseal the records. They pointed out to the court that defendant's fair trial would no longer be threatened by prejudicial publicity.

The defense reiterated its earlier position in favor of secrecy. Together with the prosecutor, they alleged only that the same factors justifying secrecy continued, without any further specification.

The court ruled as follows:

> Originally when this motion to close the hearing on this particular issue was brought, Mr. Hill and Mr. Waggoner had the opportunity to argue the propriety of the closure, During the course of the trial, the Seattle Times and the Seattle P-I, through Mr. Hill and again Mr. Waggoner, moved to open the sealed records. On both of those occasions I indicated to counsel that basically there were two reasons for the sealing and closure order and that was:
>
> One, the constitutional right of Miss Marler to have a fair trial and, secondly, the reason of exceptional circumstances **724 in the case and the uniqueness of the reasons for the closure. To some extent those two reasons have changed insofar as I believe the first reason I gave, which would be a fair trial itself in view of the verdict of the jury, that is somewhat eliminated; however, the same "exceptional circumstances" and the uniqueness of the circumstances in this case requires me to adhere to my former order (that) the records and files on this specific hearing continue to remain in that state.
>
> I appreciate the news media's concern, (its) attempts to argue basically in a vacuum when they don't know the substance of what took place. I believe that the hearing itself, if it were to be reviewed by the Appellate Court or the Supreme Court, would make it quite clear the basis for my ruling ...

(Transcript of the March 13, 1981 Hearing at 10-11). Counsel for the Times later asked: "I take it we should assume at this point there is no longer a need to keep coming before the court requesting unsealing of these records?" The court replied: "I would say so."

*45 Once again the judge failed to indicate that he had weighed the relevant interests. Because the court accepted the conclusory allegations of the prosecutor rather than determining for itself the sufficiency of the need for continued secrecy, it erred.

There are a variety of less restrictive alternative methods for effectively protecting the additional interest asserted after trial. Any future defendants could request a continuance, severance, or change of venue to insure that their trials would be fair. In addition, all of the interests allegedly protected by denying the newspapers' March 13 request would not have been seriously threatened if the records were sealed for a definite rather than an indefinite period. Regardless of

the means the court eventually chose, it erred in failing to demonstrate that it considered any alternative to permanent total secrecy.

The active role of the court in managing closure motions warrants reiteration. When a perceived clash between a defendant's fair trial right and the right of free speech arises, courts have an affirmative duty to try to accommodate both of those interests. Therefore, rather than engage in idle "balancing", it is our hope that careful judicial craftsmanship will help preserve "two of the most cherished policies of our civilization". Bridges v. California, 314 U.S. 252, 260, 62 S.Ct. 190, 192, 86 L.Ed. 192 (1941) (Black, J.). See Kurtz, 94 Wash.2d at 68-73, 615 P.2d 440 (Dolliver, J., dissenting).

Review of the contents of the sealed record reveals that the trial judge was faced with extremely difficult problems. It may be that the closure and temporary sealing were proper. The difficulty is that this record prevents an appellate court from any meaningful review of the trial court's actions since we only have the conclusions, not the rationale or critical factual findings of the trial court.

We remand this matter to the respondent's court to reconsider petitioners' motion to unseal in accordance with *46 the standards expressed herein.

ROSELLINI, STAFFORD and WILLIAMS, JJ., and HUNTER, J. PRO TEM., concur.

DOLLIVER, Justice (concurring).

I concur fully with the analysis and result of the majority. One further comment is, I believe, important. As noted by the majority, the interests to be protected by the secrecy order were:

(1) the fair trial of defendant Marler;

(2) the ongoing criminal investigation of the murder of Wanda Touchstone; and

(3) the safety of witnesses.

A limited secrecy order, under the standards articulated by the majority might well be appropriate to protect interests (1) and (2). It would not be appropriate to protect interest (3). It is not the business of courts through pretrial secrecy orders to provide "protection" for witnesses or parties. To hold otherwise would put the courts in an impossible position: Fail to issue a secrecy order and if the witness or **725 party is injured or killed it is the fault of the court.

The safety or life of a witness or a party to an action is the responsibility of law enforcement agencies. It is not properly done by courts through the use of secrecy orders. Once the argument to the contrary is accepted, any vitality in an open judicial system is destroyed.

If the unavoidable circumstances are indeed such that a witness or a party to an action must be protected, then this must be accomplished by appropriate police action and not by the closure of the court. If, on the other hand, the circumstances which brought about the alleged threat to safety or life were brought about by actions of the prosecution or the defense subsequent to the crime then notice should be given that such actions will not result in approval of a secrecy order by the court.

UTTER, J., concurs.DORE, Justice (concurring).

I concur in the excellent opinion *47 of Brachtenbach, C. J. I feel, however, that the statement, "When a perceived clash between a defendant's fair trial right and the right of free speech arises, courts have an affirmative duty to try to accommodate both of those interests" should be clarified.

Where the public's right to openly administered justice does not infringe on the defendant's constitu-

tional right to a fair trial, the above statement is a correct assessment of the court's responsibility. See Richmond Newspapers, Inc. v. Va., 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980). But where the public's right to open proceedings cannot be accommodated without infringing upon the defendant's constitutional due process rights, the defendant's rights must be preserved. See Gannett Co. v. DePasquale, 443 U.S. 368, 378-79, 99 S.Ct. 2898, 2904-2905, 61 L.Ed.2d 608 (1979); Federated Publications, Inc. v. Kurtz, 94 Wash.2d 51, 55, 615 P.2d 440 (1980); Richmond Newspapers, 448 U.S. at 581 n.18, 100 S.Ct. at 2830 n.18. The First Amendment rights of the public and representatives of the press are not absolute, and must surrender to the defendant's fair trial rights where both cannot be accommodated.

Wash., 1982.
Seattle Times Co. v. Ishikawa
97 Wash.2d 30, 640 P.2d 716, 8 Media L. Rep. 1041

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Supreme Court of Washington,
En Banc.
Rondi BENNETT, an individual, and Gerald Horrobin, an individual, Plaintiffs,
and
D. Edson Clark, Petitioner,
v.
SMITH BUNDY BERMAN BRITTON, PS, a Washington professional services corporation, and Sharon Robertson, individually and her marital community, Respondents.

No. 84903–0.
Jan. 10, 2013.

Background: Action was brought against accounting firm for accounting malpractice. Following settlement of action, accounting expert who was not a party to action filed motion to intervene and to unseal documents. The Superior Court, King County, James E. Rogers, J., granted a limited right to intervene but denied motion to unseal records. Intervenor appealed. The Court of Appeals affirmed. Intervenor petitioned for review.

Holding: The Supreme Court, Chambers, Justice Pro Tem, held that public did not have constitutional right of access to sealed documents filed with the court in anticipation of decision that the court never made.

Affirmed.

Madsen, C.J., filed concurring opinion, in which James Johnson, J., joined.

Stephens, J., filed dissenting opinion, in which Owens and Fairhurst, JJ., and Alexander, Justice Pro Tem, joined.

West Headnotes

[1] Records 326 32

326 Records
326II Public Access
326II(A) In General
326k32 k. Court records. Most Cited Cases

Once material becomes part of the administration of justice, the constitutional provision declaring that justice "shall be administered openly" requires disclosure unless a party shows a more compelling need for secrecy than mere good cause. (Per Chambers, Justice Pro Tem, with three Justices concurring and the Chief Justice concurring separately.) West's RCWA Const. Art. 1, § 10.

[2] Records 326 32

326 Records
326II Public Access
326II(A) In General
326k32 k. Court records. Most Cited Cases

A trial court's decision to seal records is reviewed for abuse of discretion. (Per Chambers, Justice Pro Tem, with three Justices concurring and the Chief Justice concurring separately.)

[3] Records 326 32

326 Records
326II Public Access
326II(A) In General
326k32 k. Court records. Most Cited Cases

The constitutional provision declaring that justice "shall be administered openly" applies and renders documents presumptively public when the documents cross the line from "unfiled discovery" to "documents filed in support of a motion that can potentially dispose of a case." (Per Chambers, Justice Pro Tem, with three Justices concurring and the Chief Justice concurring separately.) West's RCWA Const. Art. 1, § 10.

[4] Records 326 ⚿32

326 Records
326II Public Access
326II(A) In General
326k32 k. Court records. Most Cited Cases

The key to distinguishing information to which the open courts provision of the state constitution applies is not the act of filing, but whether or not the information becomes "part of the court's decision making process"; simply put, information that does not become part of the judicial process is not governed by the open courts provision. (Per Chambers, Justice Pro Tem, with three Justices concurring and the Chief Justice concurring separately.) West's RCWA Const. Art. 1, § 10.

[5] Records 326 ⚿32

326 Records
326II Public Access
326II(A) In General
326k32 k. Court records. Most Cited Cases

Under the open courts provision of the state constitution, some conduct by the judge or judiciary is necessary for the public's constitutional interest in the proceedings to arise, but the meaning of "conduct" is broad and can include omissions and failures to act. (Per Chambers, Justice Pro Tem, with three Justices concurring and the Chief Justice concurring separately.) West's RCWA Const. Art. 1, § 10.

[6] Records 326 ⚿32

326 Records
326II Public Access
326II(A) In General
326k32 k. Court records. Most Cited Cases

Documents must ultimately be relevant to the decision of the court on the merits of the motion, not merely to the motion itself, for the open courts provision of the state constitution to apply. (Per Chambers, Justice Pro Tem, with three Justices concurring and the Chief Justice concurring separately.) West's RCWA Const. Art. 1, § 10.

[7] Records 326 ⚿32

326 Records
326II Public Access
326II(A) In General
326k32 k. Court records. Most Cited Cases

Sealed documents filed with the court in anticipation of a decision which was never made because the parties settled were not presumptively public under the open courts provision of the state constitution, and thus the public did not have a constitutional right of access to the sealed documents. (Per Chambers, Justice Pro Tem, with three Justices concurring and the Chief Justice concurring separately.) West's RCWA Const. Art. 1, § 10.

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CHAMBERS, J.[FN*]

FN* Justice Tom Chambers is serving as a justice pro tempore of the Supreme Court pursuant to Washington Constitution article IV, section 2(a).

304** [1] ¶ 1 Article I, section 10 of the Washington State Constitution declares, "Justice in all cases shall be administered openly, and without unnecessary delay." Under305** this straightforward directive, court records that become part of the administration of justice may be kept from the public only upon a showing of some compelling need for secrecy. But not all records are subject to this constitutional command. Documents obtained through the discovery process may be sealed for mere good cause shown. This good cause standard helps protect sensitive information, including information of nonparties, that might never be used in litigation. However, once material becomes part of the administration of justice, article I, section 10 requires disclosure unless a party shows a more compelling need for secrecy than mere good cause.

¶ 2 The case before us was settled before the trial court made any decision. We must decide if records sealed for good cause and submitted in support of a motion that was never decided became part of the administration of justice and are thus presumptively public. We affirm the Court of Appeals, *Bennett v. Smith Bunday Berman Britton, PS*, 156 Wash.App. 293, 234 P.3d 236 (2010), and hold that only material relevant to a decision actually made by the court is presumptively public under article I, section 10. In the absence of a decision by the court, the records in question here are not part of the ****888** administration of justice and may remain sealed for good cause.

FACTS

¶ 3 This case illustrates how litigation may take unexpected twists and turns. The case began as a marriage dissolution. The firm Smith Bunday Berman Britton PS (Smith Bunday) provided accounting services to Todd and Rondi Bennett during their divorce. Rondi Bennett and her father, Gerald Horrobin, owned businesses jointly with Todd Bennett. Smith Bunday also provided accounting services for those businesses. Rondi and Gerald (for the sake of clarity we will refer to these parties collectively as Horrobin) filed suit against Smith Bunday alleging it had ***306** aided Todd Bennett in embezzling and hiding money that belonged to Horrobin. As part of discovery, the plaintiffs requested tax records of nonparties to the suit. Smith Bunday objected to the discovery on ground that it was prohibited by law from revealing a person's tax information without that person's consent.

¶ 4 To resolve the confidentiality problem, the plaintiffs proposed a protective order. The order, stipulated to by both parties, and signed by the trial judge, permitted the parties to stamp any documents they produced as "confidential." Such documents, according to the protective order, could then be used in conjunction with briefs, motions, and other court filings only if the documents were filed separately under seal.

¶ 5 On October 7, 2008, Smith Bunday filed a motion to dismiss all of the plaintiffs' claims on summary judgment. On October 29, Horrobin moved to remove certain documents from the protective order so they could be attached unsealed to the plaintiffs' response to the summary judgment motion. In particular, Horrobin wanted to attach some of the documents marked "confidential" to a declaration of the plaintiffs' expert witness, Ed Clark, in support of the response. The trial court ordered that the documents should be filed under seal first, and then upon receipt, the court would examine them and determine whether they should remain subject to the protective order. On November 14, 2008, Horrobin filed the response to the summary judgment motion and Clark's supporting declaration.

¶ 6 Just a few hours after the response was filed, and before the court had examined either the summary judgment motion or response, the parties settled the case. Smith Bunday notified the court that the case had been settled and that its summary judgment motion should be removed from the calendar.

¶ 7 Settlement did not bring resolution. Smith Bunday noticed that Horrobin's response and supporting declaration contained or made reference to documents that had ***307** been stamped "confidential," but Horrobin had not filed them under seal as required by the stipulated protective order. This was apparently accidental. After discussing the matter, and despite the fact the case had settled, the parties stipulated the plaintiffs would refile redacted and sealed versions of the response and declaration in accordance with the stipulated protective order.

¶ 8 The plaintiffs' expert, Clark, who wrote the declaration in support of the response to summary judgment, moved to intervene. He asserted his right as a member of the public to open access to court records, opposed the refiling under seal, and moved to unseal other documents in the case already filed under seal.[FN1] The trial court granted his motion to intervene but denied his motion to unseal. Clark appealed, and the Court of Appeals upheld the trial court's order. Clark petitioned this court, and we accepted review.

> FN1. Clark's motivation for intervening after the settlement is not entirely clear. He asserts in his brief that he intervened in this case "when he realized after a settlement that numerous court filings were sealed and everything was about to go underground." Appellant's Suppl. Br. at 2–3. Whatever Clark's motivation it is not relevant to our resolution of this case.

ANALYSIS

STANDARD OF REVIEW

[2] ¶ 9 A trial court's decision to seal records is reviewed for abuse of discretion. *Dreiling v. Jain*, 151 Wash.2d 900, 907, 93 P.3d 861 (2004) (citing *King v. Olympic Pipe Line Co.*, 104 Wash.App. 338, 348, 16 P.3d 45 (2000)). But the proper standard governing ****889** the sealing of court records is a legal question we review de novo. *Rufer v. Abbott Labs.*, 154 Wash.2d 530, 540, 114 P.3d 1182 (2005). If the trial court reached its decision by applying an improper legal standard, we will remand to the trial court to apply the correct rule. *Id.*

***308** PRESUMPTION OF PUBLIC ACCESS

¶ 10 There are, for purposes of the case before us, two different standards for sealing documents. "Much of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying cause of action." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984). Such information may implicate privacy interests of both litigants and nonparties. To protect such interests, "[b]ecause of the liberality of pretrial discovery[,] ... it is necessary for the trial court to have the authority to issue protective orders." *Id.* at 34, 104 S.Ct. 2199. Thus, under our civil rules, parties may seal discovery material "for good cause shown." CR 26(c).

¶ 11 At some point, material that is sealed for good cause during discovery may become part of the administration of justice, and at that point, a stricter standard of sealing must be applied. A party may, for example, file material sealed for good cause in discovery along with and in support of a motion. We have recently decided several cases addressing the effect of such filing on the public's right of access to the records.

[3] ¶ 12 Not long ago we held in *Dreiling*, in accordance with federal case law, that documents filed in support of dispositive motions, such as a motion for summary judgment, cannot remain sealed under a mere good cause standard; rather, they become pre-

sumptively public. *Dreiling*, 151 Wash.2d at 909–10, 915, 93 P.3d 861. We explained that presumptive publicity was guaranteed by article I, section 10 of our state constitution, which provides the public a right of access to court documents as well as a right of physical access to courtroom proceedings. *Id.* at 908–09, 93 P.3d 861 (citing Const. art. I, § 10). Article I, section 10 applies and renders documents presumptively public when the documents cross the line from "unfiled discovery" to "documents filed in support of a motion that can potentially dispose of *309 a case." *Id.* at 912, 93 P.3d 861 (emphasis omitted). We ultimately held that where article I, section 10 applies to documents, courts must engage in an *Ishikawa* analysis [FN2] to determine whether sealing is permissible. *Id.* at 915, 93 P.3d 861.

FN2. In *Seattle Times Co. v. Ishikawa*, 97 Wash.2d 30, 37–39, 640 P.2d 716 (1982), we held that the public's right of access to court records may be limited only if the proponent of secrecy can show a compelling need for sealing. Whether sealing is warranted turns on a five factor test intended to balance the public's right of access against other countervailing interests. *Id.*

¶ 13 In *Rufer*, 154 Wash.2d 530, 114 P.3d 1182, we went further, holding that "any records that were filed with the court in anticipation of a court decision (dispositive or not) should be sealed or continue to be sealed only when the court determines—pursuant to *Ishikawa*—that there is a compelling interest which overrides the public's right to the open administration of justice." *Id.* at 549, 114 P.3d 1182. The difference between *Rufer* and *Dreiling* is that *Rufer* dropped the "dispositive" distinction and required an *Ishikawa* analysis for sealing documents filed with the court in anticipation of any decision. We conceded this went beyond the federal cases but noted that our unique open courts provision provided "good reason to diverge from federal open courts jurisprudence." *Id.* Thus, *Rufer* provided an extra level of protection for the openness of our courts but did not alter the underlying principles we established in *Dreiling*.

¶ 14 In the case before us, we are asked to extend the constitutional command that "[j]ustice in all cases shall be administered openly" to documents submitted in anticipation of a ruling by a court that was never made. Wash. Const. art. I, § 10. Perhaps more broadly, the question before us is: does the act of filing documents with the court itself render the documents presumptively public?

[4] ¶ 15 As we pointed out in *Dreiling*, "Our founders did not countenance secret justice. '[O]perations of the courts and the **890 judicial conduct of judges are matters of utmost public concern.' " *Dreiling*, 151 Wash.2d at 908, 93 P.3d 861 (alteration in original) (quoting *310*Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 839, 98 S.Ct. 1535, 56 L.Ed.2d 1 (1978)). The public, including the press, is entitled to be informed as to the conduct of the judiciary and judges. Scrutiny by the public is a check on the conduct of judges and of the power of the courts. But the act of filing a document does not alone transform the document into a public one. The key to distinguishing information to which article I, section 10 applies is not the act of filing, but whether or not the information becomes "part of the court's decision making process." *Id.* at 909–10, 93 P.3d 861. Simply put, information that does not become part of the judicial process is not governed by the open courts provision in our constitution.

RELEVANCE TO THE MERITS

¶ 16 What, then, does it mean for information to become part of the court's decision making process? *Rufer* provides a partial answer: relevancy to the motion before the court. In *Rufer*, we expressly considered a scenario in which parties "use the motions and pleadings process to embarrass or harass other parties by attaching confidential documents produced by other parties which may not be relevant to the underlying motion." *Rufer*, 154 Wash.2d at 547, 114 P.3d

1182. One of the parties in *Rufer* argued that it would be "unfair that those documents would be entitled to a strong presumption of openness by virtue of their attachment to a dispositive motion." *Id.* We explained that documents irrelevant to the merits of a case are, on balance, not subject to disclosure:

> We have already held that article I, section 10 is not relevant to documents that do not become part of the court's decision making process. *Dreiling*, 151 Wash.2d at 909–10 [93 P.3d 861]. Thus, if a record is truly irrelevant to the merits of the case and the motion before the court, the court would not consider the document in evaluating the motion before it, and in applying *Ishikawa* it would likely find that sealing is warranted. As long as the opposing party has a valid interest in keeping the information confidential, there is very little, if any, interest of ***311** the public or the moving party to balance against that asserted interest.

Id. at 548, 114 P.3d 1182. *Rufer* here plainly states article I, section 10 applies only to documents relevant to the merits of the motion before the court. Further, *Rufer* explains that applying *Ishikawa* to irrelevant documents is appropriate because when *Ishikawa* is applied to truly irrelevant documents, the test always comes out in favor of nondisclosure. Thus, *Rufer* is clear that the public has no constitutional interest under article I, section 10 in documents not relevant to the merits of a motion.

RELEVANCE TO A DECISION

¶ 17 Relevancy to the merits of the motion is not the end of the story. *Rufer* establishes that documents must be relevant to the merits of a motion to be subject to the public's article I, section 10 interest. But this condition of relevancy is only necessary, not sufficient. Filing documents, whether relevant or irrelevant, does not alone make the documents part of the court's decision making process. In order for documents to become part of the decision making process, there must be a decision.

¶ 18 Documents filed with the court that do not become part of the decision making process of the judge, and are unrelated to the conduct of the judiciary, do not implicate article I, section 10. Both *Dreiling* and *Rufer* confirm this view. In *Dreiling*, we held that article I, section 10 does not apply to information that "does not become part of the court's decision making process." *Dreiling*, 151 Wash.2d at 910, 93 P.3d 861. Similarly, in *Rufer*, we held that openness requires the public "be afforded the ability to witness the *complete* judicial proceeding, including all records the court has considered in *making any ruling*, whether 'dispositive' or not." *Rufer*, 154 Wash.2d at 549, 114 P.3d 1182 (emphasis added).

[5][6] ¶ 19 Here, as in *Dreiling* and *Rufer*, some conduct by the judge or judiciary is necessary for the public's constitutional ****891 *312** interest in the proceedings to arise.[FN3] The public right of access does not arise only because documents are relevant with respect to a motion in support of which they are filed. As we stated in *Rufer*, "[I]f a record is truly irrelevant to the merits of the case and the motion before the court, the court would not consider the document in evaluating the motion before it." *Id.* at 548, 114 P.3d 1182. Irrelevant documents are not subject to article I, section 10 precisely because such documents would not be considered during the decision making process. Documents therefore must ultimately be relevant to the decision of the court on the merits of the motion, not merely to the motion itself, for article I, section 10 to apply.

> FN3. By using the term "conduct," we do not mean to suggest that only an affirmative act by the court in relation to documents renders them public. The meaning of "conduct" is broad and can include omissions and failures to act. Black's Law Dictionary 336–37 (9th ed. 2009). There may be other circumstances where the conduct of the judiciary as a whole could well create a constitutional public in-

terest in certain relevant records.

[7] ¶ 20 We hold that only material relevant to a decision or other conduct of a judge or the judiciary is subject to a presumption of public access under article I, section 10. Because the public has no constitutionally guaranteed interest in material truly irrelevant to any actual decision, such as the material at issue here, an *Ishikawa* analysis will invariably favor nondisclosure of irrelevant material.

ISHIKAWA'S FIVE PART TEST

¶ 21 The open administration of justice has been the subject of several of this court's opinions in recent years. It is, for example, incumbent upon the trial judge not to close the courtroom to the public without full consideration of the factors enumerated in *State v. Bone–Club*, 128 Wash.2d 254, 258–59, 906 P.2d 325 (1995). *See also In re Pers. Restraint of Orange*, 152 Wash.2d 795, 804–05, 100 P.3d 291 (2004). The trial judge has a similar responsibility relating to the public's right of access to documents filed with the court. We have very liberal rules of discovery. In reality, parties ***313** are required to produce many more records than are ultimately relevant to the specific issues before the court. "It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." CR 26(b)(1). Often, billings, claims files, incident reports, accident reports, or, as in this case, the personal financial information of people who have no meaningful connection to the litigation are subject to discovery.

¶ 22 The public's right to the open administration of justice does not automatically grant the public a right to see all documents produced during the discovery process, or even all those filed with the court. Documents may be privileged, contain proprietary trade secrets, or may simply contain sensitive information such as medical records, social security numbers, or the identities of victims. Both parties to the litigation and nonparties may have significant interests in maintaining such records' confidentiality. As when a courtroom is closed, it falls to the trial judge to assure the many interests and rights implicated by the potential disclosure of documents are properly considered.

¶ 23 The tool we have provided to the trial courts for balancing the public's right of access against privacy interests is the five-part test we laid down in *Ishikawa*, 97 Wash.2d at 36, 640 P.2d 716. *Ishikawa*, decided 30 years ago, involved a murder trial, the closure of a courtroom during a pretrial motion, and the sealing of the transcript of that motion. We take this opportunity to review those factors in the context of sealing or unsealing records previously sealed for good cause in a civil case such as the one before us.

1. *The proponent of closure and/or sealing must make some showing of the need therefore*

¶ 24 The burden is upon the party seeking closure to state the interests or rights giving rise to a need for secrecy. *See Rufer*, 154 Wash.2d at 544, 114 P.3d 1182. Application of this first *Ishikawa* factor will be simple if the trial court follows the procedures we laid out for sealing discovery in *Dreiling*.

****892 *314** ¶ 25 In *Dreiling*, we expressly adopted the position of the Ninth Circuit Court of Appeals that blanket protective orders are to be discouraged and that the proponent of sealing must make a good cause showing for each individual document it seeks to protect. *Dreiling*, 151 Wash.2d at 916–17, 93 P.3d 861 (citing *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130–31 (9th Cir.2003)). We plainly stated that "[p]articularized findings must be made by the trial court to support meaningful review." *Id.* at 917, 93 P.3d 861.

¶ 26 Given our open court jurisprudence, and our requirement of particularized findings, the better practice for trial courts is to require every request for

the sealing of documents for good cause to be accompanied by a document log identifying each document by number. For each document, the log should state the basis for protection and interest sought to be protected and identify support for assertions in the record. The log should also include a statement as to why redaction or other less restrictive measures than sealing will not protect the interest. If the record implicates a nonparties' interest, the judge may wish to require the identification of nonparties who have interests in the document and to determine whether such nonparties have been or should be notified of the potential disclosure.

¶ 27 Such a procedure at the time documents are sealed for good cause will facilitate any in camera review at the time of sealing, facilitate future motions under *Ishikawa*, and facilitate appellate review.

2. *Anyone present when the closure or sealing motion is made must be given an opportunity to object*

¶ 28 As we stated in *Dreiling*, " 'For this opportunity to have meaning the proponent must have stated the grounds for the motion with reasonable specificity, consistent with the protection of the right sought to be protected.' " *Id.* at 914, 93 P.3d 861 (quoting *Ishikawa*, 97 Wash.2d at 38, 640 P.2d 716). Once again, a document log and particularized findings made at the time ***315** documents are sealed for good cause will facilitate meeting this requirement.

3. *The court, the proponent, and the objectors should carefully analyze whether the requested method for curtailing access would be both the least restrictive means available and effective in protecting the interests threatened*

¶ 29 "Entire documents should not be protected where mere redaction of sensitive items will satisfy the need for secrecy." *Id.* at 917, 93 P.3d 861. For example, depending on the purpose for which documents are sought in discovery or submitted to the court in support of rulings, it may suffice to redact names or identifying information of individuals or entities while leaving the documents as a whole unsealed.

4. *The court must weigh the competing interests of the parties and the public and consider the alternative methods suggested*

¶ 30 *Ishikawa* and our subsequent cases had no need to account for protecting nonparty information. *Rufer*, for example, does not consider that someone other than the opposing party might have "a valid interest in keeping the information confidential." *Rufer*, 154 Wash.2d at 548, 114 P.3d 1182. This case reveals how nonparty information may require protection.

¶ 31 As this case illustrates, the records of nonparties may be produced in discovery. Unlike the case before us, most litigants who produce records have no duty to protect the confidentiality of those whose records are produced. Even if a company has a privacy disclosure policy, those sorts of policies generally permit the disclosure of information as "required" or "permitted" by law. It is likely that compliance with court rules of discovery satisfies all such ***316** policies. There is no requirement that those whose private information is being disclosed be notified.[FN4]

> FN4. The Public Records Act, on the other hand, does provide for such a requirement. "An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice." RCW 42.56.540.

****893** ¶ 32 Here, the certified public accounting firm that produced client tax returns was duty- and statute-bound to protect those records. But in other cases, there may be no advocate for nonparties whose sensitive records have been produced in discovery. The party who originally sought to produce the rec-

ords under seal for good cause may have little incentive, because of insolvency or some other reason, to advocate under the *Ishikawa* factors on behalf of nonparties. We therefore add to this factor consideration of the interests of nonparties whose records may be disclosed.

¶ 33 Depending upon the circumstances of the case and whether anyone is advocating for nonparties, a trial judge may consider requiring notice and an opportunity for nonparties to assert any interest they may have in nondisclosure. Again, the court's considerations and findings should be particularized. *See People v. Jones*, 47 N.Y.2d 409, 415, 391 N.E.2d 1335, 418 N.Y.S.2d 359 (1979).

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

¶ 34 If the court does enter an order sealing documents, it should be limited in time with the option of the proponent to renew the request to seal. However, with or without an expiration date, an order to seal is always subject to challenge consistent with our open administration of justice jurisprudence.

CONCLUSION

¶ 35 Smith Bunday during discovery produced documents, including those containing private information of ***317** nonparties. According to the stipulation of both parties, the documents were stamped "confidential" and filed, or were about to be filed, under seal in support of a response to a motion for summary judgment. The court never made any decision involving the disputed information. Instead, the case settled just a few hours after the response and supporting material were filed. The supporting material cannot be relevant to a nonexistent decision. We hold that because the information at issue in this case was not relevant to any decision made by the court, it is not presumptively public under article I, section 10. We remand to the trial court for further proceedings consistent with this opinion.

WE CONCUR: CHARLES W. JOHNSON, JAMES M. JOHNSON, and CHARLES K. WIGGINS, Justices.

MADSEN, C.J. (concurring).

¶ 36 I agree with the lead opinion that documents obtained through discovery that are filed with a court in support of a motion that is never decided are not part of the administration of justice and therefore may remain sealed under the good cause standard of CR 26(c). In such circumstances, the open courts provision of article I, section 10 of the Washington State Constitution is not implicated. Here, the documents in question were never part of the administration of justice. They therefore were not subject to the open courts provision of our state constitution and remain properly sealed under the good cause standard.

¶ 37 This should be the end of the analysis. But the lead opinion goes on to discuss the *Ishikawa* [FN1] factors in an effort to explain how they should be applied *if* the open courts provision *were* implicated. Since the open courts provision is not at issue, however, this entire discussion is dicta. *See Pedersen v. Klinkert*, 56 Wash.2d 313, 317, 320, 352 P.2d 1025 (1960) (statements in an opinion that were "not necessary ***318** to the decision in [the] case" are dicta and do not control future cases); *Noble Manor v. Pierce County*, 133 Wash.2d 269, 289, 943 P.2d 1378 (1997) (Sanders, J., concurring) (dicta is not controlling precedent); *State v. Potter*, 68 Wash.App. 134, 149 n. 7, 842 P.2d 481 (1992) ("[s]tatements in a case that do not relate to an issue before the court and are not necessary to decide the case constitute obiter dictum and need not be followed").

FN1. *Seattle Times Co. v. Ishikawa*, 97 Wash.2d 30, 640 P.2d 716 (1982).

¶ 38 Unfortunately, without a legal and factual basis for an analysis of what should happen should the need arise, trial courts and litigants in future cases

must make **894 guesses about the meaning, force, and value of the court's dicta. The prudent course for the lead opinion is to avoid discussing how the *Ishikawa* factors might apply in circumstances not before the court.

¶ 39 Moreover, the discussion is both unnecessary and confusing. We have already provided considerable guidance for applying the good cause standard for sealing documents obtained in discovery as well as for applying the *Ishikawa* factors when the issue becomes whether documents can be sealed or must be unsealed under the open courts provision. In *Dreiling v. Jain*, 151 Wash.2d 900, 916, 93 P.3d 861 (2004), and *Rufer v. Abbott Laboratories*, 154 Wash.2d 530, 550, 114 P.3d 1182 (2005), we explained how *Ishikawa* applies to discovery documents filed in court, and in *Dreiling* we considered what procedures suffice under the good cause standard.

¶ 40 Thus, *Dreiling* contains discussion of two separate matters. The court held that the *Ishikawa* factors apply to documents filed in support of dispositive motions and described these factors. *Dreiling*, 151 Wash.2d at 913–15, 93 P.3d 861. As a separate matter, the court approved guidelines set out in the Ninth Circuit Court of Appeals' analysis in *Foltz v. State Farm Mutual Automobile Insurance Co.*, 331 F.3d 1122 (9th Cir.2003), for obtaining protective orders under the good cause standard. Significantly, *Foltz* did not address any constitutional issues, and in *Dreiling* this court did not *319 purport to turn the relevant guidelines into a constitutional analysis. Rather, the court noted that the opinion in *Foltz* "provides an apt guide to the appropriate mechanics and procedures to be followed when a trial court is confronted with a motion to place documents under seal, whether the documents are pure discovery or are filed in support of dispositive court action." *Dreiling*, 151 Wash.2d at 916, 93 P.3d 861.

¶ 41 These guidelines were approved:

> [A] party asserting good cause bears the burden, for each particular document it seeks to protect, of showing that specific prejudice or harm will result if no protective order is granted. Unsubstantiated allegations will not satisfy the rule. The requesting party must support, where possible, its request by affidavits and concrete examples. Entire documents should not be protected where mere redaction of sensitive items will satisfy the need for secrecy. Particularized findings must be made by the trial court to support meaningful review. When third parties move to intervene, the court may not stand on its previous order. Instead, these collateral litigants may challenge those documents which should not have been placed under seal in the first place and may be entitled to an order modifying the original protective order. Reliance on the confidentiality provisions of the original protective order does not foreclose independent discovery by intervenors, as it is not reasonable to expect the court to hold records under seal forever.
>
> *Id.* at 916–17, 93 P.3d 861 (citations omitted).

¶ 42 In the present case, the lead opinion not only adds to this list, it also inexplicably intertwines the rule-based inquiry with the open courts constitutional analysis. In addressing the first *Ishikawa* factor, which concerns a showing of need by the proponent of "closure and/or sealing," the lead opinion says that application of this factor will be simple if the trial court follows the procedures adopted in *Dreiling*. In other words, review will be easier if the constitutional issue ever arises.

¶ 43 But as we have recently reiterated, the open courts provision does not concern the disclosure of information *320 that surfaces through pretrial discovery but does not otherwise come before the court. *State v. McEnroe*, 174 Wash.2d 795, 801, 279 P.3d 861 (2012) (quoting *Rufer*, 154 Wash.2d at 541, 114

P.3d 1182). In most instances, discovery will not be filed in support of a motion that is decided by the trial court, and there is no need to set up complex procedures to facilitate review. Moreover, CR 26 and GR 15 contain pertinent standards that must be applied by a court when making decisions about sealing at the discovery stage and when discovery documents are filed. I disagree with the premise that we must impose burdens at the discovery stage whenever sealing is requested because of the possibility that the **895 open courts provision *might* eventually be an issue.

¶ 44 I especially do not agree with the lead opinion's efforts to add to the burdens that already exist. The lead opinion is not content with what was said in *Dreiling* but directs that a detailed log should accompany every motion to seal and specifies in minute detail what must be recorded in such a log. Lead opinion at 891–92. Since *Dreiling* already provides for particularized findings, this addition is unnecessary and insulting to our trial judges, who routinely consider and decide parties' motions. It is also inconsistent with the premise that a trial court's decision on whether to seal or unseal a record is reviewed for an abuse of discretion. *Rufer*, 154 Wash.2d at 540, 114 P.3d 1182; *see also Rhinehart v. Seattle Times Co.*, 98 Wash.2d 226, 232, 654 P.2d 673 (1982) (under CR 26(c), providing for protective orders, a trial court exercises broad discretion). We should allow the trial courts to exercise their discretion as they reasonably see fit, and a decision based on particularized findings that support granting a motion to seal cannot be said to constitute an abuse of discretion, whether there are particularized logs or not.

¶ 45 It hardly needs to be added that preparation of the detailed logs described by the lead opinion can impose a significant burden on the parties as well. As one example, the lead opinion says that the parties must identify support *321 in the record for assertions that protection of a document is necessary. Given that motions to seal may be made at the time discovery is sought when there is no record to speak of, this suggests an ongoing obligation to supplement the logs with information as the record develops.

¶ 46 In addition to other obligations, the lead opinion also says that if a record indicates nonparties have interests in a document, then a trial court may want such nonparties identified and may determine that such nonparties should be notified of potential disclosure. This direction goes far beyond *Dreiling*, which addressed only interests of intervening third parties and implicates a greatly expanded duty on the part of parties to identify any individuals having possible interests implicated in or by discovery documents. I cannot agree with this expansion.

¶ 47 The lead opinion forthrightly explains that following this procedure at the time documents are sealed will, along with aiding the court in making a sealing decision, "facilitate future motions under *Ishikawa*, and facilitate appellate review." Lead opinion at 892. Again, the lead opinion seems to think the procedure is desirable because the constitutional issue *may* arise, notwithstanding that vastly different review standards and inquiries are involved depending upon whether the issue is sealing discovery documents or the open courts provision.

¶ 48 The matter of nonparties resurfaces in the lead opinion's discussion of *Ishikawa* factor four, which concerns weighing the competing interests of the parties and the public. In this context, the lead opinion says that there may be no advocate for interests of nonparties who have sensitive records that have been disclosed in discovery. The lead opinion therefore purports to "add to this factor" the "consideration*322 of the interests of nonparties whose records may be disclosed." *Id.* at 893.[FN2]

FN2. The lead opinion posits that a trial judge may require notice and an opportunity for nonparties to assert any interest in nondisclosure. Lead opinion at 892.

¶ 49 This is a serious matter. The lead opinion is attempting to change the constitutional analysis under the open courts provision by expanding the scope under the fourth *Ishikawa* factor. Any announcement that interests of nonparties to litigation must be considered as a separate matter from the public interest when the open courts provision is at issue ought to be addressed by the court in a case that presents the issue. It should never be introduced "sideways" through dicta discussing procedures that should apply to discovery and motions to seal discovery documents.

¶ 50 And, again, it seems clear that the lead opinion is of a mind that from the time a party seeks a sealing order for a document that is requested during discovery, the trial court and the parties must proceed as if the constitutional standard applies. I simply ****896** cannot agree that the more onerous burdens associated with the open courts provision should be required in every instance at the discovery stage. As the lead opinion itself recognizes, most discovery is never introduced in a trial and does not become part of the record, much less part of a court's decision on a motion. As a court, we should be most reluctant to impose such burdens as suggested by the lead opinion. Discovery is already burdensome enough, without added mandates.

¶ 51 *Dreiling* has already adopted procedures that should be followed at the discovery stage. These guidelines should not be questioned as a result of the lead opinion's dicta in the present case. If there are to be additional procedures that must be followed when sealing or unsealing is sought at the discovery stage, I believe they should come through appropriate rules adopted by the court. In this way, the requirements are made clear and neither trial courts nor ***323** parties are left to speculate about dicta appearing in our case law.

¶ 52 Finally, there is no need to provide additional general advice to the trial courts and the parties about the open courts provision as it may apply to sealed discovery documents. We explained in *Rufer*, 154 Wash.2d at 550, 114 P.3d 1182, that "filing merely triggers the analysis of whether records should be opened; it does not automatically open previously sealed records. Parties opposing the potential opening would then be required to make the requisite showing of a compelling or overriding interest for closure." This required showing, as is clearly explained in our decisions in *Dreiling* and *Rufer*, is that mandated under the *Ishikawa* factors, which apply when the open courts provision is implicated by a sealing order. Parties who have any thought that documents will be filed in court should know, because of *Dreiling*, *Rufer*, and the substantive portion of the present lead opinion, what showing is constitutionally required to obtain sealing or prevent unsealing. The *Ishikawa* factors readily explain what must be established to seal or prevent unsealing a record.

Conclusion

¶ 53 I agree with the first part of the lead opinion, which holds that documents obtained through discovery and filed with a court in support of a motion that is never decided are not subject to the open courts provision of article I, section 10, and therefore sealing of these documents continues to be determined under the good cause standard of CR 26(c). In the present case, the documents in question were never part of the administration of justice because no decision was made, and therefore the documents were never subject to the presumption of public access.

¶ 54 Accordingly, the rest of the lead opinion, which purports to explain how the *Ishikawa* factors would apply if this constitutional provision did apply, is dicta. It is also ***324** most unfortunate dicta because it appears to impose additional requirements on the discovery process and to modify the constitutional analysis as it concerns weighing of interests. I believe the dicta should be eliminated from the lead opinion. At the least, it should be disregarded as unnecessary to the court's decision.

WE CONCUR: JAMES M. JOHNSON, Justice.

STEPHENS, J. (dissenting).

¶ 55 Our state constitution commands that "[j]ustice in all cases shall be administered openly." Wash. Const. art. I, § 10. This provision guarantees the public and press a right of access to court documents. *Dreiling v. Jain*, 151 Wash.2d 900, 908, 93 P.3d 861 (2004). To safeguard this right, we held in *Rufer v. Abbott Laboratories*, 154 Wash.2d 530, 549, 114 P.3d 1182 (2005), that any records filed "in anticipation of a court decision ... should be sealed or continue to be sealed only when the court determines—pursuant to *Ishikawa*[FN1]—that there is a compelling interest which overrides the public's right to the open administration of justice." Because I believe this simple directive compels a result opposite from that of the lead opinion, I dissent.

FN1. *Seattle Times Co. v. Ishikawa*, 97 Wash.2d 30, 640 P.2d 716 (1982).

**897 Analysis

¶ 56 Under article I, section 10 of the Washington State Constitution, "[j]ustice in all cases shall be administered openly." By this pronouncement, the public and press are guaranteed a right of access to judicial proceedings and court documents. *Dreiling*, 151 Wash.2d at 908, 93 P.3d 861 (citing *Cohen v. Everett City Council*, 85 Wash.2d 385, 388, 535 P.2d 801 (1975)). We have denounced "[p]roceedings cloaked in secrecy." *Id.* And we have repeatedly recognized open justice as "fundamental to the operation and legitimacy of the ***325** courts and protection of all other rights and liberties." *In re Det. of D.F.F.*, 172 Wash.2d 37, 43, 256 P.3d 357 (2011).

¶ 57 Although openness is presumed, the right is not absolute. *Dreiling*, 151 Wash.2d at 909, 93 P.3d 861. It may be restricted to protect other fundamental rights. *Id.* But before this is done, the proponent of secrecy must convince the court the restriction is appropriate in light of five factors laid out in *Seattle Times Co. v. Ishikawa*, 97 Wash.2d 30, 640 P.2d 716 (1982). *Tacoma News, Inc. v. Cayce*, 172 Wash.2d 58, 66, 256 P.3d 1179 (2011).

¶ 58 The lead opinion believes that article I, section 10 is not implicated at all with respect to court documents the trial court does not use to make a decision. It reads our opinions in *Dreiling* and *Rufer* as applying only to court records that are actually considered by the trial judge or jury in rendering a decision. Based on this misreading of our precedent, the lead opinion advances the remarkable proposition that court records are no longer public if the case settles before the court rules. This significantly erodes the constitutional guaranty of openness. Moreover, the lead opinion's misstep results in an unworkable rule, requiring courts to distinguish between court records that are subject to article I, section 10 and those that are not based on a determination of which filings are "relevant." Yet, what is relevant will be impossible to know before the court renders a decision; for example, the very records the lead opinion today concludes may be sealed without regard to the *Ishikawa* test would have been subject to that test had a motion to seal been brought between the time they were filed and the time the case settled and the summary judgment motion was withdrawn.

¶ 59 We have recognized "there are distinctions to be drawn depending on the nature and use of court records." *Yakima v. Yakima Herald–Republic*, 170 Wash.2d 775, 803, 246 P.3d 768 (2011). But, the distinctions we have drawn do not depend on whether submitted documents in fact informed a decision of a court. Instead, the constitutionally***326** mandated presumption of openness attaches when documents are filed with a court and thus deemed relevant to the proceedings. As we stated in *Rufer*, it applies to documents filed "in *anticipation* of a court decision." 154 Wash.2d at 549, 114 P.3d 1182 (emphasis added).

¶ 60 Although the lead opinion purports to follow our holdings in *Dreiling* and *Rufer*, a proper reading of these cases reveals the lead opinion's holding strays from their guidance. In *Dreiling*, we held "that the same guidelines applied in *Ishikawa* must be applied to documents filed in support of dispositive motions." 151 Wash.2d at 915, 93 P.3d 861. We acknowledged a distinction between "[m]ere discovery" and material filed with a court in anticipation of a court decision. *Id.* at 909–10, 93 P.3d 861. Because " '[m]uch of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying cause of action,' " such information may be kept confidential for good cause shown. *Id.* at 909, 93 P.3d 861 (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984)). In contrast, documents filed in support of a dispositive motion "lose their character as the raw fruits of discovery." *Id.* at 910, 93 P.3d 861. These documents may be withheld from the public's view only upon a showing of an overriding interest necessitating secrecy. *Id.*

¶ 61 The court in *Dreiling* distinguished between unfiled discovery and filed documents germane to issues presented in a case. In the context of making this distinction, we stated that article I, section 10 does not "speak to" the disclosure of tangentially related discovery information that "does not ****898** become part of the court's decision-making process." *Id.* We cautioned, however, that "the same cannot be said for materials attached to a summary judgment motion." *Id.* Materials of that ilk are presumptively open to the people and may be sealed only upon the demonstration of an overriding interest compelling secrecy. *Id.* A close reading of *Dreiling* reveals that in making this point, we were in actuality defining what material "become [s] part of ***327** the court's decision-making process" and is thereby subject to the presumption of openness. *Id.* Documents thought relevant enough by a party to be used in support of a motion are part of the open court process subject to article I, section 10. Unfiled discovery materials are not. Nowhere in *Dreiling* did we suggest that, as a precondition to the application of article I, section 10, documents must in fact result in a decision by the court or jury.

¶ 62 Instead, we endorsed the broader principle that the check of public scrutiny on court proceedings is one of the reasons our constitution demands justice be conducted openly. *See id.* at 903, 93 P.3d 861 ("Justice must be conducted openly to foster the public's understanding and trust in our judicial system *and* to give judges the check of public scrutiny." (emphasis added)); *see also id.* at 908, 93 P.3d 861 (" '[O]perations of the courts *and* the judicial conduct of judges are matters of utmost public concern.' " (quoting *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 839, 98 S.Ct. 1535, 56 L.Ed.2d 1 (1978) (emphasis added))). The premise of article I, section 10 is that open access will cultivate the public's understanding and confidence in the operation of our justice system as a whole. *Rufer*, 154 Wash.2d at 549, 114 P.3d 1182.

¶ 63 In *Rufer* we were again asked to determine the appropriate standard for sealing records in a civil case. At issue were documents attached to nondispositive motions and deposition testimony that had been published (and thus technically filed). *Id.* at 540, 114 P.3d 1182.[FN2] One of the defendants moved to seal several exhibits and selected portions of deposition testimony. *Id.* at 536, 114 P.3d 1182. The plaintiffs conceded that the deposition testimony not used at trial could remain sealed for good cause but opposed closure of the remaining ***328** records. *Id.* at 536–37, 114 P.3d 1182. The trial court ordered all records in question be made available to the public because a compelling interest had not been shown. *Id.* at 538, 114 P.3d 1182.

> FN2. We noted in *Rufer* that " '[t]he publication of a deposition at trial is simply the clerical act of "the breaking of the sealed envelope containing the conditional examination [deposition] and making it available

> for use by the parties or the court." ' " 154 Wash.2d at 540 n. 3, 114 P.3d 1182 (quoting Pet'rs' Suppl. Br. at 17 n. 12 (quoting *Augustine v. First Fed. Sav. & Loan Ass'n of Gary*, 270 Ind. 238, 240, 384 N.E.2d 1018 (1979))).

¶ 64 We concluded the trial court employed the correct legal standard: "any records ... filed with the court in anticipation of a court decision (dispositive or not) should be sealed or continue to be sealed only when the court determines—pursuant to *Ishikawa*—that there is a compelling interest which overrides the public's right to the open administration of justice." *Id.* at 549, 114 P.3d 1182. We recognized one exception for "deposition transcripts published but not used in trial or as an attachment to any motion," noting the parties' agreement that the good cause standard applied to such transcripts. *Id.* at 550, 114 P.3d 1182. We thus affirmed the trial court and remanded for the limited purpose of resealing the depositions that were not presented at trial or used in support of any motion. *Id.* at 553, 114 P.3d 1182.

¶ 65 Underlying our decision in *Rufer* was recognition that the openness secured by article I, section 10 "is not concerned with merely whether our courts are generating legally-sound *results*. Rather, we have interpreted this constitutional mandate as a means by which the public's trust and confidence in our *entire judicial system* may be strengthened and maintained." *Id.* at 549, 114 P.3d 1182 (citing *Allied Daily Newspapers of Wash. v. Eikenberry*, 121 Wash.2d 205, 211, 848 P.2d 1258 (1993)). In refusing to draw a distinction between dispositive and nondispositive motions, we observed that everything passing before a trial court is relevant to the public interest and, ultimately, the legitimacy of our courts. *See* ****899***Id.* at 542, 114 P.3d 1182. "[T]he public has an intense need and a deserved right to know about the administration of justice in general...." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 604, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) (Blackmun, J., concurring). This interest includes learning about "all the actors in the judicial arena; and about the trial itself." *Id.*

¶ 66 The basis for distinguishing the published depositions from the other documents at issue in *Rufer* was that ***329** the published depositions were neither placed before the fact finder nor used in support of a motion, i.e., they did not become part of the court's decision-making process. *See Rufer*, 154 Wash.2d at 550, 114 P.3d 1182 ("The one exception would be any deposition transcripts published *but not used in trial or as an attachment to any motion*." (emphasis added)). In contrast, all documents at issue in this case were put before the court in anticipation of a judicial decision. Accordingly, they lost their character as mere discovery. As made clear in *Rufer*, it is the "*filing* [that] triggers the analysis of whether records should be opened." *Id.* (emphases added and omitted). Once the presumption of openness arises, the public's right of access cannot be restricted unless the proponent of secrecy shows compelling reasons for closure consistent with the standards articulated in *Ishikawa*, *Tacoma News*, 172 Wash.2d at 66, 256 P.3d 1179.

¶ 67 The lead opinion believes it would go too far to require adherence to article I, section 10 when a case settles without the judge having reviewed the documents at issue. It suggests such documents are irrelevant because no judicial decision was rendered. Lead opinion at 890. But the lead opinion's notion of when a document is "relevant" is circular. Its reasoning begs the question: Were the documents *relevant* between the time they were filed in connection with a summary judgment pleading and the time the court received notice to strike the summary judgment hearing? The lead opinion gives no indication of how timing affects its analysis, but it would acknowledge that the *Ishikawa* standard must apply to a motion to unseal records filed while a matter is pending. Otherwise, a court would have to know whether it was going to be required to rule on the matter before it could rule on a motion to seal or unseal.

¶ 68 Herein lies the heart of the problem with the lead opinion's rule. The relevance of a court record—which under the lead opinion's view determines the applicable standard for sealing—cannot turn on what transpires *after* the record ***330** is filed in anticipation of a decision. A motion may be pending in court for months before a case resolves. A case may go through an entire trial only to be settled before verdict. But, when a member of the press or public moves to intervene and unseal part of the court file, the court must review the file and make a ruling. It cannot defer ruling on the motion to see if the documents in question will in fact be relevant to a judicial decision.[FN3]

> FN3. The lead opinion goes one step further, stating that "[i]n order for documents to become part of the decision making process, there must be a decision." Lead opinion at 890. While the settlement in this case occurred shortly after the documents at issue were filed, this case is not unique in having been resolved without a judicial decision. The lead opinion does not explain what its rule means for entire court files in those cases that wind through the judicial system for months or even years only to have the parties reach an out-of-court settlement and dismiss the case.

¶ 69 Our decisions in *Dreiling* and *Rufer* appropriately treat the question of relevance not as the lead opinion does, but instead as describing documents that are filed with the court in anticipation of a judicial decision. This includes documents relating to both dispositive and nondispositive motions. Beyond this, any further consideration of whether a filed document is relevant *to the merits of the case* is properly factored into the *Ishikawa* analysis when a motion to seal or unseal is brought. As we explained in *Rufer*:

> [T]he potential for abuse is also addressed through the application of the *Ishikawa* factors to a motion to seal. If a party attaches to a motion something that is both irrelevant to the motion and confidential to another party, the court should seal it. When there is indeed little or no relevant relationship between the document and the ****900** motion, the court, in balancing the competing interests of the parties and the public pursuant to the fourth *Ishikawa* factor, would find that there are *little or no valid interests* of the party attaching the document to its motion or of the public with respect to disclosure of the document. This is because the interest of the public that we are concerned with in making these determinations is the public's right to the open administration of justice. We have already held that article I, section 10 is not relevant to documents that ***331** do not become part of the court's decision making process. *Dreiling*, 151 Wash.2d at 909–10 [93 P.3d 861]. Thus, if a record is truly irrelevant to the merits of the case and the motion before the court, the court would not consider the document in evaluating the motion before it, and in applying *Ishikawa* it would likely find that sealing is warranted.
>
> 154 Wash.2d at 547–48, 114 P.3d 1182.

¶ 70 The lead opinion quotes a portion of this passage and describes it as holding that "article I, section 10 applies only to documents relevant to the merits of the motion before the court." Lead opinion at 890. But the full passage makes clear that the relevance of a court record is part of the application of the *Ishikawa* analysis, not an exception from it. *Rufer* does not support the lead opinion's limited view of the reach of article I, section 10.[FN4]

> FN4. Given the lead opinion's conclusion that article I, section 10 does not apply to the court records at issue in this case, its extended discussion of the *Ishikawa* factors is meaningless. *See* lead opinion at 890–93. In particular, the lead opinion's suggestion that courts should create document logs and notify nonparties whose interests may be affected by the sealing or unsealing of records

has no application to its resolution of this case. Under the lead opinion's holding, the only consideration for sealing the records at issue is "good cause" under CR 26(c) because in its view the documents never became part of the administration of justice. *See* lead opinion at 888–89.

¶ 71 Like the lead opinion, the trial court believed article I, section 10 does not speak to the records here because the case settled before the court had occasion to review them. It therefore sealed the records without considering the criteria articulated in *Ishikawa.* In fact, it appears the trial court applied no standard at all, relying solely on the previously entered protective order and the parties' stipulation. Under our precedent, this was improper. *See Dreiling,* 151 Wash.2d at 917, 93 P.3d 861 ("When third parties move to intervene, the court may not stand on its previous [protective] order."); *see also Rufer,* 154 Wash.2d at 550, 114 P.3d 1182 (explaining that parties may file records under seal pursuant to the terms of a protective order, but the court should open such records upon motion "unless the party wishing to keep them sealed demonstrates an overriding interest"). Because the trial court reached its decision ***332** by applying an improper legal standard, I would remand to the trial court to apply the correct rule and to determine whether the court files in question should be sealed under the *Ishikawa* test.

Conclusion

¶ 72 The lead opinion departs from the standard we adopted in *Dreiling* and *Rufer,* and creates an unworkable rule that undermines the constitutional guaranty of open court records. I would adhere to our precedent and hold that documents filed with a court in anticipation of a decision are presumptively open to public access without regard to whether they are ultimately considered by the court in rendering a decision. With respect to such court files, the people's right of access cannot be restricted unless the proponent of secrecy shows compelling reasons for closure consistent with the standards stated in *Ishikawa.* I respectfully dissent.

WE CONCUR: SUSAN OWENS and MARY E. FAIRHURST, Justices and GERRY L. ALEXANDER, Justice Pro Tem.

Wash.,2013.
Bennett v. Smith Bundy Berman Britton, PS
176 Wash.2d 303, 291 P.3d 886

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CJC 2.2 Comment 4

To: DMCJA Board

From: DMCJA Rules Committee

Re: Proposed amendments to Judicial Canons

Date: August 28, 2013

Proposed Amendments to the Judicial Canons

At the request of the State Supreme Court, the Access to Justice Board ("ATJ") has promulgated two amendments to the Judicial Canons, and has promulgated one entirely new Comment to an existing Canon (see attached). These changes are designed to codify the judicial obligation to provide a meaningful hearing for pro se litigants and to provide some "cover" to judges who make reasonable accommodations for pro se litigants. At this point, the Supreme Court Rules Committee has not voted to take any action on the proposed amendments. That committee has, however, reached out to our association, the appellate judges, the SCJA, and the Ethics Advisory Committee for preliminary input.

The DMCJA Rules Committee agrees that access to the courts for pro se litigants is essential, and that judges play a central role as stewards of and gatekeepers to the justice system. We are concerned, however, that the amendments as proposed are overly prescriptive and may require judges to take actions in violation of countervailing ethical and legal requirements.

Before addressing the proposed amendments, the Committee wishes to stress that the current Rule 2.2 already has four existing Comments, and the current Rule 2.6 contains two sub-parts and has three existing Comments. In considering any amendments or additional Comments, it is important that any new language not be inconsistent with nor in conflict with the language of the current Rules and Comments. The Rules Committee provides the following comments to the DMCJA Board regarding the proposed amendments:

i. Preamble [1] and Comment [4] to Rule 2.2

We do not have any objection to the minor changes proposed to these two sections of the Canons. Our concerns lie with Comment [1A] to Rule 2.6.

ii. Comment [1A] to Rule 2.6

a. *Mandatory vs. permissive language*

Comment [1A] to Rule 2.6 as drafted instructs judges as to the actions they "should" take when presiding over a case involving one or more pro se litigants. See Comment [1A] to Rule 2.6, line 3. We are concerned that many of the actions proposed would be ethically or legally impossible. We strongly believe that this Comment, if adopted, should identify the steps that judges "may" take in appropriate circumstances when interacting with pro se litigants.

b. The Comment is not necessary

Comment [1A] to Rule 2.6 is entirely new. It is prescriptive in nature, and many of the actions required would be –in some circumstances-- ethically or legally impossible. We recognize that there is an on-going need for judicial education on the difficult topic of interacting with pro se litigants. However, codifying what is in essence a list of best practices into a prescriptive mandate is not helpful to the bench where the accommodations listed will often be impossible to implement.

c. The appearance of partiality

Proposed Comment [1A] recognizes that "[a] judge cannot level the playing field for self-represented litigants or ignore procedural mandates, substantive law, or the burden of proof." See Comment [1A] to Rule 2.6, lines 1-2. We agree that these disclaimers belong in any rule addressing our obligations when interacting with pro se litigants. However, we believe that the Comment should additionally recognize that judges cannot take actions that amount to partiality or that create the appearance of partiality. We propose the addition of language to that effect. We are concerned that the proposed Comment, if adopted, may require us to elevate the rights of pro se litigants over the rights of represented parties.

d. Impermissible activities

Some of the enumerated accommodations in paragraph 2 of Comment 1[A] may require us to take action from the bench that is otherwise impermissible. For example:

- Item (5) requires judges to explain legal concepts from the bench;
- Item (6) requires judges to explain the rules of evidence;
- Item (8) requires judges to modify the rules of procedure and evidence; and
- Item (9) requires judges to oversee the fairness of settlement agreements.

Attachment:

- Amendments to CJC 2.2 Comment 4 and CJC 2.6 Comment 1A, as proposed by the Access to Justice Board

Proposed Changes to Preamble [1] and Comments [4] and [1A] to Rules 2.2 and 2.6 of the CJC

(Proposed changes are in blue; please note that the entirety of Comment 1A to Rule 2.6 is a new proposed Comment)

Preamble

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. In their capacity as stewards of the justice system, judges have an essential role in managing the courtroom and ensuring access to justice for all who participate. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

Comment [4] to Rule 2.2

It is not a violation of this rule for a judge to take appropriate steps to provide self-represented litigants an opportunity to have their matters fairly presented and heard. See Comment [1A] to Rule 2.6, which describes the judge's affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard.

Comment [1A] to Rule 2.6 *Note: This Comment is all new*

A judge cannot level the playing field for self-represented litigants or ignore procedural mandates, substantive law, or the burden of proof. However, judges' traditional discretion and control over proceedings allow a judge to adopt flexible, efficient courtroom procedures that increase the likelihood a diligent self-represented litigant acting in good faith will have his or her case fairly heard on the merits with an adequate factual record. Therefore judges should take reasonable steps to help pro se litigants understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law.

Steps judges should take when appropriate to implement the right to be heard for pro se litigants as required by this Rule, include but are not limited to, (1) making referrals to any resources available to assist the litigant in the preparation of the case, (2) granting extensions of time to the extent consistent with the rights of all parties to a timely hearing, (3) liberally construing pleadings and freely allowing amendments as permitted by court rule or other legal authority, (4) explaining the basis for a ruling, (5) explaining legal concepts and refraining from using legal jargon, (6) providing brief information about the procedures to be followed during the litigant's hearing and evidentiary and foundational requirements, (7) asking neutral questions to elicit or clarify information, (8) modifying the traditional order of taking evidence and –to the extent consistent with the rights of all parties to the litigation- relaxing the formal rules of procedure and evidence, and (9) ensuring that a settlement presented for entry as a court order is not unduly one-sided and is understood by all litigants.

Proposed Changes to CJC Rules

To: DMCJA Board

From: DMCJA Rules Committee

Re: Proposed amendments to the Discipline Rules for Judges

Date: August 28, 2013

Proposed Amendments to Discipline Rules for Judges ("DRJ")

The Commission on Judicial Conduct ("CJC") has proposed amendments to Rules 1, 2, 3, 4, 5, 6, 7, 10, 12, and 13 of the DRJ (see attached). These proposed changes are housekeeping measures, primarily intended to bring the DRJ Rules in line with the Washington State Constitution. After a 1989 amendment to the State Constitution, the DRJ Rules were not modified. As a result, the DRJ Rules are now outdated and in some instances are inaccurate. We recommend that the DMCJA express that it has no objections to the changes.

Attachment:

- CJC Amendments, as proposed by the Commission on Judicial Conduct

RULE 1
SCOPE OF RULES; PARTIES

(a) Supreme Court Consideration. A decision of the ~~Judicial Qualifications~~ Commission on Judicial Conduct that ~~recommends the~~ disciplines or recommends the suspension, removal, or retirement of a judge or justice (hereafter "judge") or that recommends that a judge should or should not be reinstated to eligibility to hold judicial office ~~will~~ may be considered by the Supreme Court in the manner provided by these rules.

(b) ~~Judicial Qualifications~~ Commission on Judicial Conduct. The proceedings of the ~~Judicial Conduct Qualifications~~ Commission (hereafter "commission") are governed by rules adopted by the commission (CJCRP).

(c) Parties. The only parties to a proceeding under these rules are the commission and the judge who is the subject of the commission recommendation of discipline or retirement.

(d) Discipline. As used in these rules, "discipline" includes admonishment, reprimand, censure, suspension, and removal from office. ~~but does not include admonishment or reprimand agreed to by the judge as provided in rule 12.~~

COMMENT

Section (a). The Supreme Court may only consider a ~~Judicial Qualifications~~ Commission on Judicial Conduct recommendation of discipline or retirement that is contested by the judge or that includes a recommendation for suspension, discipline, or an order of retirement. Const. art. 4, subsection 31 (amend. 71). The word "judge" will be used throughout the rules rather than the terms "judge or justice" found in the constitution.

Section (b). The commission determines its own rules for proceedings before it. Const. art. 4, subsection 31 (amend. 71).

Section (c). Only the commission and the judge will be parties to Supreme Court proceedings.

Section (d). Rule 12 acknowledges ~~authorizes~~ the commission ~~to~~ may enter a stipulated admonishment, reprimand, or censure with ~~informally admonish or reprimand~~ a judge without referring the matter to the Supreme Court so long as that stipulation does not include a recommendation for suspension or removal. ~~The word "discipline" used throughout these rules does not include this informal admonishment or reprimand.~~

[Effective May 14, 1982]

RULE 2.
INITIATING SUPREME COURT CONSIDERATION

(a) *Generally.* Decisions of the commission disciplining a judge or finding no misconduct after a fact-finding proceeding ~~recommending to the Supreme Court that a judge should be disciplined or retired~~ shall be in writing, in accordance with the commission's rule CJCRP 24(d). The commission shall serve on the judge a copy of its decision, ~~recommending that the Supreme Court discipline or retire the judge.~~ When the commission's decision after a fact-finding proceeding or pursuant to a stipulation is to censure the judge, with a recommendation for suspension, removal or retirement, or the judge has timely filed a notice of contest under DRJ 3, ~~Unless a matter is disposed of under rule 12,~~ the commission shall file a copy of its decision with the Supreme Court when the commission's decision is final under the rules of the commission. The commission shall serve notice on the judge of the date the decision has been filed with the Supreme Court.

(b) *Time for filing.* The written decision of the commission shall specify the time period in which the judge may file a notice of contest under rule 3. The period may not be shorter than 7 days nor longer than 28 days after the date of service on the judge of notice that the decision has been filed with the Supreme Court.

HISTORY: Adopted May 6, 1982, effective May 14, 1982.

NOTES:
COMMENT

Section (a). -- The commission's rules require that all its public decisions ~~ecommendation to the Supreme Court~~ must be in writing. Where the commission's decision to censure a judge includes a recommendation to suspend, remove, or retire a judge, the Supreme Court must consider and act on that recommendation. Any judge disciplined or recommended for retirement by the commission is entitled to review of that decision by the Supreme Court by filing a notice of contest. ~~The rule does not prohibit the commission from giving the judge a proposed recommendation to determine if discipline can be imposed by agreement under rule 12. The rule also accommodates a process for reconsideration by the commission before filing a recommendation with the Supreme Court.~~

SECTION (B). --This section delegates to the commission the responsibility of determining how much time should be allowed for the filing of a notice of contest. The commission is in the best

position to know whether the particular case requires prompt action or may be handled in a manner closely approximating the normal time limits for an appeal to the Supreme Court.

RULE 3

CONTESTING ~~RECOMMENDATION~~COMMISSION DECISION

(a) Generally. A judge who seeks to contest a commission decision imposing discipline or recommending retirement ~~recommendation of discipline or retirement~~ must file a notice of contest with the Supreme Court and the commission. The notice must be filed within the time period specified in the decision of the commission as provided in rule 2(b).

(b) Form of Notice. The notice of contest must (1) be titled a notice of contest, (2) describe the portions of the ~~recommendation~~ decision of the commission that the judge wishes to contest, and (3) name the judge seeking to contest the ~~recommendation~~decision. The notice must be signed by the judge or by counsel. The name, address, and telephone number of the lawyer for any party represented by counsel should be placed on the notice. The residence address and telephone number of the judge seeking to contest the ~~recommendation~~ decision should also be included on the notice.

COMMENT

Section (a). The judge who wishes to contest a commission ~~recommendation~~ decision must file a notice of contest. The time period for filing a notice of contest is determined by the commission. See rule 2(b).

[Effective May 14, 1982]

RULE 4
RECORD ON REVIEW

(a) Transcription of Proceedings. Except as provided in section (b), upon receipt of a timely filed notice of contest, the commission shall at its own expense transcribe those portions of the record of the proceedings involving those charges upon which the ~~recommendation~~ decision of the commission is based. The transcription of the record and copies of relevant material filed with the commission shall be forwarded by the commission to the judge within the time authorized by the Supreme Court. Any objections relating to the accuracy and content of the record must be made within 14 days after service of the record on the judge. Objections shall be decided in accordance with the rules of the commission. The commission shall forward the record to the Supreme Court after objections are determined by the commission or, in the absence of objection, after the time for objection has expired.

(b) Agreed Record in Contested Proceedings. The commission and the judge may agree to a record in contested proceedings different from that required by section (a). The agreed record shall contain sufficient material to permit the Supreme Court to consider the decision of the commission.

(c) Uncontested Proceedings. If the judge has not timely filed a notice of contest, and the commission recommends suspension, removal or retirement, the record shall consist of the decision of the commission and any other portions of the proceeding which the Supreme Court deems relevant for its consideration.

COMMENT

Section (a). The rule provides that the commission will prepare the record in a contested proceeding. The commission will only need to transcribe those portions of the proceedings which are relevant to its ~~recommendation~~decision. Thus, if the judge was originally charged with five different violations of the Code of Judicial Conduct and the commission ~~recommends~~ imposes discipline based on only one of those, it would only need to transcribe the portions of the proceedings relevant to the charge actually found. The commission will first serve the record on the judge to allow for its determination of any objections to the record before the matter is referred to the Supreme Court. If a party is not satisfied with the commission's determination of the objection, the Supreme Court will decide the matter.

Section (b). There may be circumstances when the commission and the judge disagree only over a limited part of the commission ~~recommendation~~decision. In such circumstances, an agreed record is authorized. Cf. RAP 9.4.

Section (c). If a judge does not contest the commission ~~recommendations~~decision, and the commission recommends suspension, removal or an order of retirement, the record will only consist of the commission decision, supplemented by those portions of the record the Supreme Court deems relevant.

[Effective May 14, 1982]

RULE 5
BRIEFS

(a) Contested Proceedings. If a notice of contest is timely filed, the Supreme Court will establish a schedule for filing briefs.

(b) Uncontested Proceedings. If a notice of contest is not timely filed, briefs will not be required unless requested by the Supreme Court in a case where the commission recommends suspension, removal or an order of retirement.

(c) Content of Brief. A brief should contain under appropriate headings and in the order here indicated:

(1) Title Page. A title page, which is the cover.

(2) Tables. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where cited.

(3) Statement of the Case. A fair statement of the facts and procedure relevant to the recommended discipline or retirement, without argument. Reference to the record must be included for each factual statement.

(4) Statement of the Issues. A statement of the issues presented by the commission's ~~recommendation~~decision.

(5) Argument. The argument in support of the relief sought by the party filing the brief, together with citations to legal authority and references to relevant parts of the record. The argument may be preceded by a summary.

(6) Conclusion. A short conclusion stating the precise relief sought.

(7) Appendix. An appendix to the brief if deemed appropriate by the party submitting the brief.

(d) Typing and Filing Brief. Rule of Appellate Procedure 10.4(a) is applicable to briefs filed under these rules.

(e) Preparation of Brief. Rules of Appellate Procedure 10.4(b), (c), (e), (f), and (g) are applicable to briefs filed under these rules.

(f) Service of Brief. A party shall serve a copy of the party's brief on all other parties at or before the time the brief is filed with the Supreme Court.

(g) Reproduction of Brief. Rule of Appellate Procedure 10.5(a) is applicable to a brief filed under these rules.

(h) Submission of Improper Brief. Rule of Appellate Procedure 10.7 is applicable to a brief filed under these rules.

(i) Amicus Curiae Brief. Rule of Appellate Procedure 10.6 is applicable to an amicus curiae brief filed under these rules.

COMMENT

Section a). If a proceeding is contested, the court will set the schedule for filing briefs. This will allow the court flexibility to accelerate those cases which should be speedily resolved, while permitting more time for cases which do not require quick resolution.

Section (b). In an uncontested case where the commission recommends suspension, removal or an order of retirement, the court will usually decide the case based on the decision of the commission, which should include the factual basis for the commission's recommendation. The court may order a brief from the commission if it concludes additional information is necessary.

Section (c). This section is adapted from RAP 10.3. Section (i). ~~As a general rule persons other than parties will not be aware of a discipline or retirement proceeding, but the court or a partymay occasionally find the need for an amicus brief.~~ This section incorporates the relevant appellate rule.

[Effective May 14, 1982]

RULE 6.
HEARING

(a) Contested proceedings. If a notice of contest is timely filed, the Supreme Court will set the date for the hearing with oral argument. Oral argument will be governed by Title 11 of the Rules of Appellate Procedure.

(b) Uncontested proceedings. If a notice of contest has not been filed in a case where the commission has recommended suspension, removal or an order of retirement, oral argument will not be held unless requested by the Supreme Court. The Supreme Court will nevertheless notify the parties of the date set for the hearing without oral argument.

[Effective May 14, 1982.]

COMMENT

Section (a). Normally the court will hear oral argument only in contested proceedings. The court will set the date for oral argument at the same time it sets the briefing schedule. RAP Title 11 governs oral argument.

Section (b). --The court is required to hold a hearing in order to impose suspension, removal, or to retire a judge. Const. art. 4, § 31 (amend. 71). If a proceeding is uncontested, the court will set a date for considering the commission recommendation, but it will not ordinarily schedule time for oral argument.

RULE 7.
ADDITIONAL EVIDENCE OR FINDINGS -- REMAND

If the Supreme Court on its own motion or on the motion of the commission or the judge determines that further commission proceedings, additional evidence, or additional findings will aid the Supreme Court, the Supreme Court may remand the case to the commission or accept supplementary materials without remand.

[Effective May 14, 1982.]

COMMENT

The Supreme Court may conclude, either on its own or at the instance of a party, that additional commission proceedings are desirable. The Supreme Court may decide that the commission should reconsider its decision ~~the recommendation~~ or obtain additional evidence. This rule permits a remand for these purposes. The rule also authorizes the Supreme Court to receive additional evidence. The generally accepted standard of review for Supreme Court proceedings in the area of judicial misconduct or disability is an "independent evaluation of the evidence." Hence, the Supreme Court functions with a broader standard of review than is usual for an appellate court reviewing a trial court decision. This rule allows maximum flexibility for supplementing the record. Cf. ABA Standards 7.4-7.6 which are consistent with this approach.

RULE 8.
MOTION

(a) Relief available. A party may seek relief, other than a decision of the case on the merits, by a motion. Rules of Appellate Procedure 17.3(a) and 17.4 are applicable to the motion filed under these rules.

(b) No oral argument. Motions will ordinarily be decided without oral argument.

(c) Motions decided by department or full court. A motion will be decided by a department of the Supreme Court or by the full Supreme Court.

[Effective May 14, 1982.]

RULE 9.
DECISION AND RECONSIDERATION

(a) Decision by full court. Hearings on the merits under these rules will ordinarily be heard by nine justices. A reference to Supreme Court Justice or Justices in these rules includes regular and pro tempore justices. A reference to the Supreme Court includes the Supreme Court as regularly constituted, and the Supreme Court with one or more justices pro tempore.

(b) Postponement of decision. The Supreme Court may postpone Supreme Court proceedings involving a judge if there are other proceedings pending before the commission involving that same judge.

(c) Decision imposing discipline or retirement. Discipline may be imposed or retirement ordered only upon the affirmative vote of at least five Supreme Court Justices. The decision of the court shall be in the form of a written opinion. The Supreme Court may impose the sanction recommended by the commission, or any other sanction that the Supreme Court deems proper.

(d) Finality of decision. The decision of the Supreme Court becomes final 14 days after the decision is filed, unless a motion for reconsideration of the decision is earlier filed. If a timely motion for reconsideration is filed, the decision of the Supreme Court becomes final when the motion for reconsideration is denied. If the motion for reconsideration is granted, the reconsidered decision is final when filed. The Supreme Court decision is effective when final, unless otherwise provided by the Supreme Court in its decision.

(e) Motion for reconsideration. A party seeking reconsideration of a decision must file a motion for reconsideration within 14 days after the decision of the Supreme Court has been filed. Rules of Appellate Procedure 12.4(c) through (h) are applicable to proceedings under these rules.

[Effective May 14, 1982.]

COMMENT

Section (a). The Supreme Court will ordinarily decide a judicial discipline case with a full panel of nine justices, drawing from justices pro tempore if necessary, to create a full panel. The rule does provide, however, that a decision by less than nine justices will be effective if the decision is supported by at least five justices.

Section (b). The ABA Standards recommend that the court dispose of all matters regarding the discipline of a particular judge at one time. ABA Standards Relating to Judicial Discipline and Retirement, Std. 7.6.

Section (c). The Supreme Court must approve the discipline of a judge with at least five votes. The court may impose the discipline it determines is proper.

Section (d). --A party has 14 days in which to file a motion for reconsideration. If no motion is filed, the decision is final at the end of the 14-day period. If a motion is filed, the decision is final when the motion is denied or when the reconsidered decision is filed. This parallels RAP 12.4 which permits only one motion for reconsideration. This paragraph supersedes RCW 2.04.170 to the extent the statute is in conflict with this rule.

RULE 10.
EFFECT OF DISCIPLINE

(a) Removal or retirement. The office of a judge removed or retired by the Supreme Court becomes vacant when the Supreme Court decision is final. A judge may not perform any judicial duties thereafter. A judge who is removed or retired by the Supreme Court is no longer eligible for judicial office unless the eligibility of the person removed or retired is reinstated by the Supreme Court after review by the commission through application of CJCRP 28.

(b) Suspension. The office of a judge suspended by the Supreme Court does not become vacant, but the judge may not perform any judicial duties during the period of suspension, except to the extent the decision of the Supreme Court provides otherwise.

(c) Effect of discipline on salary. A decision imposing discipline other than removal or retirement will state the effect of the discipline upon the salary of the judge. Subject to the limitation in rule 9(c), the Supreme Court may diminish the salary of the judge based only on the prospective future decrease in the judge's workload brought about by the discipline imposed by the Supreme Court.

[Effective May 14, 1982.]

COMMENT

Section (a). The constitution provides that a judicial office becomes vacant if a judge is removed or retired. Const. art. 4, § 31 (amend. 71).

Section (b). If a judge is suspended from office, the implication is that the office is not vacant. This section makes this clear. The rule does not allow a judge to perform judicial duties while suspended, except as may be otherwise authorized by the Supreme Court.

Section (c). The constitution requires the Supreme Court to specify the effect on the judge's salary of discipline other than removal or retirement. The Supreme Court will not use its power to affect salary as a means of imposing a fine on the judge, which is not specifically authorized by the constitution. Statutes control the collateral effect on retirement benefits of a Supreme Court decision affecting payment of a judge's salary.

RULE 11.
REINSTATEMENT OF ELIGIBILITY TO HOLD JUDICIAL OFFICE

(a) Petition filed with commission. A former judge who has been removed from office or retired by the Supreme Court may apply to the commission for reinstatement of eligibility to hold judicial office.

(b) Commission recommendation. The commission shall determine, under CJCRP 28, whether the applicant has made an affirmative showing that reinstatement will not be detrimental to the integrity and standing of the judiciary and the administration of justice, or be contrary to the public interest. The commission recommendation on the application shall be in writing.

(c) Supreme Court procedure. A decision recommending that a former judge should or should not be reinstated to eligibility to hold judicial office shall be processed under these rules in the same manner as a decision of the commission recommending the discipline or retirement of a judge.

[Effective May 14, 1982.]

COMMENT

Section (a). The constitution gives to the Supreme Court the authority to reinstate the eligibility of a removed or retired judge to hold judicial office. The constitution does not establish standards for reinstatement. This section provides that the commission will initially consider an application for reinstatement.

Section (b). This section is modeled after rule 8.6(a) of the Discipline Rules for Attorneys. The Supreme Court has considered the question of attorney reinstatement several times. The standard set forth in the rule along with the developed case law will provide the commission and the Supreme Court with a basis for determining whether to reinstate a former judge's eligibility.

Section (c). Once a commission recommendation is filed with the Supreme Court, the procedure will be the same as in cases involving the discipline or retirement of a judge.

RULE 12.

~~INFORMAL ADMONISHMENT OR REPRIMAND~~ STIPULATED RESOLUTIONS BY COMMISSION

(a) Generally. The commission may stipulate to a disposition of a case, ~~informally admonish or reprimand a judge, but only~~ with the agreement of the~~at~~ judge under CJCRP 23. If the stipulation requires the suspension, removal, or retirement of a judge, the Supreme Court must review and approve or reject the stipulation. ~~The agreement shall provide whether the agreement of the judge to the admonishment or reprimand may be considered as an admission of misconduct by the judge. In any event, the conduct causing the admonishment or reprimand may be considered in the event of a future complaint against the same judge. The agreed admonishment or reprimand may include an agreement by the judge to desist from certain prescribed conduct~~.

(b) Effect of stipulated resolution.~~informal admonsishment or reprimand.~~ A~~n~~ stipulated agreement to ~~informally~~ admonish,~~ or~~ reprimand or censure without a recommendation for suspension, removal or retirement a judge terminates the complaint or complaints which gave rise to the admonishment or reprimand, without the necessity of referring the matter to the Supreme Court.

[Effective May 14, 1982].

COMMENT

Const. art. 4, § 31 (amend. ~~71~~85) gives the commission ~~Supreme Court~~ the authority to impose discipline on judges. Only the Supreme Court can suspend, remove, or ~~retire~~ order a judge retired. ~~Arguably, the commission may not engage in informal dispositions without authority from the Supreme Court. This rule delegates a small, but important, part of the Supreme Court's discipline power to the commission.~~ The commission is only empowered to ~~informally~~ admonish, ~~or~~ reprimand, or censure a judge. If more serious discipline is called for, the Supreme Court must impose the discipline. ~~The rule requires the consent of the judge. The judge will, thereby, be waiving any right to have discipline imposed only by the Supreme Court. Cf. ABA Standard 6.6.~~

RULE 13.
SUBSTITUTE PANEL

(a) Generally. If a justice of the Supreme Court is the subject of ~~a~~ commission discipline or recommendation for retirement that is reviewed by the Supreme Court, ~~recommendation for discipline or retirement~~, a substitute panel of nine judges shall be selected as provided in this rule to serve as justices pro tempore to consider the commission ~~recommendation~~decision.

(b) Selection of justices pro tempore. The presiding chief judge of the Court of Appeals shall be one member of the substitute panel and shall be the chief justice pro tempore unless the judge disqualifies himself or herself or is otherwise disqualified by section (c). The clerk of the Supreme Court shall select the balance of the justices pro tempore by lot from all remaining active Court of Appeals judges. If there are fewer than nine judges of the Court of Appeals who are not disqualified, the panel shall be completed by the clerk by selecting by lot from the active superior court judges until a full panel of nine justices pro tempore has been selected.

(c) Disqualification. A judge may disqualify himself or herself without cause. No judge who has served as a master or a member of the commission in the particular proceeding or who is otherwise disqualified may serve on the substitute panel. No judge against whom a formal charge is pending before the commission shall serve on the panel.

(d) Chief justice pro tempore. If the presiding chief judge of the Court of Appeals is not a member of the substitute panel, the substitute panel shall select one of its members to serve as chief justice pro tempore.

[Effective May 14, 1982.]

RULE 14.
SUPPLEMENTAL PROVISIONS

(a) Service and filing with the court. Rule of Appellate Procedure 18.5 governs service, proof of service, and filing of papers under these rules.

(b) Computation of time. Rule of Appellate Procedure 18.6 applies to the computation of time under these rules.

(c) Waiver of rules and sanctions for violation of rules. Rules of Appellate Procedure 18.8(a) and (d) and 18.9(a) are applicable to proceedings under these rules.

(d) Applicability of RAP. Upon order of the Supreme Court, the Rules of Appellate Procedure may be made applicable to any part of the proceeding involving the discipline or retirement of a judge not governed by these rules.

(e) Confidential and privileged communications. Confidential communication between a judicial officer and peer Counselors of the Judicial Assistance Committee of the Superior Court Judges' Association or the District and Municipal Court Judges' Association of the LAP (Lawyers Assistance Program of the Washington State Bar Association) shall be privileged against disclosure without the consent of the judicial officer to the same extent and subject to the same conditions as confidential communication between a client and psychologist.

[Effective May 14, 1982; amended November 6, 2003, effective November 25, 2003.]

Presiding Judges' Conference
Budget Request

WASHINGTON COURTS

Presiding Judges' Education Committee

Honorable Thomas P. Larkin, Chair

July 10, 2013

Honorable David A. Svaren, President
District and Municipal Court Judges' Association
Skagit County District Court
PO Box 340
Mount Vernon, WA 98273-0340

Dear Judge Svaren:

The Presiding Judges' Education Committee is planning to develop and present a presiding judge and administrator program November 16-18, 2014.

At this time Board for Court Education (BCE) funding is not available for this program so we are approaching the various associations requesting funding to help defray the educational costs. We also intend to request a registration fee from each attendee to help with the costs.

We would like to request that the District and Municipal Court Judges' Association (DMCJA) allot $10,000 in your 2014 budget cycle toward the implementation of a Presiding Judge and Administrator education program. These funds would be used toward educational costs only (faculty costs, meeting room costs, materials, audio-visual needs). Participants will be charged a registration fee to cover two hosted meals and coffee breaks. If we can secure outside funding we can keep the registration fee as low as possible since participants will also have to pay for their housing, meals, and travel costs.

I would be happy to meet with you and the Board to discuss this request..

Thank you for considering this request.

Thomas Larkin

Judge Tom Larkin, Chair
Presiding Judge's Education Committee

cc: Ms. Shannon Hinchcliffe
Ms. Judith Anderson

Review of DUI Sentencing Grid, etc, Patter Forms (possible action)

WASHINGTON COURTS	**Courts of Limited Jurisdiction forms subcommittee** Draft form changes to implement E2SSB 5912, relating to DUI. **View and download the draft forms and the Session Law, under "Pattern Forms-CLJ" at:** http://www.courts.wa.gov/committee/index.cfm?fa=committee.home&committee_id=150.
List of forms that will be submitted by the CLJ forms subcommittee to the DMCJA Board for review.	
Laws of 2013, 2d Spec. Sess., Ch. 35 (E2SSB 5912) Crimes – DUI, effective 09/28/12 – except for sections 27, 28, and 30 through 32,which become effective 01/01/14	
1.	**DUI Sentencing Grid.**
2. CrRLJ 4.2(g)	**Statement of Defendant on Plea of Guilty**
3. CrRLJ 4.2(g) DUI	**"DUI" Attachment**
4. CrRLJ 4.2(g) DUI 2	**"Washington State Misdemeanor DUI Sentencing Attachment"** The subcommittee approved the following text for CrRLJ 4.2(g) between the "DUI" Attachment and the "Washington State Misdemeanor DUI Sentencing Attachment." "As an alternative to the "DUI" Attachment, a plea of guilty may substantially comply with the "Washington State Misdemeanor DUI Sentencing Attachment," which is available on the Washington Courts' website http://www.courts.wa.gov/, under the links "Resources, Publications, and Reports" and" DUI Sentencing Grids." The following is a sample page of the automated 'Washington State Misdemeanor DUI Sentencing Attachment:' " The Pattern Forms Committee will ask the Supreme Court to add the above explanation immediately before the Washington State Misdemeanor DUI Sentencing Attachment" in CrRLJ 4.2(g).
5. CrRLJ 04.1100	**Petition for Deferred Prosecution**
6. CrRLJ 04.1110	**Petition for Deferred Prosecution of Criminal Mistreatment Charge**

Final Recommended Pattern Forms Will Be Available After the September 13th CLJ Pattern Forms Subcommittee meeting and will be posted to:

http://www.courts.wa.gov/committee/index.cfm?fa=committee.home&committee_id=150

Hard copies will be available at the DMCJA Board Meeting on September 22nd.

Judicial College Reception
Annual Contribution
(Judicial College)

WASHINGTON
COURTS

2014 Judicial College

Sent by e-mail

Date: July 16, 2013

Judge Svaren
President DMCJA
Skagit County District Court
600 S. 3rd Street
Mr. Vernon, WA 98273-3800

RE: Contribution to 2014 Judicial College

Dear President and DMCJA Board Members:

I am contacting you in my capacity as Assistant Dean on behalf of the District and Municipal Judges for the 2014 Washington Judicial College.

Traditionally both the SCJA and the DMCJA have contributed $300 to the judicial college for the opening reception and other social events offered for the participating student judges throughout the week of judicial college.

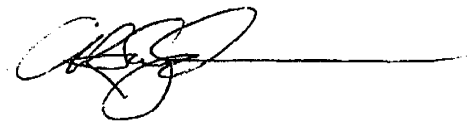
As costs have increased over the past few years, I am respectfully requesting the DMCJA consider making a $400.00 contribution again to the 2014 Judicial College.

Please contact me with any questions or concerns. Thank you for considering this request.

Professionally,

Judge Shelley Szambelan
Judicial College Assistant Dean
For DMCJA

Sincerely,



Judge Charles Snyder
Dean

Judge Janis Whitener-Moberg
Dean

Joint Judicial College Reception Proposal (SCJA & DMCJA)

Special Fund Report
Judge Svaren forwarded the last report he had from August which is included in the Board materials. Roughly, the account made .50 cents for the month. Judge Svaren will work on retrieving the special fund thumb drive from Judge La Salata's office for reporting purposes.
M/S/P to approve Special Fund Report.

ACTION

A. Judicial College Reception Proposal
Judge Jahns described the purpose of the Judicial College reception as doing outreach to new judges in a social setting. Judge Jahns surveyed the area around the main hotel and chose the Sheraton Bellevue Grille for several reasons including walking distance. The associations would have the whole restaurant and the materials include the per item cost. SCJA was interested in the idea and it is estimated there would be approximately 60 attendees.

M/S/P Contribute $2,000 from the Judicial Outreach line item for the purposes of hosting a reception in 2013 Judicial College on the condition that Superior Court matches the amount and agrees to co-host an event next year when the majority of participants will likely be from courts of limited jurisdiction.

Members discussed the benefits of having a planning meeting between the DMCJA and SCJA to discuss how information will be disseminated to attendees. Likely there would be a small talk by the President or her designee, Chair participation either by written materials or in person and other resources.

B. Pro Tem Reimbursement Requests
Members discussed the volunteer nature of the organization and the challenge of awarding pro-tem reimbursement to one member and not another. Having a large scale reimbursement policy would be fiscally irresponsible.

There is a current item for pro-tem reimbursement for the Legislative Committee because the Association was having a hard time getting volunteer's last minute to testify on bills, due to the nature of the legislative process.

M/S/P – Delete the pro-tem reimbursement line item, deny pending requests.
Judge Derr will write a letter denying the pro-tem reimbursements requests.

C. Part-Time Municipal Court Workgroup Recommendations
Members re-capped the conversation from the last meeting and discussed the individual recommendations from part-time municipal court judges' workgroup.

M/S/P to follow up with a survey to the judges in one year, possibly via survey monkey.
M/S/P to table the recommendation to draft a model contract but to pursue outreach and education pieces.
M/S/P to refer the issue of pro tem appointment when there is no presiding judge to the Legislative Committee.

The Board of Governors shall support and encourage legal and judicial associations such as the Washington State Bar Association, the Washington State Minority and Justice Commission, the Washington State Gender and Justice Commission, and the minority bar associations in their effort to provide opportunities for appointment and/or election of individuals of diversity to the judiciary.

ARTICLE IV - Dues

Section 1. Amount of Dues:

The annual membership dues of the Association for the calendar year shall be set by the Board.

Section 2. Method of Payment:

All dues shall be paid by February 15th of each year. If dues are not paid by said date, a demand for their payment shall be made to the judge.

Judges sitting in more than one court are responsible for ensuring that full dues are paid. The judge is responsible for apportionment of payments between courts in which the judge sits.

Section 3. Delinquency:

After May 1, a non-paying member shall not be a member in good standing or entitled to any rights or privileges of active membership and shall be so notified in writing by the Secretary-Treasurer.

Section 4. Application of Dues:

Application of dues is dependent upon whether the dues are paid by the judge personally or by a governmental entity. If paid by the judge, the dues are associated with the judge and if the judge is replaced mid-term, the successor judge must also pay dues. If paid by a governmental entity, then the dues are associated with the position and if a judge is replaced mid-term, the dues shall be applied to the successor judge. The judge should clarify when the payment is made if the judge is paying personally or the governmental entity is paying the dues.

ARTICLE V - Officers

Section 1. Designated:

The elective officers of the Association shall be a President, a President-Elect, a Vice President, a Secretary-Treasurer, and nine members-at-large

ARTICLE X - Committees

Section 1. Membership of Committees:

There shall be twelve (12) standing committees and other such committees as may be authorized by the Association and by the President. The standing committees shall be the Nominating Committee, Bylaws Committee, Conference Committee, Legislative Committee, Court Rules Committee, Education Committee, Long Range Planning Committee, Diversity Committee, DOL Liaison Committee, Technology Committee, Therapeutic Courts Committee, and Judicial Assistance Services Program. Committee Chairs shall submit written annual reports to the members at the Association's Annual Meeting. In selecting members for the Association's committees, the President should make every effort to assign a member to the member's first preferred committee, even if such assignment increases the committee's size.

Section 2. Committee Functions:

(a) Nominating Committee:

(1) The Nominating Committee shall serve for one year and shall consist of not less than five members with at least one member from each of the following four geographical areas: northeastern, southeastern, northwestern, and southwestern Washington, and one member-at-large.

(2) At the Board meeting in October, the President will appoint the members of the Nominating Committee. The Immediate Past-President will Chair the Nominating Committee. No more than one member of the Nominating Committee may be a member of the present Board of Governors.

(3) The Nominating Committee shall select a slate of candidates from members in good standing. It will select not more than two candidates for Vice-President, Secretary-Treasurer, and President-Elect who shall serve one year, and three Board members-at-large, who shall serve on the Board for three years. The Committee shall also select not less than two (2) candidates to serve as a representative to the Board for Judicial Administration for a four (4) year term.

(4) The Nominating Committee, after soliciting suggestions of nominees and after securing the consent of the nominees to serve, shall submit its report to the Board at its March business meeting. The names of the nominees will be published in the written notice of the Spring Conference and in the Minutes of the Board's March meeting. Nominations

for all offices except President may be made by the members, at the Spring Conference.

(b) Education Committee:

(1) The Education Committee shall develop and administer a mentor program for new judges, commissioners, and judicial officers. Efforts should be made to contact new judges, commissioners, and judicial officers immediately upon their commencement of service and to select mentor judges, commissioners, and judicial officers geographically proximate to the judge they advise.

(2) The Education Committee shall develop educational programs for the Association's Spring Conference and such other educational seminars as may become available consistent with policies of the Board for Court Education (BCE).

(3) The Education Committee shall administer the Continuing Judicial Education requirement as contained in these Bylaws.

(4) The Education Committee shall consist of twelve members. Terms of the members shall be three years, and be staggered so that four new members shall be appointed each year. All DMCJA representatives on BCE shall be ex officio members of the Education Committee.

(5) The incoming President shall appoint a member of the Committee as Chair of the Committee for a term of one year.

(c) Long Range Planning Committee:

(1) The Long Range Planning Committee shall consist of four (4) district court members and four (4) municipal court members. Part-time and full-time courts shall be represented. In making appointments, the President shall take into consideration the Associations' diversity policy. The President shall have the discretion to appoint other members with institutional memory or expertise as needed to address specific issues. The Chair of the Long Range Planning Committee shall be the current Vice-President.

(2) The Long Range Planning Committee will consider issues relating to long range planning and review processes.

(3) The Long Range Planning Committee shall conduct an annual review of such issues.

DISTRICT AND MUNICIPAL COURT JUDGES ASSOCIATION

SPECIAL FUND

POLICIES AND USE CRITERIA

The District and Municipal Court Judges Association Special Fund (Special Fund) is a fund comprised of personal contributions from members of the District and Municipal Court Judges Association (DMCJA). The fund is used for activities consistent with the DMCJA purpose as set forth in RCW 3.70.040 and DMCJA Bylaws, for which public funds may not be expended. The Special Fund shall consist of a savings and a checking account.

Special Fund expenditures shall be made only for initiatives that benefit a substantial segment of the DMCJA membership. Such expenditures may include, but are not limited to, issues of general interest to courts of limited jurisdiction, lobbying expenses, *amicus* briefs and arguments, honorariums, condolences, and gifts. The DMCJA President may approve expenditures under $100 without prior approval, but shall timely report such expenditures to the DMCJA Board of Governors (Board). Application for expenditure of Special Fund monies in excess of $100 shall be submitted to the Board for approval. Board approval of such special fund expenditures in excess of $100 shall be subject to majority vote at regularly or specially scheduled Board meetings prior to the expenditure. While the Washington State Legislature is in session, the Board Executive Committee may authorize by majority vote up to $1,000 for lobbying services that are not provided for in the general lobbying contract. Approval of all President or Board Executive committee expenditures shall be noted in Board minutes.

The Board may, as part of the DMCJA annual budget, allocate amounts from the Special Fund for specific committees or projects.

The DMCJA Special Fund shall be administered by a Special Fund Custodian (Custodian), appointed by the DMCJA President and approved by the Board. It shall be the Custodian's duty to receipt Special Fund contributions, timely deposit all receipts, and pay invoices as approved by the Board. The Custodian is authorized to expend up to $25 annually for administrative office expenses without prior Board or President approval. The Custodian shall submit monthly reports to the Board of all income, contributions, expenses, and distributions. The Custodian shall make an annual report to the membership at the Annual Meeting. The Custodian is responsible to ensure that fund monies are managed in accordance With sound principles of money management.

The Reserves Committee shall consider issues relating to association reserve funds and make recommendations to the Board of Governors annually.

(Adopted September 27, 2006)
(Amended by Board November 12, 2010)

Annual Review of DMCJA Dues

District and Municipal Court Judges' Association

WASHINGTON COURTS

President
JUDGE SARA B. DERR
Spokane County District Court
Public Safety Building
1100 W Mallon Avenue
Spokane, WA 99260-0150
(509) 477-2959

President-Elect
JUDGE DAVID A. SVAREN
Skagit County District Court
600 S 3rd Street
PO Box 340
Mount Vernon, WA 98273-0340
(360) 336-9319

Vice-President
JUDGE VERONICA ALICEA-GALVAN
Des Moines Municipal Court
21630 11th Ave S Ste C
Des Moines, WA 98198
(206) 878-4597

Secretary/Treasurer
JUDGE DAVID STEINER
King County District Court
585 112th Ave. S.E.
Bellevue, WA 98004
(206) 205-9200

Past President
JUDGE GREGORY J. TRIPP
Spokane County District Court
Public Safety Building
1100 W Mallon Avenue
Spokane, WA 99260-0150
(590) 477-2965

Board of Governors

JUDGE SANDRA L. ALLEN
Ruston/Milton Municipal Courts
(253) 759-8545

JUDGE JEFFREY J. JAHNS
Kitsap County District Court
(360) 337-7033

JUDGE JUDY RAE JASPRICA
Pierce County District Court
(253) 798-3313

JUDGE MARY C. LOGAN
Spokane Municipal Court
(509) 622-4400

JUDGE G. SCOTT MARINELLA
Columbia County District Court
(509) 382-4812

JUDGE KELLEY C. OLWELL
Yakima Municipal Court
(509) 575-3050

JUDGE REBECCA C. ROBERTSON
Federal Way Municipal Court
(253) 835-3000

COMMISSIONER PETE SMILEY
Bellingham Municipal Court
(360) 778-8150

November 19, 2012

TO: DMCJA Membership

FROM: Judge Sara B. Derr, President
Judge David A. Steiner, Secretary-Treasurer

RE: ASSOCIATION DUES

The 2013 District and Municipal Court Judges' Association (DMCJA) Dues notice is enclosed. Dues are payable by **February 15, 2013**. Please remember that, to be a member in good standing, association dues must be paid.

The DMCJA is a statutorily-created, professional Association of Washington State's limited jurisdiction court judicial officers. The Association is charged at RCW 3.70.040 with duties related to the operation and administration of limited jurisdiction courts.

The Association relies on dues and special fund assessments to carry out its statutory duties. Most activities are paid for out of Association dues. The special fund is used for expenses that cannot be paid out of government funds, but this fee will not be assessed this year.

Membership in good standing will be certified prior to the 2013 Spring Conference business meeting. As of May 1, 2013, any member who has not paid Association dues is not entitled to "any rights and privileges of active membership." (DMCJA Bylaws, Article IV, Section 3). Only those members who have paid dues will be allowed to run for Association office and/or vote. Standing will also be considered in making committee assignments and appointing representatives to outside groups.

The DMCJA encourages all its members to support the justice system by donating to the Campaign for Equal Justice/Law Fund and the Washington Judges' Foundation. An information form is enclosed for your convenience.

Enclosures:
DMCJA Dues Notice
Charitable Organizations Notice

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District and Municipal Court Judges' Association

WASHINGTON COURTS

TO: District and Municipal Court Judges, Commissioners, and Magistrates
DMCJA Associate Members

FROM: Judge Sara B. Derr, DMCJA President
Judge David A. Steiner, DMCJA Secretary-Treasurer

RE: 2013 DMCJA DUES

According to the Bylaws of the District and Municipal Court Judges' Association (DMCJA), annual dues will be assessed for members. The DMCJA Taxpayer Identification Number (TIN) is 91-1303223.

Payment of dues is prerequisite to participation in DMCJA governance and receipt of benefits associated with membership in good standing.

CHECK ONE

Judge

❑ ¾ to Full-time District or Municipal Court Judge	$750
❑ ¼ to ¾ Time District or Municipal Court Judge	$375
❑ Less than ¼ Time District or Municipal Court Judge	$187

Commissioner/Magistrate (80 percent of the judge rate, based on FTE)

❑ ¾ to Full-time District or Municipal Court Comm./Magistrate	$600
❑ ¼ to ¾ Time District or Municipal Court Comm./Magistrate	$300
❑ Less than ¼ Time District or Municipal Court Comm./Magistrate	$150

Associate Member

❑ Associate Member (retired or former member only)	$25

⇨ **MAKE CHECK PAYABLE TO "DMCJA"** ⇦

Please provide the following information to ensure proper posting:

Name _____

Court _____

Address _____

To maintain your membership in good standing, please remit this form and your payment by February 15, 2013.

Send to: Judge David Steiner
King County District Court
585 112th Ave SE
Bellevue, WA 98004

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DMCJA Dues History

	Judges			Commissioners/Magistrates			Associate
	3/4-full	1/4-3/4	<1/4	3/4-full	1/4-3/4	<1/4	Members
2013	$ 750	$ 375	$ 187	$ 600	$ 300	$ 150	$ 25
2012	$ 750	$ 375	$ 187	$ 600	$ 300	$ 150	$ 25
2011	$ 750	$ 375	$ 187	$ 600	$ 300	$ 150	$ 25
2010	$ 750	$ 375	$ 187	$ 600	$ 300	$ 150	$ 25
2009	$ 750	$ 375	$ 187	$ 600	$ 300	$ 150	$ 25
2008	$ 750	$ 375	$ 187	$ 600	$ 300	$ 150	$ 25
2007	$ 625	$ 312	$ 156	$ 500	$ 250	$ 125	$ 25
2006	$ 625	$ 312	$ 156	$ 500	$ 250	$ 125	$ 25
2005	$ 500	$ 250	$ 125	$ 400	$ 200	$ 100	$ 25
2004	$ 500	$ 250	$ 125	$ 400	$ 200	$ 100	$ 25
2003	$ 500	$ 250	$ 125	$ 400	$ 200	$ 100	$ 25
2002	$ 500	$ 175	$ 175	$ 175	$ 175	$ 175	$ 25
2001	$ 500	$ 175	$ 175	$ 175	$ 175	$ 175	$ 25
2000	$ 500	$ 175	$ 175	$ 175	$ 175	$ 175	$ 25

dmcja\dues\dues history.xlsx

Nominating Committee Members

2013-2014 District and Municipal Court Judges' Association Nominating Committee

Listserv Address: DMCJANC@listserv.courts.wa.gov

Members

Judge Sara Derr, Chair
Spokane District Court
Public Safety Bldg
PO Box 2352
Spokane WA 99210-2352
509-477-2959
sderr@spokanecounty.org

Judge Stephen Brown
Grays Harbor Co. District Court
102 W Broadway Ave, Rm 202A
Montesano WA 98563-3621
360-249-3441
sbrown@co.grays-harbor.wa.us

Judge G. Scott Marinella
Columbia District Court
535 Cameron St
Dayton, WA 99328-1279
509-382-4812
smarinella@nealey-marinella.com

Judge Glenn Phillips
Kent Municipal Court
1220 Central Ave S
Kent WA 98032-7426
253-856-5734
gphillips@kentwa.gov

Judge Linda S. Portnoy
Lake Forest Park Municipal Ct
17425 Ballinger Way NE
Lake Forest Park WA 98155-5556
206-957-2872
lportnoy@ci.lake-forest-park.wa.us

AOC Staff
Shannon Hinchcliffe
Admin. Office of the Courts
PO Box 41170
Olympia WA 98504-1170
360-705-5226
shannon.hinchcliffe@courts.wa.gov

Charges

1. The Nominating Committee shall annually select not more than two candidates for Vice-President, Secretary/Treasurer, President-Elect, and three Board member-at-large positions. The Board member-at-large positions shall be for three-year terms.

2. The report of the Nominating Committee shall be submitted to the Board at its March meeting. The names of the nominees will be published in the written notice of the Spring Conference and in the Minutes of the Board's March meeting. Nominations for all offices except President may be made by the members at the Spring Conference.

3. The Nominating Committee shall make nominations for other vacancies on the Board.

Budget

Budget: $400

Updated 9/13

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Hinchcliffe, Shannon

Subject: FW: DMCJA Committee Reports due Wednesday, September 11th for the DMCJA Board meeting (if your committee is contributing)

From: Finkle, Michael [mailto:Michael.Finkle@kingcounty.gov]
Sent: Friday, September 06, 2013 2:30 PM
To: Hinchcliffe, Shannon
Cc: Hahn, Sondra; Odegaard, Paula; 'DavidSvaren'; 'Hayes, Debra'; Finkle, Michael
Subject: RE: DMCJA Committee Reports due Wednesday, September 11th for the DMCJA Board meeting (if your committee is contributing)

Here is the report from Judge Hayes and me as co-chairs of the Therapeutic Courts Committee:

1. The SB 5797 Work Group is reviewing draft proposed legislation relating to therapeutic courts. We are coordinating with Judge Meyer and the Legislative Committee. Judges Meyer and Svaren have been provided copies of the most recent draft.
2. Several committee members were able to attend the NAMI Conference in August, and will be talking about the experience at the next TC meeting in September.
3. The Misdemeanant Corrections Association reached out to the TC this summer, and Judge Finkle spoke with them about having one or two judges give a presentation on therapeutic courts at the next MCA conference. The TC will discuss this at its September meeting.
4. The SCJA has asked the TC to designate a representative to replace Judge Pat Burns as a liaison to the SCJA's TC. We will discuss this at the TC meeting.
5. The TC plans to discuss goals for the upcoming year at its September meeting.

I will be at the conference through Tuesday afternoon, but, I will not be able to attend the business meeting that Wednesday.

Judge Michael Finkle
King County District Court's Regional Mental Health Court and Regional Veterans Court
michael.finkle@kingcounty.gov

Seattle Courthouse
516 Third Avenue, E326
Seattle, WA 98104

206-477-2121
FAX: 206-296-6213
TTY Relay: 711

Issaquah Courthouse
5415 220th Avenue SE
Issaquah, WA 98029

206-477-2121
FAX: 206-296-0591

DMCJA Legislative Committee Meeting

Friday, August 9, 2013 (9:30 a.m. – 12:00 p.m.)
Sea Tac AOC

MEETING MINUTES

Members:
Chair, Judge Samuel G. Meyer
~~Judge Scott K. Ahlf~~
Judge Stephen Brown
Judge Brett Buckley
~~Judge D. Mark Eide~~
~~Judge Douglas J. Fair~~
~~Judge Michelle Gehlsen~~
Judge Corinna Harn
Judge David Larson
Judge Susan Mahoney
~~Judge Marilyn G. Paja~~
Judge Glenn Phillips
Judge Heidi E. Smith
~~Judge David A. Steiner~~
Judge Shelley Szambelan

Guests:
Ms. Linda Baker, DMCMA
Ms. Kathy Seymour, DMCMA
Ms. Melanie Stewart

AOC Staff:
Ms. Shannon Hinchcliffe

CALL TO ORDER
Judge Meyer called the meeting to order and led introductions.

STATE OF THE LEGISLATURE
Judge Meyer gave a brief overview of the legislative session and special sessions. He thanked Judge Phillips for the DUI synopsis which was sent out to judges over the list-serv. Judge Meyer explained that the legislature produced two workgroups, the impaired driving workgroup and the therapeutic courts workgroup.

DMCJA LEGISLATIVE PROPOSALS FOR 2013

A. **Review of RCW 9.96.060 and vacate of misdemeanor when a temporary, but not permanent, DV order has been issued subsequent to the original conviction**

There was discussion about what is meant by the term "order" within the statute. Most members agreed that it would be beneficial to have clarification of the term. There was discussion of bringing this desire for clarification to an invested group and/or getting feedback from outside entities such as the Attorney General's office, criminal defense lawyers or the DV Protection Order Statute Workgroup. Judge Meyer will work on assigning this to a member that is not in attendance to work up the legal case for clarification of the term so it can be handed off to another group to advocate for. Melanie suggested talking to Senate staff attorneys and possibly Rep. Appleton to give them a heads-up on the concerns.

B. **Review of removal of a municipal court judge by an executive or legislative branch prior to expiration of his or her four-year term**

Judge Bejarano wrote a thorough proposal. Judge Larson volunteered to take on this assignment and move towards parity with the district court wind-down provision(s). It was suggested to talk to city lobbyists about the issue and AWC when it is ripe.

C. **Misdemeanor jury fees**

This issue was not approved by the Board last year due, primarily, to the amount of proposals that had been approved regarding fees. Since the issue has been discussed before, Judge Meyer will take this assignment.

D. **Discover pass fee allocations**

Judge Brown discussed the efforts he undertook last year to bring this issue to legislators attention. He wrote letters and engaged in some conversations but was not successful in gaining support. He also explained that there are three courts that are hit disproportionately with these cases. It has a big impact on those courts because 1) they are seasonal May-Sept, 2) they are labor-intensive to manually enter into the parking module and deal with the respondents who are often from out of town. It is also concerning that this precedent has been set and other efforts may follow.

Judge Brown will take this assignment. Going forward, it would be worthwhile to set up some a meeting with Judge Reyneir and possibly Judge Goelz to meet with their legislators about the issues. A meeting with the Department of Parks would also likely be worthwhile. There are two ways to work the issue, either 1) ask for a split, like other non-parking infractions or 2) request reasonable costs of administering the program or abdicate the judicial/administrative oversight back to parks who can create their own hearings body. Members suggested partnering with the cities and counties about this revenue issue and see if they would either take the lead or partner on the issue.

E. **Review the need of legislation to limit public access to CLJ misdemeanant probation files**

Judge Garrow has recommended the legislative committee to be prepared to propose a legislative exemption to these records if GR 31.1 is enacted without an exemption provision and ARLJ 9 is repealed without a companion provision for the records. Judge Mahoney will take this assignment.

F. **Allowance of reimbursement fees for interpreters when defendants have financial ability to pay**

Members mentioned that they believed there was a Division II or Division III opinion that prohibits this based on an equal protection argument. Judge Szambelan will do the research on this assignment.

G. **Modification of RCW 50.13.070 concerning subpoenas to the Department of Employment Security**

Although Judge Paja could not be present, she proposed removing judges signatures on DES subpoenas and allowing attorneys to issue them since there is no recognized oversight function (unlike garnishment for example). Judge Brown volunteered to work with Judge Paja on this issue.

Impaired Driving Specific Suggestions

H. **Amendment to RCW 3.50.815** – Judge Phillips withdrew this request.

I. **Review authority to issue search warrants for blood draws when the draw takes place outside of city limits**

Judge Philips started the legal review on this issue and Judge Meyer asked him to finish the review and bring it to the September meeting. He mentioned a 1980 court case which referenced jurisdiction which is one of the issues he will be looking into.

J. **Review of 2ESSB 5912 for clarification on reference to Chapter RCW 10.21**

Members discussed Judge Portnoy's concern for clarification and instead of a formal legislative proposal, the committee asked Judge Phillips to bring the concern to the external impaired driving workgroup to see if there is an opportunity for clarification.

INTERIM WORKGROUP REPORTS

Garnishment – This group should be considered concluded. Judge Linde was the original participant and Judge Meyer worked on some follow-up after she went to Superior Court.

Bail Workgroup – This group has not met in a long time and should be considered concluded. Judge Paja was the representative on this group.

Domestic Violence Protection Orders– This group is considered concluded with the passage of the stalking protection order legislation.

Impaired Driving Workgroup – This workgroup has re-formed as a result of 2ESSB 5912 and only one member of DMCJA has been appointed, Judge Phillips. They start meeting in a few weeks.

Therapeutic Courts – as a result of SB 5797, a collaborative workgroup was formed and there are three DMCJA members, Judge Finkle, Judge Hayes and Judge Jorgensen. Unfortunately, none are members of this committee so Judge Meyer spoke with Judge Finkle about the progress of the group. They have met a few times since their origination and Judge Clarke of SCJA and Judge Finkle are co-chairs. They have discussed a proposal for "regional" therapeutic courts which would allow courts by geographical location, regardless of court level, to work cooperatively through agreement to provide therapeutic courts. Judge Finkle relayed that they are trying to ensure local court autonomy in decision making.

The committee agreed by consensus that anything produced out of the workgroup should be shared with the Legislative Committee and the Board of Governors before it is adopted as an Association position moving into the 2014 legislative session.

Meeting Adjourned at 11:17 a.m.

Next Meeting: Friday, September 20, 1:30 p.m.-3:30 p.m. at SeaTac AOC

DMCJA Technology Committee

Tuesday, July, 25 2013 (12:00 p.m. – 1:00 p.m.)
http://aoceccl.adobeconnect.com/dmcjatechcomm/
1-888-757-2790, PIN 436042#

MEETING MINUTES

Members:
Chair, Judge Kimberly Walden
Judge Marcine Anderson
Commissioner Anthony E. Howard
Judge David Larson
Judge Heidi E. Smith
Judge Steven Rosen
Judge Tracy Staab
Judge Lorrie Towers

Guests:

AOC Staff:
Ms. Shannon Hinchcliffe
Ms. Vicky Marin
Mr. Brian Stoll

Judge Walden called the meeting to order at 12:04 p.m.

1. **Welcome and Introductions**

2. **June 11, 2013 Meeting Minutes** – approved by consensus

3. **Committee Overview**

   a. **Committee Charges**

Judge Walden had members take a look at the committee charges and requested that a copy be sent out to everyone.

   b. **DMCJA Website Status**

Judge Walden gave some history of the DMCJA website and the reason why it is not currently operating. Essentially, it was time to re-up the web hosting contract and the website and functionality of the site was out of date. AOC had been working on subsites for other bodies such as Gender and Justice Commission and Minority and Justice Commission and is able to offer a moderately customized subsite for DMCJA. Web services is currently working on the bones of the subsite and the Operating Level Agreement (OLA) which spells out the terms and expectations of the site along with roles and responsibilities of the Association and AOC staff in maintaining the site.

Judge Larson had asked about the traffic to the website and questions about who the audience is for the website. Judge Walden responded that she had looked at the analytics and while it is hard to tell whether judges themselves were accessing the site, she was able to see that it was being viewed externally/internationally and had been hacked one time. Also, in light of public access and wanting not to repeat information which is accessible via Inside Courts, the proposed version will contain most of the same level of content that the old website had. Judge Larson also suggested that we try to contact the domain host to re-direct users to the new courts subsite if they try to access dmcja.org. Brian said he could look into that. This topic will

be put on the August 8th meeting agenda and hopefully some templates can be available along with a draft operating level agreement.

c. IT Governance Overview

Because of eCCL/phone difficulties, a combination of Vicky, Judge Walden and Judge Rosen gave an overview of the IT Governance process for those who are not familiar.

4. IT Governance Requests – Endorsement Action on #190 Access the New Abstract of Driving Record of JABS

Currently, DOL has made an ADR available by their computer system IHIPS. A few of the changes reflected in the new form include steps for defendant reinstatement. Judge Docter requested that this version of the ADR be made available in JABS. Members had a lengthy discussion about the relative value of accessing and using the form in the court. Vicky explained that there is currently and ISD information exchange project that includes some aspects of this within the data exchange but, including the new DOL data elements are outside the scope of the project.

There was also discussion about how it would be accessed through JABS; could a link be included in a tab, is it the paper image that would be accessed or the data elements which could look a different way in JABS. Members concluded after the discussion that they would like to go back to their court and access the form through IHIPS, work with it and come back and talk about it at the August 8th meeting.

5. Committee Member Updates

a. JISC – Judge Rosen

Judge Rosen explained that partially as a result of the DMCJA comments on the proposed Data Dissemination Committee Policy, the JISC decided to populate a workgroup including Judge Heller, Judge Rosen and a court administrator to review the policy and make recommendations. Vicky also discussed this and explained that it is currently scheduled to come back to the JISC in September.

b. DDC – Judge Rosen – *see comments above*

c. DMSC – Judge Larson sent a link to the DMSC page: http://www.courts.wa.gov/committee/?fa=committee.home&committee_id=142 The committee hasn't met since 2012 but is gearing up to start work again.

6. 2013-2014 Committee Meeting Schedule

Judge Walden reviewed the schedule and explained that the November and December dates will be set in October. Also, based on the response, there will not be a fall conference meeting.

7. Other Business

- Judge Walden asked the committee members to think of whether or not they want to pursue a conference education session proposal and to bring back ideas to the next meeting.
- Judge Walden also talked about the idea to coordinate with the DMCMA Technology Committee Members at least quarterly.

ADJOURN AT 1:06 p.m.

WASHINGTON COURTS

DMCJA Rules Committee

Wednesday, July 24, 2013 (12:00 p.m. – 1:00 p.m.)
Via Teleconference

MEETING MINUTES

Members:
Chair, Judge Garrow
~~Vice Chair, Judge Dacca~~
~~Judge Bender~~
Judge S. Buzzard
Judge Grant
~~Judge Heller~~
Judge Portnoy
Judge Robertson
~~Judge Steiner~~
Judge Szambelan
~~Ms. Linda Hagert, DMCMA Liaison~~

AOC Staff:
Ms. J Krebs
Ms. Shannon Hinchcliffe

Judge Garrow called the meeting to order at 12:04 p.m.

The Committee discussed the following items:

1. **June 2013 meeting minutes**

The June 2013 Rules Committee meeting minutes were approved as presented.

2. **Discussion related to proposed amendments to SCJA search warrant and probable cause determinations and WAPA comments**

The SCJA has proposed amendments to the Superior Court rules related to search warrant and probable cause determinations, consideration of which has been postponed to September 30, 2013. The Rules Subcommittee working on this issue was unable to find language that was acceptable to the Committee as well as to Judge Cozza. DMCJA President Svaren will discuss the issue with SCJA President Snyder. If no agreement is reached, Judge Garrow would like to be prepared to go forward with a proposal to amend the CLJ rules related to search warrants and probable cause determinations.

The Washington Association of Prosecuting Attorneys (WAPA) has also proposed amendments to the search warrant rules. The Committee reviewed the proposal and decided not to comment on it.

3. **Draft comment letter to DMCJA Board regarding third revision of GR 31.1**

Judge Garrow drafted a letter to the DMCJA Board regarding proposed amendments to GR 31.1 and circulated it to the Rules Committee for comment. She also contacted the Office of

Public Defense and members of the defense bar to see if they had any comments. The Committee approved the letter to be sent to the DMCJA Board.

4. **Proposed amendments to GR 15 by the JISC Data Dissemination Committee**

The JISC Data Dissemination Committee has proposed amendments to GR 15. Judge Garrow agreed to work on this issue, and will see if Judge Staab will also. A report will need to be brought to the Committee for the August meeting.

5. **Proposed amendments to the Code of Judicial Conduct, proposed by the Commission on Judicial Conduct and Proposed amendments to Code of Judicial Conduct 2.2 Comment 4, proposed by the Access to Justice Board**

Two separate groups are proposing amendments to the Code of Judicial Conduct: the Commission on Judicial Conduct has proposed several changes and the Access to Justice Board is proposing a change to Comment 4 to CJC 2.2. Judge Bender, Judge Dacca and Judge Grant agreed to review the proposals and present a report to the Committee for the August meeting.

6. **Discussion regarding possible court rule regarding uniform court security standards, requested by the DMCJA Board**

Legislation regarding court security that was proposed by the DMCJA did not pass out of the legislative session, so the DMCJA would like the Rules Committee to consider the possibility of a court rule to address court security. Judge Robertson and Judge Szambelan agreed to look at this issue.

7. **Other Business & Next Meeting Date**

The next Rules Committee meeting will be held on Thursday, August 22, 2013 at noon via conference call.

There being no further business, the meeting was adjourned.

WASHINGTON COURTS

DMCJA BOARD MEETING
SUNDAY, SEPTEMBER 22, 2013
9:00 A.M. – 12:00 P.M.
2013 ANNUAL JUDICIAL CONFERENCE
WENATCHEE, WA

SUPPLEMENTAL AGENDA	TAB
Call to Order	
Minutes – August 9, 2013	
Treasurer's Report – *Judge Marinella* 1. Recommendation regarding pro-rata dues.	
Special Fund Report – *Judge David Steiner*	
Action A. Rules Committee Items – *Judge Garrow* 1. *SCJA Electronic Warrant Rule Proposal CrR 2.3 and CrR 3.2.1* 2. *ER 1101(c)(4) – Protection Order Rules* 3. *Proposed GR 15 request sought by Data Dissemination Committee before proposal to JISC* 4. *CJC 2.2 Comment 4* 5. *Proposed Changes to CJC Rules* B. **Presiding Judges Conference Budget Request – *Ms. Judith Anderson***	X
Discussion **A. Review of DUI Sentencing Grid, etc pattern forms – *possible action*** B. Judicial College Reception Annual Contribution (Judicial College) C. Joint Judicial College Reception Proposal (SCJA & DMCJA) D. Annual Review of DMCJA Dues – *Judge Svaren* E. Nominating Committee Members – *Judge Derr* F. System Improvement Committee – *Judge Svaren*	X
Liaison Reports DMCMA MCA SCJA WSBA WSAJ AOC BJA	

Presiding Judges Conference Budget Request

Presiding Judges' (PJ) Education Committee
2014 Presiding Judge and Administrator Program

History of the Presiding Judge and Administrator Program:

The Board for Judicial Administration (BJA) sponsored and budgeted for a yearly Presiding Judge and Administrator Program from 2001-2008. The three-day program focused on the specific educational needs of a presiding judge and administrator team. All travel, per diem, and housing costs were paid for. An incidental fee was requested to cover meal overages and coffee breaks.

In 2009-2010 the state of Washington and the courts faced a budget crisis. The BJA reviewed the services they were providing and prioritized what they could continue to support via the Administrative Office of the Courts (AOC) budget. The Presiding Judges' Program budget was eliminated and the Presiding Judges' Education Committee was moved under the Board for Court Education (BCE) in order to provide educational support in planning alternative modalities of education.

Over the years the BCE budgets had also been reduced and had no reserved funding to continuing the Presiding Judge and Administrator Program. However, the BCE did provide minimal funding to the Presiding Judges' Education Committee to continue meeting and develop a plan of education.

Presiding Judge and Administrator Education

The Presiding Judges' Education Committee adopted the current National Association for Court Management (NACM) which is a comprehensive curriculum that defines the core competencies for presiding and supervising judges, court managers, and court administrative staff. The core competencies are:

1. Purposes and Responsibilities of the Courts.
2. Caseflow Management.
3. Leadership.
4. Visioning and Strategic Planning.
5. Essential Components.
6. Court Community Communication.
7. Resources Budget and Finance.
8. Human Resource Management.
9. Education, Training, and Development.
10. Information Technology Management.

When funding was lost the Presiding Judges' Education Committee and the AOC Education Services began looking at funding alternatives and other modalities to continue to provide specialized education to the presiding judges and administrators.

The Presiding Judges' Education Committee approached the Superior Court Judges' Association (SCJA), District and Municipal Court Judges' Association (DMCJA), the Association of Washington Superior Court Administrators (AWSCA), and the District and Municipal Court Management Association (DMCMA) about the possibility of either incorporating a specific education program for presiding judge and administrator within their spring programs, or by adding a program at the beginning or end of their programs. One of the ongoing challenges was that the education developed focuses on the PJ and administrator team, and often these groups did not meet together but had separate conference. The Annual Conference added a presiding judge's information portion prior to the start of the conference as well, but attendance was low and again, the administrators do not attend the Annual Conference. Last year, the DMCJA Education Committee invited administrators to attend the PJ program but at their own expense. A few administrators were able to attend, but again, the program was only 90 minutes in length and did not allow the PJ and administrator team to work together and develop strategies to take back to their courts.

Due to the lack of funding available, the Presiding Judges' Education Committee applied for a State Justice Institute (SJI) grant to develop a blended learning model consisting of webinars and live programming. In 2010 the Education Committee developed webinars, self-paced online programming, and live programming via the grant. From 2011-2013 the PJ Education Committee has continued to develop webinars and programs within the various association conferences via a continued small budget allotment from the BCE.

The webinars and small face-to-face programming, though well received, do not reach the majority of presiding judges, nor their administrators. There is a continued resistance to the webinar format and conducting small live programming during the Spring programs were not sufficient to meet the need for more in-depth education, especially for new presiding judge and administrator teams.

In 2013 the Presiding Judge's Education Committee developed and disseminated a survey to all the presiding judges in the state as well as their administrators, asking about the need for a PJ and Administrator Program and if they would attend even if their lodging, meals, and transportation were not reimbursed. There was overwhelming support for reinstating a Presiding Judge and Administrator Program, including incurring more costs to their budgets for transportation, housing, and per diem for the team. The Education Committee began brainstorming ideas on finding funding for a 2014 Presiding Judge and Administrator Program.

The first ideas revolved around charging a registration fee that would be large enough to cover the costs of the hotel meeting space, audio-visual needs, printing, meals, and any other costs associated with the running of a program. The portion of the small BCE funding would also be dedicated to the conference in order to reduce the registration fee.

The Committee determined that they would like to keep the registration fee to a minimum since the courts would be paying for the attendees housing, transportation, and meals, and felt asking the various associations for funding might be feasible. Judge Tom Larkin, chair of the Presiding Judge's Education Committee drafted letters to the SCJA, DMCJA, and the DMCMA requesting funding for the 2014 program. The AWSCA were contacted in person about their willingness to provide funding if possible. They are a very small organization and do not have the resources, however, they are considering and willing to set aside as much as possible toward this program.

Judge Larkin also made a request to the BCE to increase their allotment in their FY15 budget cycle to help defray additional costs.

The Education Committee has begun working on the content of the program that continues to follow the NACM core competencies and curriculum. They have discussed ways to keep the costs down for the attendees and the budget. They are proposing a two-day program that starts on Sunday afternoon and concludes on Tuesday afternoon. Though the programming has not been confirmed, the following tentative schema will provide you an idea of the programming.

The conference dates will be November 16-18, 2014. The conference theme will be Court Leadership. The goal of the program is to build stronger leadership teams, identify the role of the presiding judge and the administrator and give participants tools to strengthen their leadership team.

Presiding Judge and Administrator Program: Court Leadership
Tentative Agenda
November 16-18, 2014
Location: TBD

Sunday, November 16	Monday, November 17	Tuesday, November 18
	8:30-12:00 GR 29 and You • GR 29 problem-solving issues • Dealing with difficult people • Administrator's perspectives	8:30 -12:00 Presiding Judge and Administrator open forum * • Issues and Concerns • Questions and Answers
11:00 – 1:00 Registration	Hosted Lunch (Registration fee covers)	Adjourned
1:15-5:00 Court Leadership • GR 29 • Media • Judicial Independence • Communications with council and judges • Teamwork	1:00 – 4:30 Records Management • Sealing • Expungement • Vacating • GR 31.1 Implementation • Juvenile non-conviction data • Public disclosure/disclosure requests	
No Host Social Hosted Dinner (Registration Fee covers)		

Note:* The intent of the Tuesday program is to request short video or written questions from the participants about any of the program topics. Faculty would prepare answers and run the forum. There is also the possibility that the Tuesday program would be cancelled allowing the presiding judge and administrator to travel home on Monday evening.

Frequently Asked Questions

Why the BCE Can't/Won't Fund This?
The BCE supports this program as much as it can with the limited funding they have. The BCE has provided the PJ Education Committee a small budget for their planning purposes and to pay for any webinar or face-to-face faculty costs.

Why did the BJA stop funding this program?
During the state's fiscal crisis, the BJA reviewed all the programming they funded and prioritized essential services. Funding the Presiding Judges' Program fell below the projected funding level. They transferred the Presiding Judges' Education Committee to the BCE but did not allot any funding to continue the programs. The intent was to continue to support PJ education via the professional educators.

Are other organizations being requested to assist in the funding of this program?
Yes, the Superior Court Judges' Association, the District and Municipal Court Judge's Association, and the District and Municipal Court Management Association were all sent letters requesting funding by the chair of the Presiding Judges' Education Committee. The Association of Washington Superior Court Administrators were approached informally due to their size and limited funding, however, they have agreed to allot unused funding they may have in 2014 to the program.

Has the Committee considered holding this program in conjunction with other conferences already taking place to keep costs down?
Yes. Over the past several years they have developed a blended learning model for the presiding judges and administrators that consist of two webinars followed up with a face-to-face program at the various conferences. They have also conducted programs for presiding judges prior to the start of the annual conferences. This is problematic in that the courses are often placed before the conferences start, or in the late afternoon. It is also problematic when the education is developed for the presiding judge and administrator and they are not at the same location. Even when there are joint conferences and presiding judge/administrator programming is held, it does not reach the majority of the presiding judges and their administrators. Administrators would have to travel, on their court's budget to attend a program at the Annual Conference or at the judge's conference.

Why can't we cancel the Annual Conference and dedicate the funding to a presiding judge program?
The Annual Conference funding is mandated by the legislature RCW 2.56.060 and cannot be used for other purposes. These funds are not governed by Board for Court Education standards and limitations.

How often will there be a Presiding Judge and Administrator Program?
The PJ Education Committee would like to see a program every two to three years. In between, they would resume the blended learning model of webinars and live-programming at conferences where possible.

Will the associations be responsible for funding future conferences?
The BCE and the Presiding Judges' Education Committee would like to secure permanent funding for this program via legislative action, BJA action, association grants, or funding it entirely via a large registration fee. There is a possibility that the associations would again be asked for funding in the future.

DMCJA Questions

Is there a budget in place?
It is anticipated it will cost approximately $25,000 to conduct this conference. However, as the educational content is further developed and faculty identified the total cost may increase. The intent is to utilize the BCE funds available, a small registration fee and grants from the various associations to pay for faculty costs, meeting room costs, audio-visual costs, printing costs for the program.

Is there a plan for a refund should the money not all be used?
There is no set plan in place regarding refunds and won't be until funding is secured. It is the intent of the PJ Committee to have the funds placed in the AOC judicial checking account and to keep the number of checks written to a minimum (hotel costs (hosted meals, breaks, audio visual costs, meeting room costs), faculty costs (honorarium, travel, per diem) and printing costs. There will be no reimbursement to any attendee. It is anticipated that the AOC will keep a record of how much each association funds and reimburse accordingly, keeping track of each account. If funds remain, a check can be written refunding the money. The PJ Committee would review and approve the amounts taken from each group.

Will they be providing reimbursement to participants?
No money collected would be used to reimburse participants.

I wonder if, because of the cost of a separate conference, we can just add a choice session to the spring and fall conference every year which deals with PJ issues.
Over the past two years the PJ committee has developed a blended learning model of two webinars and a face-to-face meeting during the various conferences. They have also developed programming during the annual conference. The continual dilemma is that often times the presiding judge is pulled away during the webinars and presiding judge and administrators are not often together during the spring conference.

Review of DUI Sentencing Grid and Pattern Forms

WASHINGTON
COURTS

September 17, 2013

TO: District and Municipal Court Judges' Association Board

FROM: Merrie Gough, AOC Sr. Legal Analyst

RE: Request for Review and Comment on Proposed Amendments to the CrRLJ 4.2(g) and (i) forms

The Courts of Limited Jurisdiction Forms Subcommittee has prepared draft amendments to the CrRLJ 4.2(g) and (i) court forms. Judge Stephen Holman, subcommittee chair, and Judge Tracy Staab asked me to forward the draft changes to you for review and comment. Please forward any comments to me at merrie.gough@courts.wa.gov.

The requested deadline for comments, the online location of the forms, and the detailed descriptions of the changes follow:

For the benefit of the courts, Washington State Pattern Forms Committee wants to publish the DUI Sentencing Grid and the Washington State Misdemeanor DUI Sentencing Attachment before September 28, 2013. To meet this goal, the CLJ Forms Subcommittee requests your comments on those two documents by 5:00 p.m. Tuesday, September 24, 2013.

The Washington State Pattern Forms Committee wants to forward the CrRLJ 4.2(g) and (i) changes to the Supreme Court rules committee for its October 21, 2013, meeting. To meet that goal, the CLJ Forms Subcommittee requests your comments no later than 5:00 p.m. Wednesday, October 2, 2013.

The documents to be reviewed are provided with this memorandum. You may also view and download the draft documents and Laws of 2013, 2d Spec. Sess., Ch. 35 (E2SSB 5912), under "Courts of Limited Jurisdiction Forms" at: http://www.courts.wa.gov/committee/index.cfm?fa=committee.home&committee_id=150:

Following is a list of the forms and proposed changes based upon approved recommended changes and Laws of 2013, 2d Spec. Sess., Ch. 35.

Laws of 2013, 2d Spec. Sess., Ch. 35 (E2SSB 5912) Crimes – DUI, effective 09/28/12 – except for sections 27, 28, and 30 through 32,which become effective 01/01/14

1.	**DUI Sentencing Grid** Below the document title, change the sentence in parentheses as follows: **"(RCW 46.61.5055 as amended ~~through~~ by statutes effective ~~through~~September 28, 2013, and ~~August 1, 2012~~ January 1, 2014)"** **DUI Sentencing Grid, page 1, BAC Result < .15 or No Test Result:** To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(6): • in the left column, add a new row below the row for "Mandatory Minimum/Maximum Jail Time" and above "EHM/Jail Alternative," and add entries for the three rows, as follows: Row title: "If Passenger Under 16 Mandatory Jail" No Prior Offense: "Additional 24 hours" One Prior Offense: "Additional 5 days" Two or Three Prior Offenses: "Additional 10 days" • in the row titled "If Passenger under 16, II Device," Add "Additional" before "6 Months" in all of the columns: No Prior Offense: "Additional 6 Months" One Prior Offense: "Additional 6 Months" Two or Three Prior Offenses: "Additional 6 Months" To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(1) – (3): • Below the row heading "If Passenger Under 16, II Device" and above "Alcohol/Drug Ed./Victim Impact or Treatment," add a new row: Row title: "24/7 Sobriety Program[2]" No Prior Offense: "N/A" One Prior Offense: "As Ordered" Two or Three Prior Offenses: "Mandatory" • Below the row heading "Alcohol/Drug Ed./Victim Impact or Treatment," add a new row:

	Row title: "Expanded alcohol Assessment/treatment" No Prior Offense: "N/A" One Prior Offense: "As Ordered" Two or Three Prior Offenses: "Mandatory/treatment if appropriate" Below the table, delete "**Driver's License minimum suspension/revocation. DOL may impose more." **DUI Sentencing Grid, page 1, BAC Result ≥ .15 or Test Refusal:** To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(1)(b): • In the first row "Mandatory Minimum/Maximum Jail time," and the column for "No Prior Offense," change "2 Consecutive/364 Days" to "48 Consecutive hours/364 Days." To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(6): • in the left column, add a new row below the row for "Mandatory Minimum/Maximum Jail Time" and above "EHM/Jail Alternative," and add entries for the three rows, as follows: Row title: "If Passenger Under 16 Mandatory Jail" No Prior Offense: "Additional 24 hours" One Prior Offense: "Additional 5 days" Two or Three Prior Offenses: "Additional 10 days" • in the row titled "If Passenger under 16, II Device," Add "Additional" before "6 Months" in all of the columns: No Prior Offense: "Additional 6 Months" One Prior Offense: "Additional 6 Months" Two or Three Prior Offenses: "Additional 6 Months" To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(1) – (3): • below the row heading "If Passenger Under 16, II Device" and above "Alcohol/Drug Ed./Victim Impact or Treatment," add a new row:

	Row title: "24/7 Sobriety Program[2]" No Prior Offense: "N/A" One Prior Offense: "As Ordered" Two or Three Prior Offenses: "Mandatory" • below the row heading "Alcohol/Drug Ed./Victim Impact or Treatment," add a new row: Row title: "Expanded alcohol Assessment/treatment" No Prior Offense: "N/A" One Prior Offense: "As Ordered" Two or Three Prior Offenses: "Mandatory/treatment if appropriate" Below the table, add "*See Court and Department of Licensing (DOL) Ignition Interlock Requirements, page 5." Page 2, **change the title of the table relating to Department of Licensing required ignition interlock requirements, as follows**: "**Department of Licensing Required Ignition Interlock Device Requirements, RCW 46.20.720(3), (4) as amended ~~through August 1, 2012~~ with statutes effective through ~~Sept. 28, 2013~~January 1, 2014.***" To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §19, amending RCW 46.20.720(4), change the text below the heading as follows: "Restriction effective, until IID vendor certifies to DOL that none of the following occurred within four months prior to date of release: any attempt to start the vehicle with a BAC of .04 or more unless another test performed within 10 minutes registers a breath alcohol concentration lower that 0.04 and the digital image confirms the same person provided both samples; failure to take ~~or pass~~ any ~~required retest~~ random test unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time of the missed test; failure to pass any random retest with a breath alcohol concentration of 0.025 or lower unless another test performed within 10 minutes registers a

breath alcohol concentration lower than 0.025, and the digital image confirms the same person provided both samples; failure of the person to appear at the IID vendor when required."

Page 2, **Prior Offenses:**

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(14), add the following new prior offense:

- "**Deferred Sentences for the following**: *If originally charged with DUI or Phys. Cont. or an equivalent local ordinance, or Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522);* but deferred sentence was imposed for (1) Neg. Driving 1st (RCW 46.61.5249), (2) Reckless Driving (RCW 46.61.500), (3) Reckless Endangerment (RCW 9A.36.050), (4) Equiv. out-of-state or local ordinance for the above offenses."

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(1)-(3), change the section titled "Mandatory Jail and Electronic Home Monitoring (EHM)" as follows:

"[2]**Mandatory Jail ~~and~~, Electronic Home Monitoring (EHM), and 24/7 Sobriety Program**: If there are prior offenses with an arrest date within seven years before or after the arrest date of the current offense, the mandatory jail shall be served by imprisonment for the minimum statutory term and may not be suspended ~~or deferred~~ unless the court finds that imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. The mandatory statutory term may not be converted to EHM. Where there are no prior offenses within seven years, the court may grant EHM instead of mandatory minimum jail. If there are prior offenses, the mandatory EHM may not be suspended ~~or deferred~~ unless the court finds that imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Instead of mandatory EHM, the court may order additional jail time. (Effective January 1, 2014) If available: Where there is one prior offense, instead of mandatory EHM or additional jail time, the court may order 6-month 24/7 sobriety program

monitoring. Where there are two or three prior offenses, the court shall order 6-month 24/7 sobriety program monitoring. The 24/7 sobriety program is a 24 hour and 7 days a week sobriety program which requires tests of the defendant's blood, breath, urine or other bodily substances to find out if there is alcohol, marijuana, or any controlled substance in his/her body. The defendant will be required to pay the fees and costs for the program. RCW 46.61.5055(1), (2), (3). Laws of 2013, 2d Spec. Sess., ch. 35, §26."

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(11)(a), change the section titled "Mandatory Conditions of Probation for any Suspended Jail Time" as follows:

"**Mandatory Conditions of Probation for any Suspended Jail Time**: The individual is not to:
(i) drive a motor vehicle without a valid license to drive and proof of liability insurance or other financial responsibility (SR 22), (ii) drive or be in physical control of a vehicle while having an alcohol concentration of .08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher within two hours after driving, (iii) refuse to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of a law enforcement-officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drug. Except for ignition interlock driver's license and device or alcohol monitoring requirements under RCW 46.61.5055(5), violation of **any** mandatory condition, requires a minimum penalty of 30 days' confinement, which may not be suspended or deferred, and an additional 30-day license suspension. RCW 46.61.5055(11). Courts are required to report violations of mandatory conditions requiring confinement or license suspension to DOL. RCW 46.61.5055."

Under Laws of 2013, 2d Spec. Sess., Ch. 35, §13, the interpretation of fines under RCW 46.61.5055(6) remains unsettled. However, it is clear that ignition interlock device and jail time is additional. Therefore, the section "If Passenger Under 16," is revised to clarify that interpretation of RCW 46.61.5055(6) regarding fines is unsettled:

	"[4] **If Passenger Under 16**: The interpretation of RCW 46.61.5055(6), regarding the fines, is unsettled. Some interpret it as setting a new mandatory minimum and maximum fine, replacing a fine in RCW 46.61.5055(1) – (3). Some interpret it as setting a fine that is in addition to one of those fines. Apply applicable assessments." Page 5, to implement Laws of 2013, 2d Spec. Sess., Ch. 35, §19, amending RCW 46.20.720(3), under the heading "DOL Imposed Ignition Interlock (II) Device – RCW 46.20.720, change the sentence: "However, when the employer's vehicle is assigned exclusively to the restricted driver and used solely for commuting to and from employment, the employer exemption does not apply." As follows: "However, the employer exemption does not apply: A. (First conviction): for the first 30 days after the ignition interlock device has been installed. B. (Second or subsequent conviction): for the first 365 days after the ignition interlock device has been installed. C. ~~w~~When the employer's vehicle is assigned exclusively to the restricted driver and used solely for commuting to and from employment~~, the employer exemption does not apply~~."
2. LiveCycle PDF	**Washington State Misdemeanor DUI Sentencing Attachment** This updated automated PDF will replace the current version on the courts' DUI Sentencing Grid page: http://www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.displayContent&theFile=content/duigrid/index Changes: To facilitate the clerk's accounting data entry, accounting codes are added to some of the "Fines and Fees:" "Alcohol Violators Fee (RCW 46.61.5054) DUC" "CJF Penalty Assessment (RCW 46.64.055) TPD" "Criminal Conviction Fee (RCW 3.62.085) CFD"

	To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055: • If there is a passenger under 16, the application automatically adds the additional jail time required for no priors, one prior, or two or three priors. • If there is a passenger under 16 in the vehicle, the warning about interpretation of RCW 46.61.5055(6) was changed as follows: "The interpretation of RCW 46.61.5055(6) is unsettled. If the Court interprets it as setting a new mandatory minimum and maximum fine, thus replacing the fines in RCW 46.61.5055(1)-(3), then adjust the fine set forth in the Mand.Min.Fine box accordingly. If the Court interprets it as a fine that is in addition to the mandatory minimum fine, then add the additional fine to the Passenger field. In either case, the applicable assessments will automatically calculate. Regardless, the finding of a passenger under the age of 16 increases the mandatory minimum jail time as reflected in this form." • If there is one prior, the application changes the section below "Sentence" as follows: "The Court may impose four [or six] additional days in jail or a six-month period of 24/7 sobriety program monitoring in lieu of 60 [or 90] Days EHM." • If there is one prior, the application adds the following as the first sentence under "Mandatory Conditions of Probation:" "The Court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment." • If there is two are three priors, the application adds the following two sentences to the beginning of "Mandatory Conditions of Probation:" "If available, the Defendant shall complete a six-month period of 24/7 sobriety program monitoring. The Court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment."

	• For all DUI or Phys. Control convictions, the application updates the conditions of probation application in all cases, as follows: **"MANDATORY CONDITIONS OF PROBATION (DUI/Phys. Control Convictions only)** "...The individual is not to: (i) drive a motor vehicle without a valid license and proof of liability insurance or other financial responsibility (SR 22); (ii) drive or be in physical control of a vehicle while having an alcohol concentration of .08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher within two hours after driving; (iii) refuse to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of law enforcement who has reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drug. Except for ignition interlock device or alcohol monitoring requirements under RCW 46.61.5055(5), violation of any mandatory condition, requires a minimum penalty of 30 days' confinement, which may not be suspended or deferred, and an additional 30-day license suspension. RCW 46.61.5055(11). Courts are required to report violations of mandatory conditions requiring confinement or license suspension to DOL. RCW 46.61.5055."
3. CrRLJ 4.2(g)	**Statement of Defendant on Plea of Guilty** Change paragraph 6(i) as follows: "[ ](i) If this crime involves patronizing a prostitute, -a condition of my sentence will be that I not be subsequently arrested for patronizing a prostitute or commercial sexual abuse of a minor. The court will impose crime-related geographical restrictions on me, unless the court finds they are not feasible ~~The court will impose crime-related geographic restrictions on me if feasible~~. If this is my first offense, the court will order me to attend a program designed to educate me about the negative costs of prostitution." Renumber the remaining sub-sections of paragraph 6.

	In paragraph 6(p) (relating to DUI/Physical control), change the first check box option as follows: "[ ] the penalties described in the "DUI" Attachment or the "Washington State Misdemeanor DUI Sentencing Attachment." To implement Laws of 2013, 2d Spec. Sess., Ch. 35, and to clarify the penalties, after "*OR*," delete the second check box option and replace it with: "[ ] these penalties: Mandatory minimum sentence: • _____ days in jail. • _____days of electronic home monitoring. • $ _____ monetary penalty. • Effective January 1, 2014, if I have 2 or 3 prior offenses, a 6-month period of 24/7 sobriety program monitoring, if available. • Comply with the rules and requirements of the Department of Licensing regarding the installation and use of a functioning ignition interlock device on all motor vehicles that I operate. • The Department of Licensing will suspend or revoke my driving privilege for the period of time stated in paragraph 6(k). If I have prior offense(s): • the judge may order me to submit to an expanded alcohol assessment and comply with treatment deemed appropriate by that assessment. • instead of mandatory electronic home monitoring, the judge may order me to serve additional jail time. Effective January 1, 2014, if I have 1 prior offense, instead of additional jail time, the judge may order a 6-month period of 24/7 sobriety program monitory. Instead of the minimum jail term, the judge may order me to serve _____ days in electronic home monitoring. If the judge orders me to refrain from consuming any alcohol, the judge may order me to submit to alcohol monitoring. I shall be required to pay for the monitoring unless the judge specifies that the cost will be paid with funds from another source.

	The judge may waive electronic home monitoring or order me to obtain an alcohol monitoring device with wireless reporting technology if that device is reasonably available ~~if~~If I do not have a dwelling, telephone service, or any other necessity to operate electronic home monitoring. The judge may waive electronic home monitoring~~,~~ if I live out of state, or if the judge determines I would violate the terms of electronic home monitoring. If the judge waives ~~, the judge may waive~~ electronic home monitoring ~~and impose an~~he or she will impose an alternative sentence which may include use of an ignition interlock device, additional jail time, work crew, ~~or~~ work camp, or, beginning January 1, 2014, 24/7 sobriety program monitoring. I understand that the 24/7 sobriety program is a 24 hour and 7 days a week sobriety program which requires tests of my blood, breath, urine or other bodily substances to find out if I have alcohol, marijuana, or any controlled substance in my body. I will be required to pay the fees and costs for the program." At the end of paragraph 6(q) insert: "....or the "Washington State Misdemeanor DUI Sentencing Attachment. At the end of paragraph 6(r) insert: "....or the "Washington State Misdemeanor DUI Sentencing Attachment.
4. CrRLJ 4.2(g) DUI	**"DUI" Attachment** After "Court – DUI Sentencing Grid," change the sentence in parentheses as follows: **"(RCW 46.61.5055 as amended ~~through~~ by statutes effective ~~through~~September 28, 2013, and ~~August 1, 2012~~ January 1, 2014)"** **DUI Sentencing Grid, page 1, BAC Result < .15 or No Test Result:**

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(6):

- in the left column, add a new row below the row for "Mandatory Minimum/Maximum Jail Time" and above "EHM/Jail Alternative," and add entries for the three rows, as follows:

Row title:	"If Passenger Under 16 Mandatory Jail"
No Prior Offense:	"Additional 24 hours"
One Prior Offense:	"Additional 5 days"
Two or Three Prior Offenses:	"Additional 10 days"

- in the row titled "If Passenger under 16, II Device," Add "Additional" before "6 Months" in all of the columns:

No Prior Offense:	"Additional 6 Months"
One Prior Offense:	"Additional 6 Months"
Two or Three Prior Offenses:	"Additional 6 Months"

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(1) – (3):

- Below the row heading "If Passenger Under 16, II Device" and above "Alcohol/Drug Ed./Victim Impact or Treatment," add a new row:

Row title:	"24/7 Sobriety Program[2]"
No Prior Offense:	"N/A"
One Prior Offense:	"As Ordered"
Two or Three Prior Offenses:	"Mandatory"

- Below the row heading "Alcohol/Drug Ed./Victim Impact or Treatment," add a new row:

Row title:	"Expanded alcohol Assessment/treatment"
No Prior Offense:	"N/A"
One Prior Offense:	"As Ordered"
Two or Three Prior Offenses:	"Mandatory/treatment if appropriate"

Below the table, delete "**Driver's License minimum suspension/revocation. DOL may impose more."

DUI Sentencing Grid, page 1, BAC Result ≥ .15 or Test Refusal:

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(1)(b):

- In the first row "Mandatory Minimum/Maximum Jail time," and the column for "No Prior Offense," change "2 Consecutive/364 Days" to "48 Consecutive hours/364 Days."

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(6):

- in the left column, add a new row below the row for "Mandatory Minimum/Maximum Jail Time" and above "EHM/Jail Alternative," and add entries for the three rows, as follows:

Row title:	"If Passenger Under 16 Mandatory Jail"
No Prior Offense:	"Additional 24 hours"
One Prior Offense:	"Additional 5 days"
Two or Three Prior Offenses:	"Additional 10 days"

- in the row titled "If Passenger under 16, II Device," Add "Additional" before "6 Months" in all of the columns:

No Prior Offense:	"Additional 6 Months"
One Prior Offense:	"Additional 6 Months"
Two or Three Prior Offenses:	"Additional 6 Months"

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(1) – (3):

- below the row heading "If Passenger Under 16, II Device" and above "Alcohol/Drug Ed./Victim Impact or Treatment," add a new row:

Row title:	"24/7 Sobriety Program[2]"
No Prior Offense:	"N/A"
One Prior Offense:	"As Ordered"
Two or Three Prior Offenses:	"Mandatory"

- below the row heading "Alcohol/Drug Ed./Victim Impact or Treatment," add a new row:

Row title:	"Expanded alcohol Assessment/treatment"
No Prior Offense:	"N/A"

	One Prior Offense: "As Ordered" Two or Three Prior Offenses: "Mandatory/treatment if appropriate" Below the table, add: "*See Court and Department of Licensing (DOL) Ignition Interlock Requirements, page 5. ** Driver's license minimum suspension/revocation. DOL may impose more." Page 2, **change the title of the table relating to Department of Licensing required ignition interlock requirements, as follows**: "**Department of Licensing Required Ignition Interlock Device Requirements, RCW 46.20.720(3), (4) as amended ~~through August 1, 2012~~ with statutes effective through ~~Sept. 28, 2013~~January 1, 2014.***" To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §19, amending RCW 46.20.720(4), change the text below the heading as follows: "Restriction effective, until IID vendor certifies to DOL that none of the following occurred within four months prior to date of release: any attempt to start the vehicle with a BAC of .04 or more unless another test performed within 10 minutes registers a breath alcohol concentration lower than 0.04 and the digital image confirms the same person provided both samples; failure to take ~~or pass~~ any ~~required retest~~ random test unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time of the missed test; failure to pass any random retest with a breath alcohol concentration of 0.025 or lower unless another test performed within 10 minutes registers a breath alcohol concentration lower than 0.025, and the digital image confirms the same person provided both samples; failure of the person to appear at the IID vendor when required." In the note below the table, change the page number from 4 to 5.

Page 2, **Prior Offenses:**

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(14), add the following new prior offense:

- "**Deferred Sentences for the following**: *If originally charged with DUI or Phys. Cont. or an equivalent local ordinance, or Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522);* but deferred sentence was imposed for (1) Neg. Driving 1st (RCW 46.61.5249), (2) Reckless Driving (RCW 46.61.500), (3) Reckless Endangerment (RCW 9A.36.050), (4) Equiv. out-of-state or local ordinance for the above offenses."

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(1)-(3), change the section titled "Mandatory Jail and Electronic Home Monitoring (EHM)" as follows:

"[2]**Mandatory Jail ~~and~~, Electronic Home Monitoring (EHM), and 24/7 Sobriety Program**: If there are prior offenses with an arrest date within seven years before or after the arrest date of the current offense, the mandatory jail shall be served by imprisonment for the minimum statutory term and may not be suspended ~~or deferred~~ unless the court finds that imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. The mandatory statutory term may not be converted to EHM. Where there are no prior offenses within seven years, the court may grant EHM instead of mandatory minimum jail. If there are prior offenses, the mandatory EHM may not be suspended ~~or deferred~~ unless the court finds that imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Instead of mandatory EHM, the court may order additional jail time. (Effective January 1, 2014) If available: Where there is one prior offense, instead of mandatory EHM or additional jail time, the court may order 6-month 24/7 sobriety program monitoring. Where there are two or three prior offenses, the court shall order 6-month 24/7 sobriety program monitoring. The 24/7 sobriety program is a 24 hour and 7 days a week sobriety program which requires tests of the defendant's blood, breath, urine or other bodily substances

to find out if there is alcohol, marijuana, or any controlled substance in his/her body. The defendant will be required to pay the fees and costs for the program. RCW 46.61.5055(1), (2), (3). Laws of 2013, 2d Spec. Sess., ch. 35, §26."

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(11)(a), change the section titled "Mandatory Conditions of Probation for any Suspended Jail Time" as follows:

"**Mandatory Conditions of Probation for any Suspended Jail Time**: The individual is not to:
(i) drive a motor vehicle without a valid license to drive and proof of liability insurance or other financial responsibility (SR 22), (ii) drive or be in physical control of a vehicle while having an alcohol concentration of .08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher within two hours after driving, (iii) refuse to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of a law enforcement-officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drug. Except for ignition interlock driver's license and device or alcohol monitoring requirements under RCW 46.61.5055(5), violation of **any** mandatory condition, requires a minimum penalty of 30 days' confinement, which may not be suspended or deferred, and an additional 30-day license suspension. RCW 46.61.5055(11). Courts are required to report violations of mandatory conditions requiring confinement or license suspension to DOL. RCW 46.61.5055."

Under Laws of 2013, 2d Spec. Sess., Ch. 35, §13, the interpretation of fines under RCW 46.61.5055(6) remains unsettled. However, it is clear that ignition interlock device and jail time is additional. Therefore, the section "If Passenger Under 16," is revised to clarify that interpretation of RCW 46.61.5055(6) regarding fines is unsettled:

"[4]**If Passenger Under 16**: The interpretation of RCW 46.61.5055(6), regarding the fines, is unsettled. Some interpret it as setting a new mandatory minimum and maximum fine, replacing a fine in RCW 46.61.5055(1) – (3).

	Some interpret it as <u>setting</u> a fine that is in addition to one of those fines. Apply applicable assessments." Page 5, to implement Laws of 2013, 2d Spec. Sess., Ch. 35, §19, amending RCW 46.20.720(3), under the heading "DOL Imposed Ignition Interlock (II) Device – RCW 46.20.720, change the sentence: "However, when the employer's vehicle is assigned exclusively to the restricted driver and used solely for commuting to and from employment, the employer exemption does not apply." As follows: "However, <u>the employer exemption does not apply:</u> <u>A. (First conviction): for the first 30 days after the ignition interlock device has been installed.</u> <u>B. (Second or subsequent conviction): for the first 365 days after the ignition interlock device has been installed.</u> <u>C.</u> ~~w~~When the employer's vehicle is assigned exclusively to the restricted driver and used solely for commuting to and from employment~~, the employer exemption does not apply~~."
5. CrRLJ 4.2(g)	**New court rule text:** The Washington State Pattern Forms Committee's proposed updates include the following text for CrRLJ 4.2(g) to be placed after the "'DUI' Attachment" and immediately before the "Washington State Misdemeanor DUI Sentencing Attachment." "As an alternative to the "DUI' Attachment,' a plea of guilty may substantially comply with the Washington State Misdemeanor DUI Sentencing Attachment,' which is available on the Washington Courts' website <u>http://www.courts.wa.gov/</u>, under the links "Resources, Publications, and Reports" and" DUI Sentencing Grids." The following is a sample page of the automated 'Washington State Misdemeanor DUI Sentencing Attachment:' "

6. CrRLJ 4.2(g) DUI 2	**"Washington State Misdemeanor DUI Sentencing Attachment"** Notes: The generic, fill-in-the-blank 1-page version of the "Washington State Misdemeanor DUI Sentencing Attachment" published on the courts' web site with the Misdemeanor Judgment and Sentencing forms and on the DUI Sentencing Grid page will be discontinued. The generic 1-page version will be deleted from the forms web page and from the DUI Sentencing Grid web page. The "Washington State Misdemeanor DUI Sentencing Attachment" in CrRLJ 4.2(g) is a sample page, and directs judges, attorneys, defendants, and others to the automated version of the attachment on the DUI Sentencing Grid web page. After selecting the court level, offense, whether or not a passenger under 16 was in the vehicle, and making any edits, the 1-page print out may be attached to the guilty plea. Changes to the Attachment: Add a diagonal watermark "SAMPLE." In the top margin, add the following statement: "This is a sample page of the automated Washington State Misdemeanor DUI Sentencing Attachment available on the Washington Courts' web page: http://www.courts.wa.gov/, under the links "Resources, Publications, and Reports" and "DUI Sentencing Grids." Below "Relevant Findings" change the offense date as follows: "FOR OFFENSES OCCURRING ~~AUGUST 1, 2012~~ SEPTEMBER 28, 2013 OR LATER" Add accounting codes to the following "Fines and Fees:" "Alcohol Violators Fee (RCW 46.61.5054) DUC" "CJF Penalty Assessment (RCW 46.64.055) TPD" "Criminal Conviction Fee (RCW 3.62.085) CFD"

	Update the Mandatory Conditions of Probation (DUI/Phys. Control Convictions only), as follows: "The individual is not to: (i) drive a motor vehicle without a valid license and proof of liability insurance or other financial responsibility (SR 22); (ii) drive or be in physical control of a vehicle while having an alcohol concentration of .08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher within two hours after driving; (iii) refuse to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of law enforcement who has reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drug. Except for ignition interlock device or alcohol monitoring requirements under RCW 46.61.5055(5), violation of any mandatory condition, requires a minimum penalty of 30 days' confinement, which may not be suspended or deferred, and an additional 30-day license suspension. RCW 46.61.5055(11). Courts are required to report violations of mandatory conditions requiring confinement or license suspension to DOL. RCW 46.61.5055."
7. CrRLJ 04.1100	**Petition for Deferred Prosecution** To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §21, amending RCW 10.05.140, in paragraph 12, change the citation "RCW 46.20.720(3)(a), (b) and (c)" to "RCW 46.20.720(3)."
8. CrRLJ 04.1110	**Petition for Deferred Prosecution of Criminal Mistreatment Charge** To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §21, amending RCW 10.05.140, in paragraph 12, change the citation "RCW 46.20.720(3)(a), (b) and (c)" to "RCW 46.20.720(3)."

WASHINGTON COURTS

Court – DUI Sentencing Grid

(RCW 46.61.5055 as amended ~~through~~ by statutes effective ~~through~~September 28, 2013, and ~~August 1, 2012~~ January 1, 2014)

BAC Result < .15 or No Test Result	*No Prior Offense*[1]	*One Prior Offense*[1]	*Two or Three Prior Offenses*[1]
Mandatory Minimum /Maximum Jail Time[2]	24 Consecutive Hours/364 Days	30/364 Days	90/364 Days
If Passenger Under 16 Mandatory Jail	Additional 24 hours	Additional 5 days	Additional 10 days
EHM/Jail Alternative[2]	15 Days in Lieu of Jail	60 Days Mandatory/ 4 Days Jail Min.	120 Days Mandatory/ 8 Days Jail Min.
Mandatory Minimum /Maximum Fine[3]	$940.50/$5,000	$1,195.50/$5,000	$2,045.50/$5,000
If Passenger Under 16 Minimum/Range[4]	$1,000/$1,000-$5,000 + assessments	$1,000/$2,000-$5,000 + assessments	$1, 000/$3,000-$10,000 + assessments
Driver's License**	90-Day Suspension	2-Year Revocation	3-Year Revocation
II Driver's License* II Device	DOL imposed	DOL imposed	DOL imposed
If Passenger Under 16 II Device	Additional 6 Months	Additional 6 Months	Additional 6 Months
24/7 Sobriety Program[2]	N/A	As Ordered	Mandatory
Alcohol/Drug Ed./Victim Impact or Treatment	As Ordered	As Ordered	As Ordered
Expanded alcohol assessment/treatment	N/A	As Ordered	Mandatory/treatment if appropriate

~~**Driver's License minimum suspension/revocation. DOL may impose more.~~

BAC Result ≥ .15 or Test Refusal	*No Prior Offense*[1]	*One Prior Offense*[1]	*Two or Three Prior Offenses*[1]
Mandatory Minimum /Maximum Jail Time[2]	~~2 Consecutive~~48 Consecutive hours-/364 Days	45/364 Days	120/364 Days
If passenger under 16 Mandatory Jail	Additional 24 hours	Additional 5 days	Additional 10 days
EHM/Jail Alternative[2]	30 Days in Lieu of Jail	90 Days Mandatory/ 6 Days Jail Min.	150 Days Mandatory/ 10 Days Jail Min.
Mandatory Minimum/ Maximum Fine[3]	$1,195.50/$5,000	$1,620.50/$5,000	$2,895.50/$5,000
If Passenger Under 16 Minimum/Range[4]	$1,000/$1,000-$5,000 + assessments	$1,000/$2,000-$5,000 + assessments	$1, 000/$3,000-$10,000 + assessments
Driver's License**	1-Year Revocation 2 Years if BAC refused	900-Days Revocation 3 Years if BAC refused	4-Year Revocation
II Driver's License* II Device	DOL imposed	DOL imposed	DOL imposed
If Passenger Under 16 II Device	Additional 6 Months	Additional 6 Months	Additional 6 Months
24/7 Sobriety Program[2]	N/A	As ordered	Mandatory
Alcohol/Drug Ed./Victim Impact or Treatment	As Ordered	As Ordered	As Ordered
Expanded alcohol	N/A	As Ordered	Mandatory/treatment if

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assessment/treatment			appropriate

* See Court and Department of Licensing (DOL) Ignition Interlock Requirements, page 5.
**Driver's license minimum suspension/revocation. DOL may impose more.

Department of Licensing Required Ignition Interlock Device Requirements, RCW 46.20.720(3), (4) as amended ~~through August 1, 2012~~ with statutes effective through ~~Sept. 28, 2013~~January 1, 2014.*

Requirement	No Previous Restriction – no less than:	Previous 1-Year Restriction – no less than:	Previous 5-Year Restriction – no less than:
II Device	1 Year	5 Years	10 Years
Restriction effective, until IID vendor certifies to DOL that none of the following occurred within four months prior to date of release: any attempt to start the vehicle with a BAC of .04 or more unless another test performed within 10 minutes registers a breath alcohol concentration lower that 0.04 and the digital image confirms the same person provided both samples; failure to take ~~or pass~~ any ~~required retest~~ random test unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time of the missed test; failure to pass any random retest with a breath alcohol concentration of 0.025 or lower unless another test performed within 10 minutes registers a breath alcohol concentration lower than 0.025, and the digital image confirms the same person provided both samples; failure of the person to appear at the IID vendor when required.			

* See Court and Department of Licensing (DOL) Ignition Interlock Requirements, page 45.

[1]**Prior Offenses**: Count all prior offenses where the arrest date of the prior offense occurred within seven years before or after the arrest date on the current offense. RCW 46.61.5055(14)(b). "Prior offense" is defined by RCW 46.61.5055(14)(a) to include –

- **Original Convictions for the following**: (1) DUI (RCW 46.61.502) (or an equivalent local ordinance); (2) Phys. Cont. (RCW 46.61.504) (or an equivalent local ordinance); (3) Veh. Homicide (RCW 46.61.520) or Veh. Assault (RCW 46.61.522) if either committed while under the influence; (4) Equiv. out-of-state statute for any of the above offenses.
- **Deferred Prosecution Granted for the following**: 1) DUI (RCW 46.61.502) (or equivalent local ordinance); (2) Phys. Cont. (RCW 46.61.504) (or equiv. local ordinance); (3) Neg. Driving 1st (RCW 46.61.5249, or equiv. local ord.), *if the person was originally charged with DUI or Phys. Cont. (or an equiv. local ord.), or Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522).* An equivalent out-of-state deferred prosecution for DUI or Phys. Contr., including a chemical dependency treatment program. If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in RCW 46.61.5055(14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing.
- **Amended Convictions for the following**: *If originally charged with DUI or Phys. Cont. or an equivalent local ordinance, or Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522)*; but convicted of (1) Neg. Driving 1st (RCW 46.61.5249), (2) Reckless Driving (RCW 46.61.500), (3) Reckless Endangerment (RCW 9A.36.050), (4) Equiv. out-of-state or local ordinance for the above offenses. *If originally charged with Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522) committed while under the influence of intoxicating liquor or any drug*; but convicted of Veh.Hom. or Veh. Assault committed in a reckless manner or with the disregard for the safety of others.
- **Deferred Sentences for the following**: *If originally charged with DUI or Phys. Cont. or an equivalent local ordinance, or Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522);* but deferred sentence was imposed for (1) Neg. Driving 1st (RCW 46.61.5249), (2) Reckless Driving (RCW 46.61.500), (3) Reckless Endangerment (RCW 9A.36.050), (4) Equiv. out-of-state or local ordinance for the above offenses.

[2]**Mandatory Jail ~~and~~, Electronic Home Monitoring (EHM), and 24/7 Sobriety Program**: If there are prior offenses with an arrest date within seven years before or after the arrest date of the current offense, the mandatory jail shall be served by imprisonment for the minimum statutory term and may not be suspended ~~or deferred~~ unless the court finds that imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. The mandatory statutory term may not be converted to EHM. Where there are no prior offenses within seven years, the

court may grant EHM instead of mandatory minimum jail. If there are prior offenses, the mandatory EHM may not be suspended ~~or deferred~~ unless the court finds that imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Instead of mandatory EHM, the court may order additional jail time.

(Effective January 1, 2014) If available: Where there is one prior offense, instead of mandatory EHM or additional jail time, the court may order 6-month 24/7 sobriety program monitoring. Where there are two or three prior offenses, the court shall order 6-month 24/7 sobriety program monitoring. The 24/7 sobriety program is a 24 hour and 7 days a week sobriety program which requires tests of the defendant's blood, breath, urine or other bodily substances to find out if there is alcohol, marijuana, or any controlled substance in his/her body. The defendant will be required to pay the fees and costs for the program. RCW 46.61.5055(1), (2), (3). Laws of 2013, 2d Spec. Sess., ch. 35, §26.

Mandatory Conditions of Probation for any Suspended Jail Time: The individual is not to: (i) drive a motor vehicle without a valid license to drive and proof of liability insurance or other financial responsibility (SR 22), (ii) drive or be in physical control of a vehicle while having an alcohol concentration of .08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher within two hours after driving, (iii) refuse to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of a law enforcement-officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drug. Except for ignition interlock driver's license and device or alcohol monitoring requirements under RCW 46.61.5055(5), violation of **any** mandatory condition, requires a minimum penalty of 30 days' confinement, which may not be suspended or deferred, and an additional 30-day license suspension. RCW 46.61.5055(11). Courts are required to report violations of mandatory conditions requiring confinement or license suspension to DOL. RCW 46.61.5055.

[3]**Mandatory Monetary Penalty**: PSEA 1, RCW 3.62.090(1); Alcohol Violators Fee, RCW 46.61.5054; Criminal Justice Funding (CJF) Penalty, RCW 46.64.055 (Note: RCW 3.62.090(1) and (2) apply to CJF penalty); Criminal Conviction Fee, RCW 3.62.085.

[4]**If Passenger Under 16**: The interpretation of RCW 46.61.5055(6), regarding the fines, is unsettled. Some interpret it as setting a new mandatory minimum and maximum fine, replacing a fine in RCW 46.61.5055(1) – (3). Some interpret it as setting a fine that is in addition to one of those fines. Apply applicable assessments.

Felony DUI and Felony Physical Control: A current offense is a Class C felony punished under Ch. 9.94A RCW if the defendant has (a) four prior convictions within ten years, or (b) one prior conviction of Veh. Homicide or Veh. Assault, or (c) a prior Class C felony resulting from a or b. "Within ten years" means that the arrest for the prior offense occurred within ten years before or after the arrest for the current offense. RCW 46.61.5055(14)(c).

Jurisdiction: Court has five years jurisdiction.

WASHINGTON COURTS

Department of Licensing - DUI Administrative Sanctions and Reinstatement Provisions

(As amended through August 1, 2012)

ADMINISTRATIVE SANCTIONS – RCW 46.20.3101		
REFUSED TEST	***First Refusal Within 7 Years And No Prior Administrative Action Within Past 7 Years****	***Second or Subsequent Refusal Within Past 7 Years OR First Refusal And At Least One Prior Administrative Action Within Past 7 Years****
Adult	1-Year License Revocation	2-Year License Revocation
Minor	1-Year License Revocation	2-Year License Revocation Or Until Age 21 Whichever Is Longer
BAC RESULT	***First Administrative Action***	***Second or Subsequent Administrative Action***
Adults ≥ 0.08	90-Day License Suspension	2-Year License Revocation
Minors ≥ 0.02	90-Day License Suspension	1-Year License Revocation Or Until Age 21 Whichever Is Longer

*Day for day credit for revocation period already served under suspension, revocation, or denial imposed under RCW 46.61.5055 and arising out of the same incident.--RCW 46.20.3101(4).

Ignition Interlock Driver's License, RCW 46.20.385 (amended through August 1, 2012)
May apply for an Ignition Interlock Driver's License upon receiving RCW 46.20.308 notice or upon suspension or revocation. See "Court and Department of Licensing Ignition Interlock Requirements, page 4."

Note: An individual convicted of DUI or physical control will have his/her driving privilege placed in probationary status for five years from the date he/she is eligible to reinstate his/her driver's license (see RCW 46.61.5055 and 46.20.355). An individual granted a deferred prosecution under RCW 10.05.060 will have his/her driving privilege placed on probationary status for five years from the date of the incident, which was the basis for the deferred prosecution (see RCW 46.20.355 and 10.05.060).

REQUIREMENTS FOR REINSTATEMENT OF DRIVING PRIVILEGE	
Suspended License* (RCW 46.20.311)	***Revoked License* (RCW 46.20.311)***
• File and maintain proof of financial responsibility for the future with the Department of Licensing as provided in chapter 46.29 RCW (SR 22) • Present written verification by a company that it has installed the required ignition interlock device on a vehicle owned and/or operated by the person seeking reinstatement • Pay $150 driver's license reissue fee • Driver's ability test NOT required	• File and maintain proof of financial responsibility for the future with the Department of Licensing as provided in chapter 46.29 RCW (SR22) • Present written verification by a company that it has installed the required ignition interlock device on a vehicle owned and/or operated by the person seeking reinstatement • Pay $150 driver's license reissue fee • Satisfactorily complete a driver's ability test

*If suspension or revocation is the result of a criminal conviction, the driver must also show proof of either (1) enrollment and satisfactory participation in an approved alcohol treatment program or (2) completion of an alcohol information school, as determined by the court and/or treatment agency.

$150 Reissue Fee Effective June 11, 1998

WASHINGTON COURTS

Court and Department of Licensing (DOL) Ignition Interlock Requirements, RCW 46.20.380, 46.20.385

Ignition Interlock Driver's License, RCW 46.20.380, 46.20.385	
Eligible to Apply	• Conviction of violation of RCW 46.61.502, 46.61.504, or an equivalent local or out-of-state statute or ordinance, 46.61.520(1)(a), or 46.61.522(1)(b) involving alcohol. • License suspended, revoked, or denied under RCW 46.20.3101. • Proof of installed functioning ignition interlock device.
Requirements	• Proof financial responsibility (SR 22).
Financial Obligations	• $100 mandatory fee to DOL. • Costs to install, remove, and lease the ignition interlock device, and $20 fee per month, unless waived.
Duration	Extends through the remaining portion of any concurrent or consecutive suspension or revocation imposed as the result of administrative action and criminal conviction arising from the same incident.
Operation with Other Requirements	The time period during which the person is licensed under RCW 46.20.385, shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is required under RCW 46.20.720.

Court Order to Comply with Rules and Requirements of DOL: The court orders the person to comply with the rules and requirements of DOL regarding the installation and use of a functioning ignition interlock (II) device on all motor vehicles operated by the person. If the court orders a person to refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring and to pay for the monitoring unless the court specifies the cost will be paid with funds available from an alternative source identified by the court. RCW 46.61.5055(5).

Court Ordered Discretionary Ignition Interlock (II) Device: The court may order discretionary II device requirements that last up to the five years jurisdictional limit of the court. The court sets the duration and calibration level. Discretionary II device restrictions begin after any applicable period of suspension, revocation, or denial of driving privileges and after any DOL mandated II device restriction. The court sets the calibration level. RCW 46.20.720(1).

Passenger Under Age 16: The Court shall order the installation and use of an II device for an additional six months.

Deferred Prosecution: For application in DUI Deferred Prosecution, see RCW 46.20.720 and RCW 10.05.140, which require II device in a deferred prosecution of any alcohol-dependency based case.

DOL Imposed Ignition Interlock (II) Device - RCW 46.20.720: For all offenses occurring June 10, 2004 or later, DOL shall require that, after any applicable period of suspension, revocation, or denial of driving privileges, a person may drive only a motor vehicle equipped with a functioning II device if the person is convicted of "an alcohol-related" violation of DUI or Physical Control. The DOL required II device is not required on vehicles owned, leased, or rented by a person's employer or on those vehicles whose care and/or maintenance is the temporary responsibility of the employer and driven at the direction of a person's employer as a requirement of employment during business hours upon proof to DOL of employment affidavit. However, the employer exemption does not apply:

A. (First conviction): for the first 30 days after the ignition interlock device has been installed.
B. (Second or subsequent conviction): for the first 365 days after the ignition interlock device has been installed.
C. ~~w~~When the employer's vehicle is assigned exclusively to the restricted driver and used solely for commuting to and from employment~~, the employer exemption does not apply~~.

The person must pay a $20 fee per month in addition to costs to install, remove, and lease the ignition interlock device. DOL may waive requirement if the device is not reasonably available in the local area. DOL will give day-for-day credit as allowed by law.

WASHINGTON COURTS

Court – Reckless Driving/Negligent Driving – 1st Degree Sentencing Grid

(RCW 46.61.500, RCW 46.61.5249, RCW 46.20.720 as amended through August 1, 2012)

Reckless Driving	
Conviction	**Qualifications**
Reckless Driving (RCW 46.61.500(3)(a)	• Original charge: Violation of DUI (RCW 46.61.502) or Phys. Control (RCW 46.61.504) or equivalent local ordinance. • One or More Prior Offenses within 7 years as defined above.
Reckless Driving (RCW 46.61.500(3)(b)	• Original charge: Violation of Veh. Homicide (RCW 46.61.520) or Veh. Assault (RCW 46.61.522) committed while under the influence of intoxicating liquor or any drug.
Consequences	
II Device	• 6 Months. • Restriction remains in effect, until IID vendor certifies to DOL that none of the following incidents occurred within four months before date of release: an attempt to start the vehicle with a BAC of .04 or more; failure to take or pass any required retest; failure of the person to appear at the IID vendor when required. • DOL will give day-for-day credit as allowed by law. • Costs to install, remove, and lease the ignition interlock device, and $20 fee per month.
Maximum Jail Time	• 364 days if convicted of reckless driving.
Maximum Fine	• $5,000 if convicted of reckless driving.
EHM	• As ordered.
II Driver's License	• As imposed by DOL. May apply for II driver's license if original charge was violation of DUI (RCW 46.61.502) or Phys. Control (RCW 46.61.504) or equivalent local ordinance. If the Defendant is eligible to apply, but does not have a Washington driver's license, the defendant may apply for an II license. DOL may require the defendant to take a licensing examination and apply and qualify for a temporary restricted driver's license. • During any period of suspension, revocation or denial, a person who has obtained an II driver' license under RCW 46.20.385 may continue to drive without getting a separate temporary restricted driver's license.
Alcohol/Drug Ed./Victim Impact or Treatment	• As ordered.

Negligent Driving – 1st Degree	
Conviction	**Qualifications**
Negligent Driving - 1st Degree (RCW 46.61.5249)	• One or More Prior Offenses within 7 years as defined above.
Consequences	
II Device	• 6 Months. • Restriction remains in effect, until IID vendor certifies to DOL that none of the following incidents occurred within four months before date of release: an attempt to start the vehicle with a BAC of .04 or more; failure to take or pass any required retest; failure of the person to appear at the IID vendor when required.
Maximum Jail Time	• 90 days if convicted of negligent driving in the 1st degree.
Maximum Fine	• $1,000 if convicted of negligent driving in the 1st degree.
EHM	• As ordered.
Driver's License	• As imposed by DOL.
Alcohol/Drug Ed./Victim Impact or Treatment	• As ordered.

WASHINGTON STATE MISDEMEANOR DUI SENTENCING ATTACHMENT
Attach to Judgment and Sentence
or Statement of Defendant on Plea of Guilty

IN THE DISTRICT COURT FOR

Defendant Cause No.

RELEVANT FINDINGS

FOR OFFENSES OCCURRING SEPTEMBER 28, 2013 OR LATER

Conviction DUI or Phys. Contr. 1(a) No Prior Convictions and BAC < .15 (or no BAC)

☒ GY Passenger Under 16 Yrs ☐ Neg 1 or Reckless Driving with prior alcohol-related conviction.

STATUTORY MANDATORY MINIMUMS

FINES & FEES

Mand Min Fine (RCW 46.61.5055(1)-(3))	$350.00
Passenger under 16 (RCW 46.61.5055(6))	$0.00
PSEA (70% of Base) (RCW 3.62.090(1))	$245.00
Alcohol Violators Fee (RCW 46.61.5054) DUC	$200.00
CJF Penalty Assessment (RCW 46.64.055) TPD	$50.00
PSEA on Penalty (105%) (RCW 3.62.090(1), (2))	$52.50
Criminal Conviction Fee (RCW 3.62.085) CFD	$43.00
TOTAL FINES, PENALTIES & FEES	**$940.50**

SENTENCE

Mand Min Jail	2
Mand Min EHM	0
Mand Min TOTAL	2

The Court may impose 15 days of EHM in lieu of 24 hours in jail.

DRIVER'S LICENSING CONSEQUENCES

Min. Driver's Lic. Susp. as a result of conviction: Minimum 90-day Suspension

Ignition Interlock License: As imposed by Dept. of Licensing

Ignition Interlock Device: Mandatory minimum of six months added to any other requirement imposed by Dept of Licensing.

MANDATORY CONDITIONS OF PROBATION

The individual is not to: (i) drive a motor vehicle without a valid license and proof of liability insurance or other financial responsibility (SR 22); (ii) drive or be in physical control of a vehicle while having an alcohol concentration of .08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher within two hours after driving; (iii) refuse to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of law enforcement who has reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drug. Except for the ignition interlock device or alcohol monitoring requirements under RCW 46.61.5055(5), violation of any mandatory condition, requires a minimum penalty of 30 days' confinement, which may not be suspended or deferred, and an additional 30-day license suspension. RCW 46.61.5055(11). Courts are required to report violations of mandatory conditions requiring confinement or license suspension to DOL. RCW 46.61.5055.

WASHINGTON STATE MISDEMEANOR DUI SENTENCING ATTACHMENT
Attach to Judgment and Sentence
or Statement of Defendant on Plea of Guilty

IN THE DISTRICT COURT FOR

Defendant Cause No.

RELEVANT FINDINGS

FOR OFFENSES OCCURRING SEPTEMBER 28, 2013 OR LATER

Conviction DUI or Phys Contr 2(a) One Prior Conviction and BAC < .15 (or no BAC)

☒ GY Passenger Under 16 Yrs ☐ Neg 1 or Reckless Driving with prior alcohol-related conviction.

STATUTORY MANDATORY MINIMUMS

FINES & FEES

Mand Min Fine (RCW 46.61.5055(1)-(3))	$500.00
Passenger under 16 (RCW 46.61.5055(6))	$0.00
PSEA (70% of Base) (RCW 3.62.090(1))	$350.00
Alcohol Violators Fee (RCW 46.61.5054) DUC	$200.00
CJF Penalty Assessment (RCW 46.64.055) TPD	$50.00
PSEA on Penalty (105%) (RCW 3.62.090(1), (2))	$52.50
Criminal Conviction Fee (RCW 3.62.085) CFD	$43.00
TOTAL FINES, PENALTIES & FEES	**$1,195.50**

SENTENCE

Mand Min Jail	35
Mand Min EHM	60
Mand Min TOTAL	95

The Court may impose four additional days in jail or a six-month period of 24/7 sobriety program monitoring in lieu of 60 days of EHM.

DRIVER'S LICENSING CONSEQUENCES

Min. Driver's Lic. Susp. as a result of conviction: Minimum Two-Year Revocation.

Ignition Interlock License: As imposed by Dept. of Licensing

Ignition Interlock Device: Mandatory minimum of six months added to any other requirement imposed by Dept of Licensing.

MANDATORY CONDITIONS OF PROBATION

The Court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The individual is not to: (i) drive a motor vehicle without a valid license and proof of liability insurance or other financial responsibility (SR 22); (ii) drive or be in physical control of a vehicle while having an alcohol concentration of .08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher within two hours after driving; (iii) refuse to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of law enforcement who has reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drug. Except for the ignition interlock device or alcohol monitoring requirements under RCW 46.61.5055(5), violation of any mandatory condition, requires a minimum penalty of 30 days' confinement, which may not be suspended or deferred, and an additional 30-day license suspension. RCW 46.61.5055(11). Courts are required to report violations of mandatory conditions requiring confinement or license suspension to DOL. RCW 46.61.5055.

WASHINGTON STATE MISDEMEANOR DUI SENTENCING ATTACHMENT
Attach to Judgment and Sentence
or Statement of Defendant on Plea of Guilty
IN THE DISTRICT COURT FOR

Defendant Cause No.

RELEVANT FINDINGS

FOR OFFENSES OCCURRING SEPTEMBER 28, 2013 OR LATER

Conviction DUI or Phys. Cont. 3 or 4 (a), 2 or 3 Prior Convictions and BAC < .15 (or no BAC)

☒ GY Passenger Under 16 Yrs ☐ Neg 1 or Reckless Driving with prior alcohol-related conviction.

STATUTORY MANDATORY MINIMUMS

FINES & FEES

Mand Min Fine (RCW 46.61.5055(1)-(3))	$1,000.00
Passenger under 16 (RCW 46.61.5055(6))	$0.00
PSEA (70% of Base) (RCW 3.62.090(1))	$700.00
Alcohol Violators Fee (RCW 46.61.5054) DUC	$200.00
CJF Penalty Assessment (RCW 46.64.055) TPD	$50.00
PSEA on Penalty (105%) (RCW 3.62.090(1), (2))	$52.50
Criminal Conviction Fee (RCW 3.62.085) CFD	$43.00
TOTAL FINES, PENALTIES & FEES	**$2,045.50**

SENTENCE

Mand Min Jail	100
Mand Min EHM	120
Mand Min TOTAL	220

The Court may impose eight additional days in jail in lieu of 120 days of EHM.

DRIVER'S LICENSING CONSEQUENCES

Min. Driver's Lic. Susp. as a result of conviction: Minimum Three-Year Revocation.

Ignition Interlock License: As imposed by Dept. of Licensing

Ignition Interlock Device: Mandatory minimum of six months added to any other requirement imposed by Dept of Licensing.

MANDATORY CONDITIONS OF PROBATION

If available, the Defendant shall complete a six-month period of 24/7 sobriety program monitoring. The Court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The individual is not to: (i) drive a motor vehicle without a valid license and proof of liability insurance or other financial responsibility (SR 22); (ii) drive or be in physical control of a vehicle while having an alcohol concentration of .08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher within two hours after driving; (iii) refuse to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of law enforcement who has reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drug. Except for the ignition interlock device or alcohol monitoring requirements under RCW 46.61.5055(5), violation of any mandatory condition, requires a minimum penalty of 30 days' confinement, which may not be suspended or deferred, and an additional 30-day license suspension. RCW 46.61.5055(11). Courts are required to report violations of mandatory conditions requiring confinement or license suspension to DOL. RCW 46.61.5055.

Court of Washington for _____	
_____ Plaintiff, vs. _____ Defendant.	**No.** **Statement of Defendant on Plea of Guilty**

1. My true name is _____.
2. My age is _____.
3. I went through the _____ grade.
4. ***I Have Been Informed and Fully Understand that:***

   (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.

   (b) I am charged with:

Count	Crime	RCW or Ordinance (with subsection)
1.		
2.		
3.		
4.		

[ ] In count(s) _____, the defendant committed the offense against another family or household member as defined in RCW 10.99.020.

The elements are:

[ ] as set out in the charging document.

[ ] as follows:_____

_____

_____

_____

_____.

5. ***I Understand That I Have the Following Important Rights, and I Give Them All Up by Pleading Guilty:***

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to hear and question the witnesses who testify against me;

(d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a finding of guilt after a trial.

6. ***In Considering the Consequences of my Guilty Plea, I Understand That:***

(a) The crime with which I am charged carries a maximum sentence of _____ days in jail and a $_____ fine.

(b) The prosecuting authority will make the following recommendation to the judge:

_____

_____

_____.

(c) The judge does not have to follow anyone's recommendation as to sentence. The judge can give me any sentence up to the maximum authorized by law no matter what the prosecuting authority or anyone else recommends.

(d) The judge may place me on probation for up to five (5) years if I am sentenced for a domestic violence offense or under RCW 46.61.5055, or up to two (2) years for all other offenses and impose conditions of probation. If the court orders me to appear at a hearing regarding my compliance with probation and I fail to attend the hearing, the term of probation will be tolled until I appear before the court on the record.

(e) The judge may require me to pay costs, fees and assessments authorized by law. The judge may also order me to make restitution to any victims who lost money or property as a result of crimes I committed. The maximum amount of restitution is double the amount of the loss of all victims or double the amount of my gain.

(f) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law may be grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

Notification Relating to Specific Crimes: If any of the Following Paragraphs <u>Apply</u>, the Box Should Be Checked and the Paragraph Initialed by the Defendant.

[ ] (g) The crime of _____ has a mandatory minimum sentence of _____ days in jail and $_____ fine plus costs and assessments. The law does not allow any reduction of this sentence.

[ ] (h) The crime of prostitution, indecent exposure, permitting prostitution and patronizing a prostitute has a mandatory assessment of $_____. The court may reduce up to two-thirds of this assessment if the court finds that I am not able to pay the assessment. RCW 9A.88.120.

[ ](i) If this crime involves patronizing a prostitute, -a condition of my sentence will be that I not be subsequently arrested for patronizing a prostitute or commercial sexual abuse of a minor. The court will impose crime-related geographical restrictions on me, unless the court finds they are not feasible ~~The court will impose crime-related geographic restrictions on me if feasible~~. If this is my first offense, the court will order me to attend a program designed to educate me about the negative costs of prostitution.

[ ] (~~i~~j) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

[ ] (~~j~~k) This plea of guilty will result in suspension or revocation of my driving license or privilege by the Department of Licensing for a minimum period of _____, or longer based upon my record of conviction. This period may not include suspension or revocation based on other matters.

[ ] (~~k~~l) I may not possess, own, or have under my control any firearm, and under federal law any firearm or ammunition, unless my right to do so is restored by the court of record that ordered the prohibition on possession of a firearm or the superior court in Washington State where I live, and by a federal court if required. I must immediately surrender any concealed pistol license.

[ ] (~~l~~m) If this crime involves a violation of Title 77 RCW, the Department of Fish and Wildlife may, and in some cases shall, suspend or revoke my privileges under Fish and Wildlife licensing.

[ ] (~~m~~n) If this crime involves a drug offense, my eligibility for state and federal education benefits will be affected. 20 U.S.C. § 1091(r).

[ ] (~~n~~o) This plea of guilty is considered a conviction under RCW 46.25.010 and I will be disqualified from driving a commercial motor vehicle. RCW 46.25.090. I am required to notify the Department of Licensing and my employer of this guilty plea within 30 days after the judge signs this document. RCW 46.25.030.

[ ] (~~o~~p) If this case involves driving while under the influence of alcohol and/or being in actual physical control of a vehicle while under the influence of alcohol and/or drugs, I have been informed and understand that I will be subject to:
[ ] the penalties described in the "DUI" Attachment or the "Washington State Misdemeanor DUI Sentencing Attachment."
OR
~~[ ] these penalties: The mandatory minimum sentence of _____ days in jail, _____ days of electronic home monitoring and $_____ monetary penalty. The court shall require me to apply for an ignition interlock driver's license and to drive only with a functioning ignition interlock device or, if the court waives those requirements, to submit to alcohol monitoring, for ____ year(s). I may also be required tot~~

~~The court shall require me to comply with the rules and requirements of the Department of Licensing regarding the installation and use of drive only motor vehicles equipped with an a functioning ignition interlock device on all motor vehicles that I operate. as imposed by the Department of Licensing and/or the court. If the court orders me to refrain from consuming any alcohol, the court may order me to submit to alcohol monitoring. I shall be required to and to pay for the monitoring unless the court specifies that the cost will be paid with funds from another source. If I have prior offense(s), the court may order me to submit to an expanded alcohol assessment and to comply with treatment. Beginning January 1, 2014, the court may order a 6 months period of a 24 hour and 7 days a week sobriety program which requires tests of my blood, breath, urine or other bodily substances to find out if I have alcohol, marijuana, or any controlled substance in my body and I will be required to pay the fees and costs for the program.monitoring. My driving privilege will be suspended or revoked by the Department of Licensing for the period of time stated in paragraph 6(jk). In lieu of the minimum jail term, the judge may order me to serve _____ days in electronic home monitoring. If I do not have a dwelling, telephone service, or any other necessity to operate electronic home monitoring, if I live out of state, or if the judge determines I would violate the terms of electronic home monitoring, the judge may waive electronic home monitoring and impose an alternative sentence which may include use of an ignition interlock device, additional jail time, work crew, or work camp, or, beginning January 1, 2014, 24/7 sobriety program monitoring.~~

~~Or~~

[ ] these penalties: Mandatory minimum sentence:

- _____ days in jail.
- _____ days of electronic home monitoring.
- $ _____ monetary penalty.
- Effective January 1, 2014, if I have 2 or 3 prior offenses, a 6-month period of 24/7 sobriety program monitoring, if available.
- Comply with the rules and requirements of the Department of Licensing regarding the installation and use of a functioning ignition interlock device on all motor vehicles that I operate.
- The Department of Licensing will suspend or revoke my driving privilege for the period of time stated in paragraph 6(k).

If I have prior offense(s):

- the judge may order me to submit to an expanded alcohol assessment and comply with treatment deemed appropriate by that assessment.
- instead of mandatory electronic home monitoring, the judge may order me to serve additional jail time. Effective January 1, 2014, if I have 1 prior offense, instead of additional jail time, the judge may order a 6-month period of 24/7 sobriety program monitory.

Instead of the minimum jail term, the judge may order me to serve _____ days in electronic home monitoring.

If the judge orders me to refrain from consuming any alcohol, the judge may order me to submit to alcohol monitoring. I shall be required to pay for the monitoring unless the judge specifies that the cost will be paid with funds from another source.

The judge may waive electronic home monitoring or order me to obtain an alcohol monitoring device with wireless reporting technology if that device is reasonably available

if~~f~~ I do not have a dwelling, telephone service, or any other necessity to operate electronic home monitoring. The judge may waive electronic home monitoring~~,~~ if I live out of state, or if the judge determines I would violate the terms of electronic home monitoring. If the judge waives ~~, the judge may waive~~ electronic home monitoring ~~and impose an~~he or she will impose an alternative sentence which may include use of an ignition interlock device, additional jail time, work crew, ~~or~~ work camp, or, beginning January 1, 2014, 24/7 sobriety program monitoring.

I understand that the 24/7 sobriety program is a 24 hour and 7 days a week sobriety program which requires tests of my blood, breath, urine or other bodily substances to find out if I have alcohol, marijuana, or any controlled substance in my body. I will be required to pay the fees and costs for the program.

[ ] (~~p~~q) If this case involves reckless driving and the original charge was driving while under the influence of alcohol and/or being in actual physical control of a vehicle while under the influence of alcohol and/or drugs and I have one or more prior offenses, as defined in RCW 46.61.5055(14), within 7 years; or if the original charge was vehicular homicide (RCW 46.61.520) or vehicular assault (RCW 46.61.522) committed while under the influence of intoxicating liquor or any drug, I have been informed and understand that I will be subject to the penalties for Reckless Driving described in the "DUI" Attachment or the "Washington State Misdemeanor DUI Sentencing Attachment."

[ ] (~~q~~r) If this case involves negligent driving in the first degree, and I have one or more prior offenses, as defined in RCW 46.61.5055(14), within 7 years, I have been informed and understand that I will be subject to the penalties for Negligent Driving – 1st Degree described in the "DUI" Attachment or the "Washington State Misdemeanor DUI Sentencing Attachment."~~.~~

[ ] (~~r~~s) If this crime involves sexual misconduct with a minor in the second degree, communication with a minor for immoral purposes, or attempt, solicitation or conspiracy to commit a sex offense, or a kidnapping offense involving a minor, as defined in RCW 9A.44.128, I will be required to register with the county sheriff as described in the "Offender Registration" Attachment.

[ ] (~~s~~t) Pursuant to RCW 43.43.754, if this crime is an offense which requires sex or kidnapping offender registration, or is one of the following offenses: assault in the fourth degree with sexual motivation, communication with a minor for immoral purposes, custodial sexual misconduct in the second degree, failure to register, harassment, patronizing a prostitute, sexual misconduct with a minor in the second degree, stalking, or violation of a sexual assault protection order granted under chapter 7.90 RCW, I will be required to have a biological sample collected for purposes of DNA identification analysis, unless it is established that the Washington State Patrol crime laboratory already has a sample from me for a qualifying offense.

[ ] (~~t~~u) ***Travel Restrictions***: I will be required to contact my probation officer, the probation director or designee, or the court if there is no probation department, to request permission to travel or transfer to another state if I am placed on probation for one (1) year or more and this crime involves: (i) an offense in which a person has incurred direct or threatened physical or psychological harm; (ii) an offense that involves the use or possession of a firearm; (iii) a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol; (iv) a sexual offense that requires the offender to register as a sex

offender in the sending state. I understand that I will be required to pay an application fee with my travel or transfer request.

7. I plead guilty to the crime(s) of _____ as charged in the complaint(s) or citation(s) and notice. I have received a copy of that complaint or citation and notice. [ ] The complaint or citation and notice was orally amended and I waive filing of a written amended complaint or citation and notice.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. ***Statement of Facts***: The judge has asked me to state in my own words what I did that makes me guilty of the crime(s). This is my statement (state the specific facts that support each element of the crime(s)):

_____

_____

_____

_____.

[ ] I committed this crime against a family or household member as defined in RCW 10.99.020.
[ ] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

Date: _____ _____
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

_____ _____
Prosecuting Authority Defendant's Lawyer

_____ _____
Type or Print Name WSBA No. Type or Print Name WSBA No.

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that (check the appropriate box):

[ ] (a) The defendant had previously read; or
[ ] (b) The defendant's lawyer had previously read to him or her; or
[ ] (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

Interpreter Declaration: I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands. I have translated this document for the defendant from English into that language. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____, on (date) _____.

_____ _____

Interpreter Print Name

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: _____ _____

Judge

Case Name: _____ **Cause No.:** _____

"DUI" Attachment: Driving under the influence of alcohol and/or actual physical control of a vehicle while under the influence of alcohol and/or drugs. (If required, attach to Statement of Defendant on Plea of Guilty.)

Court – DUI Sentencing Grid (RCW 46.61.5055 as amended by statute effective September 28, 2013 and January 1, 2014~~through August 1, 2012~~)

BAC Result < .15 or No Test Result	*No Prior Offense*[1]	*One Prior Offense*[1]	*Two or Three Prior Offenses*[1]
Mandatory Minimum/ Maximum Jail Time[2]	24 Consecutive Hours/364 Days	30/364 Days	90/364Days
If Passenger Under 16 Mandatory Jail	Additional 24 hours	Additional 5 days	Additional 10 days
EHM/Jail Alternative[2]	15 Days in Lieu of Jail	60 Days Mandatory/4 Days Jail Min.	120 Days Mandatory/8 Days Jail Min.
Mandatory Minimum/ Maximum Fine[3]	$940.50/$5,000	$1,195.50/$5,000	$2,045.50/$5,000
If Passenger Under 16 Minimum/Maximum[4]	$1,000/$1,000-$5,000 + assessments	$1,000/$2,000-$5,000 + assessments	$1, 000/$3,000-$10,000 + assessments
Driver's License**	90-Day Suspension	2-Year Revocation	3-Year Revocation
II Driver's License* II Device	DOL imposed	DOL imposed	DOL imposed.
If Passenger Under 16 II Device	Additional 6 Months	Additional 6 Months	Additional 6 Months
24/7 Sobriety Program[2]	N/A	As ordered	Mandatory
Alcohol/Drug Ed./Victim Impact or Treatment	As Ordered	As Ordered	As Ordered
Expanded alcohol assessment/treatment	N/A	As Ordered	Mandatory/treatment if appropriate

BAC Result ≥ .15 or Test Refusal	*No Prior Offense*[1]	*One Prior Offense*[1]	*Two or Three Prior Offenses*[1]
Mandatory Minimum/ Maximum Jail Time[2]	~~2 Consecutive~~48 Consecutive Hours/364 Days	45/364 Days	120/364 Days
If passenger under 16 Mandatory Jail	Additional 24 hours	Additional 5 days	Additional 10 days
EHM/Jail Alternative[2]	30 Days in Lieu of Jail	90 Days Mandatory/ 6 Days Jail Min.	150 Days Mandatory/ 10 Days Jail Min.
Mandatory Minimum/ Maximum Fine[3]	$1,195.50/$5,000	$1,620.50/$5,000	$2,895.50/$5,000
If Passenger Under 16 Minimum/Maximum[4]	$1, 000/$1,000-$5,000 + assessments	$1, 000/$2,000-$5,000 + assessments	$1, 000/$3,000-$10,000 + assessments
Driver's License**	1-Year Revocation 2 Years if BAC refused	900-Days Revocation 3 Years if BAC refused	4-Year Revocation
II Driver's License* II Device	DOL imposed	DOL imposed	DOL imposed
If Passenger Under 16 II Device	Additional 6 Months	Additional 6 Months	Additional 6 Months
24/7 Sobriety Program[2]	N/A	As ordered	Mandatory
Alcohol/Drug Ed./Victim	As Ordered	As Ordered	As Ordered

Impact or Treatment			
Expanded alcohol assessment/treatment	N/A	As Ordered	Mandatory/treatment if appropriate

* See Court and Department of Licensing (DOL) Ignition Interlock Requirements, page 5.
** Driver's license minimum suspension/revocation. DOL may impose more.

Department of Licensing Required Ignition Interlock Device Requirements, RCW 46.20.720(3)(4) ~~January 1,2011~~as amended with statutes effective through January 1, 2014*			
Requirement	No Previous Restriction no less than:	Previous 1-Year Restriction no less than:	Previous 5-Year Restriction no less than:
II Device	1 Year	5 Years	10 Years
Restriction effective, until IID vendor certifies to DOL that none of the following occurred within four months prior to date of release: any attempt to start the vehicle with a BAC of .04 or more unless another test performed within 10 minutes registers a breath alcohol concentration lower than 0.04 and the digital image confirms the same person provided both samples; failure to take ~~or pass~~ any ~~required retest~~ random test unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time of the missed test; failure to pass any random retest with a breath alcohol concentration of 0.025 or lower unless another test performed within 10 minutes registers a breath alcohol concentration lower than 0.025, and the digital image confirms the same person provided both samples; failure of the person to appear at the IID vendor when required.			

* See Court and Department of Licensing (DOL) Ignition Interlock Requirements, page 45.

[1]**Prior Offenses**: Count all prior offenses where the arrest date of the prior offense occurred within seven years before or after the arrest date on the current offense. RCW 46.61.5055(14)(b). "Prior offense" is defined by RCW 46.61.5055(14)(a) to include–

- **Original Convictions for the following**: (1) DUI (RCW 46.61.502) (or an equivalent local ordinance); (2) Phys. Cont. (RCW 46.61.504) (or an equivalent local ordinance); (3) Veh. Homicide (RCW 46.61.520) or Veh. Assault (RCW 46.61.522) if either committed while under the influence; (4) Equiv. out-of-state statute for any of the above offenses.
- **Deferred Prosecution Granted for the following**: (1) DUI (RCW 46.61.502) (or equivalent local ordinance); (2) Phys. Cont. (RCW 46.61.504) (or equiv. local ordinance); (3) Neg. Driving 1st (RCW 46.61.5249, or equiv. local ord.), *if the person was originally charged with DUI or Phys. Cont. (or an equiv. local ord.), or Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522).* An equivalent out-of-state deferred prosecution for DUI or Phys. Contr., including a chemical dependency treatment program. If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in RCW 46.61.5055(14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing.
- **Amended Convictions for the following**: *If originally charged with DUI or Phys. Cont. or an equivalent local ordinance, or Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522)*; but convicted of (1) Neg. Driving 1st (RCW 46.61.5249), (2) Reckless Driving (RCW 46.61.500), (3) Reckless Endangerment (RCW 9A.36.050), (4) Equiv. out-of-state or local ordinance for the above offenses. *If originally charged with Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522) committed while under the influence of intoxicating liquor or any drug*; but convicted of Veh. Hom. or Veh. Assault committed in a reckless manner or with the disregard for the safety of others.
- **Deferred Sentences for the following**: *If originally charged with DUI or Phys. Cont. or an equivalent local ordinance, or Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522);* but deferred sentence was imposed for (1) Neg. Driving 1st (RCW 46.61.5249), (2) Reckless Driving (RCW 46.61.500), (3) Reckless Endangerment (RCW 9A.36.050), (4) Equiv. out-of-state or local ordinance for the above offenses

[2]**Mandatory Jail, ~~and~~ Electronic Home Monitoring (EHM), and 24/7 Sobriety Program**: If there are prior offenses within seven years before or after the arrest date of the current offense, the mandatory jail shall be served by imprisonment for the minimum statutory term and may not be suspended ~~or deferred~~ unless the court finds that imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. The mandatory statutory term

may not be converted to EHM. *Bremerton v. Bradshaw,* 121 Wn.App. 410, 88 P.3d 438 (Div. Two 2004). Where there are no prior offenses within seven years, the court may grant EHM instead of mandatory minimum jail. If there are prior offenses, the mandatory EHM may not be suspended ~~or deferred~~ unless the court finds that imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Instead of mandatory EHM, the court may order additional jail time.

(Effective January 1, 2014) If available: Where there is one prior offense, instead of mandatory EHM or additional jail time, the court may order 6-month 24/7 sobriety program monitoring. Where there are two or three prior offenses, the court shall order 6-month 24/7 sobriety program monitoring. The 24/7 sobriety program is a 24 hour and 7 days a week sobriety program which requires tests of the defendant's blood, breath, urine or other bodily substances to find out if there is alcohol, marijuana, or any controlled substance in his/her body. The defendant will be required to pay the fees and costs for the program. RCW 46.61.5055(1), (2), (3). Laws of 2013, 2d Spec. Sess., ch. 35, §26.

Mandatory Conditions of Probation for any Suspended Jail Time: The individual is not to: (i) drive a motor vehicle without a valid license to drive and proof of liability insurance or other financial responsibility (SR 22), (ii) drive or be in physical control of a vehicle while having an alcohol concentration of .08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher within two hours after driving, (iii) refuse to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drug. Except for ignition interlock driver's license and device or alcohol monitoring requirements under RCW 46.61.5055(5), violation of **any** mandatory condition requires a minimum penalty of 30 days' confinement, which may not be suspended or deferred, and an additional 30-day license suspension. RCW 46.61.5055(11). Courts are required to report violations of mandatory conditions requiring confinement or license suspension to DOL. RCW 46.61.5055.

[3]**Mandatory Monetary Penalty**: PSEA 1, RCW 3.62.090(1); Alcohol Violators Fee, RCW 46.61.5054; Criminal Justice Funding (CJF) Penalty, RCW 46.64.055 (Note: RCW 3.62.090(1) and (2) apply to CJF penalty); Criminal Conviction Fee, RCW 3.62.085.

[4]**If Passenger Under 16**: The interpretation of RCW 46.61.5055(6) , regarding the fines, is unsettled. Some interpret it as setting a new mandatory minimum and maximum fine, replacing a fine in RCW 46.61.5055(1) – (3). Some interpret it as setting a fine that is in addition to one of those fines. Apply applicable assessments.

Felony DUI and Felony Physical Control: A current offense is a Class C felony punished under Ch.9.94A RCW if the defendant has (a) four prior convictions within ten years, or (b) one prior conviction of Veh. Homicide or Veh. Assault, or (c) a prior Class C felony resulting from (a) or (b). "Within ten years" means that the arrest for the prior offense occurred within ten years before or after the arrest for the current offense. RCW 46.61.5055(14)(c).

Jurisdiction: Court has five years jurisdiction.

Department of Licensing - DUI Administrative Sanctions and Reinstatement Provisions (As amended through August 1, 2012)

Administrative Sanctions – RCW 46.20.3101		
REFUSED TEST	***First Refusal Within 7 Years And No Prior Administrative Action Within Past 7 Years****	***Second or Subsequent Refusal Within Past 7 Years OR First Refusal And At Least One Prior Administrative Action Within Past 7 Years****
Adult	1-Year License Revocation	2-Year License Revocation
Minor	1-Year License Revocation	2-Year License Revocation Or Until Age 21 Whichever Is Longer
BAC RESULT	***First Administrative Action***	***Second or Subsequent Administrative Action***
Adults ≥ 0.08	90-Day License Suspension	2-Year License Revocation
Minors ≥ 0.02	90-Day License Suspension	1-Year License Revocation Or Until Age 21 Whichever Is Longer

*Day for day credit for revocation period already served under suspension, revocation, or denial imposed under RCW 46.61.5055 and arising out of the same incident. RCW 46.20.3101(4).

Ignition Interlock Driver's License, RCW 46.20.385 (amended through August 1, 2012)
May apply for an Ignition Interlock Driver's License upon receiving RCW 46.20.308 notice or upon suspension or revocation. See "Court and Department of Licensing Ignition Interlock Requirements, page 4."

Note: An individual convicted of DUI or physical control will have his/her driving privilege placed in probationary status for five years from the date he/she is eligible to reinstate his/her driver's license (see RCW 46.61.5055 and 46.20.355). An individual granted a deferred prosecution under RCW 10.05.060 will have his/her driving privilege placed on probationary status for five years from the date of the incident, which was the basis for the deferred prosecution (see RCW 46.20.355 and 10.05.060).

Requirements for Reinstatement of Driving Privilege	
Suspended License* (RCW 46.20.311)	***Revoked License* (RCW 46.20.311)***
• File and maintain proof of financial responsibility for the future with the Department of Licensing as provided in chapter 46.29 RCW (SR 22) • Present written verification by a company that it has installed the required ignition interlock device on a vehicle owned and/or operated by the person seeking reinstatement • Pay $150 driver's license reissue fee • Driver's ability test NOT required	• File and maintain proof of financial responsibility for the future with the Department of Licensing as provided in chapter 46.29 RCW (SR22) • Present written verification by a company that it has installed the required ignition interlock device on a vehicle owned and/or operated by the person seeking reinstatement • Pay $150 driver's license reissue fee • Satisfactorily complete a driver's ability test

*If suspension or revocation is the result of a criminal conviction, the driver must also show proof of either (1) enrollment and satisfactory participation in an approved alcohol treatment program or (2) completion of an alcohol information school, as determined by the court and/or treatment agency.

Court and Department of Licensing (DOL) Ignition Interlock Requirements, RCW 46.20.380, 46.20.385

Ignition Interlock Driver's License, RCW 46.20.380, 46.20.385	
Eligible to Apply	• Conviction of violation of RCW 46.61.502, 46.61.504, or an equivalent local or out-of-state statute or ordinance, 46.61.520(1)(a), or 46.61.522(1)(b) involving alcohol. • License suspended, revoked, or denied under RCW 46.20.3101. • Proof of installed functioning ignition interlock device.
Requirements	• Proof of financial responsibility (SR 22).
Financial Obligations	• $100 mandatory fee to DOL. • Costs to install, remove, and lease the ignition interlock device, and $20 fee per month, unless waived.
Duration	Extends through the remaining portion of any concurrent or consecutive suspension or revocation imposed as the result of administrative action and criminal conviction arising from the same incident.
Operation with Other Requirements	The time period during which the person is licensed under RCW 46.20.385 shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is required under RCW 46.20.720.

Court Order to Comply with Rules and Requirements of DOL: The court orders the person to comply with the rules and requirements of DOL regarding the installation and use of a functioning II device on all motor vehicles operated by the person. If the court orders the person to refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring and to pay for the monitoring unless the court specifies the cost will be paid with funds available from an alternative source identified by the court. RCW 46.61.5055(5).

Court Ordered Discretionary Ignition Interlock (II) Device: The court may order discretionary II device requirements that last up to the five years jurisdictional limit of the court. The court sets the duration and calibration level. Discretionary II device restrictions begin after any applicable period of suspension, revocation, or denial of driving privileges and after any DOL mandated II device restriction. The court sets the calibration level. RCW 46.20.720(1).

Passenger Under Age 16: The Court shall order the installation and use of an II device for an additional six months.

Deferred Prosecution: For application in DUI Deferred Prosecution, see RCW 46.20.720 and RCW 10.05.140, which require II device in a deferred prosecution of any alcohol-dependency based case.

DOL Imposed Ignition Interlock (II) Device - RCW 46.20.720: For all offenses occurring June 10, 2004 or later, DOL shall require that, after any applicable period of suspension, revocation, or denial of driving privileges, a person may drive only a motor vehicle equipped with a functioning II device if the person is convicted of "an alcohol-related" violation of DUI or Physical Control. The DOL required II device is not required on vehicles owned, leased, or rented by a person's employer or on those vehicles whose care and/or maintenance is the temporary responsibility of the employer and driven at the direction of a person's employer as a requirement of employment during business hours upon proof to DOL of employment affidavit. However, the employer exemption does not apply:

A. (First conviction): for the first 30 days after the ignition interlock device has been installed.

B. (Second or subsequent conviction): for the first 365 days after the ignition interlock device has been installed.

C. ~~w~~When the employer's vehicle is assigned exclusively to the restricted driver and used solely for commuting to and from employment, the employer exemption does not apply. The person must pay a $20 fee per month in addition to costs to install, remove, and lease the ignition interlock device. DOL may waive requirement if the device is not reasonably available in the local area. DOL will give day-for-day credit as allowed by law.

Court – Reckless Driving/Negligent Driving – 1st Degree Sentencing Grid

(RCW 46.61.500, RCW 46.61.5249, RCW 46.20.720 as amended through August 1, 2012)

Reckless Driving	
Conviction	**Qualifications**
Reckless Driving (RCW 46.61.500(3)(a))	• Original charge: Violation of DUI (RCW 46.61.502) or Phys. Control (RCW 46.61.504) or equivalent local ordinance. • One or More Prior Offenses within 7 years as defined above.
Reckless Driving (RCW 46.61.500(3)(b))	• Original charge; Violation of Veh. Homicide (RCW 46.61.520) or Veh. Assault (RCW 46.61.522) committed while under the influence of intoxicating liquor or any drug.
Consequences	
II Device	• 6 Months. • Restriction remains in effect, until IID vendor certifies to DOL that none of the following incidents occurred within four months before date of release: an attempt to start the vehicle with a BAC of .04 or more; failure to take or pass any required retest; failure of the person to appear at the IID vendor when required. • DOL will give day-for-day credit as allowed by law. • Costs to install, remove, and lease the ignition interlock device, and $20 fee per month.
Maximum Jail Time	• 364 Days if convicted of reckless driving.
Maximum Fine	• $5,000 if convicted of reckless driving.
EHM	• As ordered.
II Driver's License	• As imposed by DOL. May apply for II driver's license if original charge was violation of DUI (RCW 46.61.502) or Phys. Control (RCW 46.61.504) or equivalent local ordinance. If the Defendant is eligible to apply; but does not have a Washington driver's license, the defendant may apply for an II license. DOL may require the defendant to take a licensing examination and apply and qualify for a temporary restricted driver's license. • During any period of suspension, revocation or denial, a person who has obtained an II driver's license under RCW 46.20.385 may continue to drive without getting a separate temporary restricted driver's license.
Alcohol/Drug Ed./Victim Impact or Treatment	• As ordered.

Negligent Driving – 1st Degree	
Conviction	**Qualifications**
Negligent Driving - 1st Degree (RCW 46.61.5249)	• One or More Prior Offenses within 7 years as defined above.
Consequences	
II Device	• 6 Months. • Restriction remains in effect, until IID vendor certifies to DOL that none of the following incidents occurred within four months before date of release: an attempt to start the vehicle with a BAC of .04 or more; failure to take or pass any required retest; failure of the person to appear at the IID vendor when required.
Maximum Jail Time	• 90 days if convicted of negligent driving in the 1st degree.
Maximum Fine	• $1,000 if convicted of negligent driving in the 1st degree.
EHM	• As ordered.
Driver's License	• As imposed by DOL.
Alcohol/Drug Ed./Victim Impact or Treatment	• As ordered.

This is a sample page of the automated Washington State Misdemeanor DUI Sentencing Attachment available on the Washington Courts' web page: http://www.courts.wa.gov/, under the links "Resources, Publications, and Reports" and" DUI Sentencing Grids."

WASHINGTON STATE MISDEMEANOR DUI SENTENCING ATTACHMENT

Attach to Judgment and Sentence or Statement of Defendant on Plea of Guilty

IN THE _____ (court) FOR _____ (County)

Defendant: _____ Cause No. _____

RELEVANT FINDINGS

FOR OFFENSES OCCURRING ~~AUGUST 1, 2012~~ SEPTEMBER 28, 2013 OR LATER

Conviction: _____.

☐ **GY** Passenger Under 16 Yrs ☐ Neg 1 or Reckless Driving with prior alcohol-related conviction

STATUTORY MANDATORY MINIMUMS

FINES & FEES			SENTENCE	
Mand Min Fine (RCW 46.61.5055(1)-(3))		$_____	Mand Min Jail	_____
Passenger under 16 (RCW 46.61.5055(6))		$_____	Mand Min EHM	_____
PSEA (70 of Base) (RCW 3.62.090(1))		$_____	Mand Min TOTAL	_____
Alcohol Violators Fee (RCW 46.61.5054)	DUC	$_____		
CJF Penalty Assessment (RCW 46.61.5054)	TPD	$_____		
PSEA on Penalty (105%) (RCW 3.62.090(1), (2))		$_____		
Criminal Conviction Fee (RCW 3.62.085)	CFD	$_____	The Court may impose	
TOTAL FINES, PENALTIES, & FEES		$_____	_____ days of EHM in lieu of _____ in jail.	

DRIVER'S LICENSING CONSEQUENCES

Min Driver's Lic Susp as a result of conviction: _____

Ignition Interlock License: _____

Ignition Interlock Device: _____

MANDATORY CONDITIONS OF PROBATION (DUI/Phys. Control Convictions only)

The individual is not to: (i) drive a motor vehicle without a valid license and proof of liability insurance or other financial responsibility (SR 22); (ii) drive or be in physical control of a vehicle while having an alcohol concentration of .08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher within two hours after driving; (iii) refuse to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of law enforcement who has reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drug. Except for ignition interlock device or alcohol monitoring requirements under RCW 46.61.5055(5), violation of any mandatory condition, requires a minimum penalty of 30 days' confinement, which may not be suspended or deferred, and an additional 30-day license suspension. RCW 46.61.5055(11). Courts are required to report violations of mandatory conditions requiring confinement or license suspension to DOL. RCW 46.61.5055.

_____ Court of Washington For _____	
_____ Plaintiff, vs. _____ Defendant.	**No:** _____ **Petition for Deferred Prosecution (DPPF)** **Charges:** _____ **Violation Date:** _____

I am the defendant in this case and I petition the court for deferred prosecution under RCW Chapter 10.05. I make the following statement in support of my petition:

1. The wrongful conduct charged is the result of or caused by [ ] ***Alcoholism*** [ ] ***Drug Addiction*** [ ] ***Mental Problems***, for which I need treatment.
2. Unless I receive treatment for my problem, the probability is great that I will offend again.
3. I agree to pay the cost of diagnosis and treatment, if I am financially able to do so, subject to RCW 10.05.130.
4. I understand that the court will not accept a petition for deferred prosecution from a person who sincerely believes that he or she is innocent of the crime(s) charged or does not suffer from alcoholism, drug addiction, or mental problems.
5. If this charge is a violation of Title 46 or similar municipal ordinance, I have not previously been placed on a deferred prosecution for a Title 46 or similar municipal ordinance violation.
6. I have filed a case history and assessment with this petition as required by RCW 10.05.020.
7. I have the following rights: (a) to have a lawyer represent me at all hearings; (b) to have a lawyer appointed at public expense if I cannot afford one; (c) to have a speedy, public jury trial; (d) to appeal any conviction; (e) to remain silent and not testify; (f) to question witnesses who testify against me; (g) to call witnesses to testify for me, at no cost; (h) to be presumed innocent unless the charge(s) against me is (are) proved beyond a reasonable doubt; and (i) to present evidence and a defense. By deferring prosecution on these charges, I give up my right to: (a) a speedy trial; (b) a jury; (c) testimony on my own behalf; an opportunity to (d) call and (e) question witnesses; and (f) present evidence or a defense.
8. I agree that the facts as reported in the attached police reports are admissible evidence and are sufficient to support a conviction. I acknowledge that the above items will be used to support a finding of guilty if the deferred prosecution is revoked.
9. If my deferred prosecution is revoked and I am found guilty, I may be sentenced up to the maximum penalty allowed by law.
10. If I proceed to trial and I am found guilty, I may be allowed to seek suspension of some or all fines and incarceration if I seek treatment. I understand that I may seek treatment from a public or private agency at any time, whether or not I have been found guilty or placed on deferred prosecution.

11. For some crimes, a deferred prosecution will enhance mandatory penalties for subsequent offenses committed within a seven-year period. I understand that a deferred prosecution will be a prior offense under RCW 46.61.5055 (driving under the influence, physical control of a vehicle under the influence, negligent driving if originally charged as driving under the influence or physical control of a vehicle under the influence, vehicular homicide, or vehicular assault).
12. If the court defers prosecution on any crime that would be a violation of state law or local ordinance relating to motor vehicle traffic control, I will be disqualified from driving a commercial motor vehicle for the period specified in RCW 46.25.090 and, if I drive a commercial motor vehicle holding a license issued by Washington State, I will be required to notify the Department of Licensing and my employer of this deferred prosecution within 30 days of the judge granting this petition. RCW 46.25.030. If the court grants this Petition, I may not operate a motor vehicle on the public highways without a valid operator's license and proof of liability insurance pursuant to RCW 46.29.490. If my wrongful conduct is the result of or caused by alcohol dependency, I shall also be required to apply for an ignition interlock driver's license and to install an ignition interlock device under RCW 46.20.720(2) and RCW 46.20.385. The required periods of use of the interlock shall be not less than the periods provided for in RCW 46.20.720(3)~~(a), (b) and (c)~~. I may also be required to pay restitution to victims, pay court costs, and pay probation costs authorized by law. To help ensure continued sobriety and reduce the likelihood of reoffense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for alcoholism or drugs, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. Alcoholism programs shall require a minimum of two self-help recovery groups per week for the duration of the treatment program. The court may terminate the deferred prosecution program if I violate this paragraph.
13. If the court grants this petition, during the period of deferred prosecution I will be required to contact my probation officer, the probation director or designee, or the court if there is no probation department, to request permission to travel or transfer to another state if my wrongful conduct involves: (i) an offense in which a person has incurred direct or threatened physical or psychological harm; (ii) an offense that involves the use or possession of a firearm; (iii) a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol; (iv) a sexual offense that requires me to register as a sex offender in Washington state. I understand that I will be required to pay an application fee with my travel or transfer request.
14. If I fail or neglect to comply with any part of my treatment plan or with any ignition interlock driver's license or ignition interlock device requirements, then the court shall either order me to comply with the term or condition or be removed from deferred prosecution (RCW 10.05.090). After the hearing, the court will either order that I continue with treatment or be removed from deferred prosecution and enter judgment. If I am convicted of a similar offense during the deferred prosecution, the court will revoke the deferred prosecution and enter judgment.
15. The court will dismiss the charge(s) against me in this case three years from the end of the two-year treatment program and following proof to the court that I have complied with the conditions imposed by the court following successful completion of the two-year treatment program, but no less than five years from the date the deferred prosecution is granted, if the court grants this petition and if I fully comply with all the terms of the court order placing me on deferred prosecution.

I certify under penalty of perjury under the laws of the state of Washington that I have read the foregoing and agree with all of its provisions and that all statements made are true and correct.

Dated at _____, Washington this ____ day of _____, _____.

_____ _____

Petitioner-Defendant Defense Attorney/WSBA No.

_____ Court of Washington For _____	
_____ Plaintiff, vs. _____ Defendant.	**No:** _____ **Petition for Deferred Prosecution of Criminal Mistreatment Charge (DPPF)** **Violation Date:** _____

I am the defendant in this case and I petition the court for deferred prosecution of a criminal mistreatment charge under RCW Chapter 10.05. Following are my statements in support of this petition:

1. I am the natural or adoptive parent of the alleged victim.
2. The wrongful conduct charged is the result of parenting problems for which I am in need of services.
3. I am in need of child welfare services under chapter 74.13 RCW to improve my parenting skills in order to better provide my child(ren) with the basic necessities of life.
4. I want to correct my conduct to reduce the likelihood of harm to my child(ren).
5. I have cooperated with the Department of Social and Health Services to develop a plan to receive appropriate child welfare services.
6. I agree to pay the cost of the services if I am financially able to do so.
7. I understand that the court will not accept a petition for deferred prosecution from me if I sincerely believe that I am innocent of the crime(s) or if I sincerely believe that I do not need child welfare services.
8. I have not previously been placed on a deferred prosecution for a Chapter 9A.42 RCW or similar municipal ordinance violation.
9. The Department of Social and Health Services' case history and child welfare service plan have been filed with this petition as required by RCW 10.05.020.
10. I have the following rights: (a) to have a lawyer represent me at all hearings; (b) to have a lawyer appointed at public expense if I cannot afford one; (c) to have a speedy, public jury trial; (d) to appeal any conviction; (e) to remain silent and not testify; (f) to question witnesses who testify against me; (g) to call witnesses to testify for me, at no cost; (h) to be presumed innocent unless the charge(s) against me is (are) proved beyond a reasonable doubt; and (i) to present evidence and a defense. By deferring prosecution on these charges, I understand I give up my right to: (a) a speedy trial; (b) a jury; (c) testify on my own behalf; (d) call and (e) question witnesses; and (f) present evidence or a defense.
11. I agree that the facts as reported in the attached police reports are admissible in evidence and are sufficient to support conviction for the charged crime(s). I acknowledge that the above items will be used to support a finding of guilty if the deferred prosecution is revoked.
12. If my deferred prosecution is revoked and I am found guilty, I may be sentenced up to the maximum penalty allowed by law.

13. If I proceed to trial and I am found guilty, I may be allowed to seek suspension of some or all fines and incarceration if I seek treatment. I understand that I may seek treatment from a public or private agency at any time, whether or not I have been found guilty or placed on deferred prosecution.
14. If the court defers prosecution on any crime that would be a violation of a state law or local ordinance relating to motor vehicle traffic control, I will be disqualified from driving a commercial motor vehicle for the period specified in RCW 46.25.090, and if I drive a commercial motor vehicle holding a license issued by Washington State, I will be required to notify the Department of Licensing and my employer of this deferred prosecution within 30 days of the judge granting this petition. RCW 46.25.030. If the court grants this petition, I may not operate a motor vehicle on the public highways without a valid operator's license and proof of liability insurance pursuant to RCW 46.29.490. If my parenting problems and resulting wrongful conduct are based on alcohol dependency, I shall also be required to apply for an ignition interlock driver's license and to install an ignition interlock device under RCW 46.20.720(2) and RCW 46.20.385. The required periods of use of the interlock shall be not less than the periods provided for in RCW 46.20.720(3)~~(a), (b), and (c)~~. I may also be required to pay restitution to victims, pay court costs, and pay probation costs authorized by law. To help ensure continued sobriety and reduce the likelihood of reoffense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for alcoholism or drugs, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. Alcoholism programs shall require a minimum of two self-help recovery groups per week for the duration of the treatment program. The court may terminate the deferred prosecution program if I violate this paragraph.
15. If the court grants this petition, during the period of deferred prosecution I will be required to contact my probation officer, the probation director or designee, or the court if there is no probation department, to request permission to travel or transfer to another state if my wrongful conduct involves: (i) an offense in which a person has incurred direct or threatened physical or psychological harm; (ii) an offense that involves the use or possession of a firearm; (iii) a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol; (iv) a sexual offense that requires me to register as a sex offender in Washington state. I understand that I will be required to pay an application fee with my travel or transfer request.
16. If I fail or neglect to comply with any part of my service plan, or with any ignition interlock driver's license or ignition interlock device requirements, the court shall either order me to comply with the term or condition or be removed from deferred prosecution (RCW 10.05.090). The termination of my parental rights with regard to the alleged victim due to abuse or neglect that occurred during the pendency of the deferred prosecution shall be per se evidence that I did not successfully complete the service plan. After the hearing, the court will either order that I continue with treatment or be removed from deferred prosecution and enter judgment. If I am convicted of a similar offense during the deferred prosecution, the court will revoke the deferred prosecution and enter judgment.
17. If the court grants my petition, the court will dismiss the charge(s) against me in this case when the court receives proof that I have successfully completed the child welfare service plan, or the service plan has been terminated because the alleged victim has reached his or her majority and there are no other minor children in the home.

I certify under penalty of perjury under the laws of the state of Washington that I have read the foregoing and agree with all of its provisions and that all statements made are true and correct.

Dated at _____, Washington this ____ day of _____, _____.

_____ _____

Petitioner-Defendant Defense Attorney/WSBA No.