



WASHINGTON  
COURTS

**DISTRICT AND MUNICIPAL  
COURT JUDGES' ASSOCIATION**

***BOARD MEETING***

**FRIDAY, APRIL 11, 2014**

**AOC SEATAC OFFICE  
SEATAC, WASHINGTON**





WASHINGTON  
COURTS

**DMCJA BOARD MEETING**  
**FRIDAY, APRIL 11, 2014**  
**12:30 P.M. – 3:30 P.M.**  
**AOC SEATAC OFFICE**  
**SEATAC, WA**

**PRESIDENT JUDGE DAVID SVAREN**  
**A G E N D A**

**TAB**

**Call to Order**

**Minutes – March 14, 2014** (for approval)

**1**

**Treasurer’s Report – Judge Marinella**

**Special Fund Report**

**eWarrants Presentation – Detective Chris Leyba, Seattle Police Department**

**2**

**Standing Committee Reports**  
None

**JIS Status Update – Vicky Cullinane, AOC**

**Action**

**3**

**A. Rules Committee – Judge Garrow**

1) Proposed WSBA RALJ Amendments

a. RALJ 2.2 What May be Appealed

Rules Committee Recommendation: No objection to amendment.

b. RALJ 5.4 Clarify scope of when new trial required-electronic record lost or damaged

Rules Committee Recommendation: Some concern. See tab 4 for detail.

c. RALJ 11.7(e) Application of Other Court Rules- Rules of Appellate Procedure

Rules Committee Recommendation: No objection to amendment.

2) Proposed Amendments to CrR 8.10 and CrRLJ 8.13

Rules Committee Recommendation: Not support. See tab 4 for detail.

**B. BJA Recommendations for Committees Review – Judge Svaren**

1) Request for judicial branch entities that operate committees under authority using AOC staff or resources consider implementing BJA proposed chartering and committee standards.

<p><b>Discussion</b></p> <p>A. Rules Committee – <i>Judge Garrow</i></p> <p>    1) Proposed Amendments to GR 15 (action at next Board meeting)</p> <p>B. Secretary of State Records Retention for Certification of Compliance (New Standards for Indigent Defense) – <i>Judge Svaren</i></p>	<p><b>4</b></p>
<p><b>Liaison Reports</b></p> <p style="padding-left: 40px;">DMCMA    MCA    SCJA    WSBA    WSAJ    AOC    BJA</p>	
<p><b>Information</b></p> <p>A. Update on Public Record Request – <i>Judge Svaren</i></p> <p>B. Reserves Committee Recent Meeting Minutes</p> <p>C. Rules Committee</p> <p>    1) Recent Meeting Minutes</p> <p>    2) Proposed Amendments to IRLJ 3.5</p> <p>D. JABS Logon Changes</p>	<p><b>5</b></p>
<p><b>Other Business</b></p> <p>A. Next Meeting April 25-26, 2014, Woodinville, WA</p>	
<p><b>Adjourn</b></p>	





**DMCJA Board of Governors Meeting**  
Friday, February 14, 2013, 12:30 p.m. – 3:30 p.m.  
AOC SeaTac Office

**MEETING MINUTES**

**Members:**

Chair, Judge Svaren  
Judge ~~Alicia 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 Meyer  
Judge Olwell  
Judge Ringus (non-voting)  
Judge Robertson  
Commissioner Smiley  
Judge Smith  
Judge Steiner

**Guests:**

Ms. Aimee Vance, DMCMA  
Janene Johnstone, MCA

**AOC Staff:**

Ms. J Krebs  
Ms. Vicky Cullinane  
Ms. Michelle Pardee  
Mr. Dirk Marler

President Svaren called the meeting to order at 12:35 p.m. and noted there was a quorum present.

**ASSOCIATION BUSINESS**

Minutes

M/S/P to approve February 14, 2014, minutes. Unanimous vote.

Treasurer's Report

M/S/P to approve the Treasurer's Report. Unanimous vote.

Judge Marinella also reported that DMCJA's corporate status was renewed until October 31, 2014, and the DMCJA Secretary/Treasurer is the agent.

Special Fund Report

Judge Svaren reported that there were no changes to the Special Fund and that at the Board Retreat there will be a discussion on alternative banking options for this fund to make it easier for the custodian of the fund to have access and transfer to the new custodian when time.

**Standing Committee Reports**

A. Legislative Committee

Judge Meyer reviewed the bills that passed this Legislative session

B. Reserves Committee

Judge Svaren reported that the Reserves Committee met prior to today's Board meeting and they will provide recommendation to the Board at the April 25-16, 2014, Board Retreat.

C. Education Committee

Judge Burrowes reported that this year's Spring Conference is focused on education related to DUIs. The Education Committee is working towards an education based plan that will work over a 3 year period to reach education goals. Judge Jahns volunteered to assist with the Trial Management plenary.

**JIS Status Update**

Ms. Cullinane reported on the SC-CMS project and that King County Superior Court has withdrawn from the project. This may possibly shorten the time line for implementation. JISC approved the reprioritization of the CLJ CMS as then next project to start work on. The JABS security enhancements will be coming in May 2014 and several notices detailing the changes will be coming soon.

**Action**

A. Nominating Committee - Slate of Candidates for 2014-2015 Year

M/S/P to send to the membership at the spring conference.

B. Bylaws Committee - Executive Session Language

M/S/P to send to the membership at the spring conference.

**Discussion**

A. Trial Court Advocacy Board (TCAB) – Judge Svaren

The draft charter for TCAB was included in the meeting materials. Judge Jahns again expressed his concern over the language on AOC pass through funds that he raised at the February Board meeting. Ms. Vance noted that in the TCAB February meeting notes should reflect that DMCMA requested to be voting members of TCAB, instead of non-voting members.

M/S/P to move to action.

M/S/P to approve the TCAB charter.

B. BJA Recommendations for Committees Review – Judge Svaren

The co-chairs of BJA sent a letter to Judge Svaren about BJA's review of 205 committees of associations, boards, and commissions and recommending that the organization that the committees are under examine the committees and workgroups for efficiency and relevance. 200 of these committees are staffed by AOC and reviewing of committees will help AOC focus on hoe to used staff and resources. This will be up for action at the April 11, 2014, Board meeting.

C. Rules Committee – Judge Garrow

- 1) Proposed WSBA RALJ Amendments
- 2) Proposed Amendments to CrR 8.10 and CrRLJ 8.13.

The Board discussed the proposed amendments and pros and cons for each. This will be up for action at the April 11, 2014, Board Meeting.

### **LIAISON REPORTS**

**DMCMA-** Ms. Vance reported that at their March 11, 2014, Board Meeting Detective Chris Leyba, Seattle Police Department gave a presentation on electronic warrants. Judge Svaren noted that the same presentation will be given at the April 11, 2014, DMCJA Board Meeting.

**MCA** – Ms. Johnstone reported that any recommendations that DMCJA had for MCA on GR 31 in regards to evaluation reports was welcome. MCA has had many discussions about the impact of GR 31 being repealed and where to look for guidance for what is protected and what now has to be disclosed.

**SCJA** – No liaison present.

**WSBA** – Judge Derr reported that Joanne Moore gave a report on a proposal for caseloads for the new standards for indigent defense and that having Ms. Moore come to a DMCJA Board meeting to present on this topic would be helpful. Judge Ringus discussed the email from the Office of Public Defense (OPD) on workload standards and survey related to the adoption of Standards for Indigent Defense, including public defense caseload standards.

**WSAJ** – No liaison present.

**AOC** – Mr. Marler reported that with the upcoming close of the legislative session AOC is closely watching the budget and its impacts.

**BJA** - Judge Ringus reported that BJA is working on a legislative report and is focused on budget impacts.

### **Information**

A. Judicial Needs Estimate Workgroup– Judge Jahns, Judge Burrowes, Judge Logan

The workgroup has met 10 times since October 2013 and is working towards getting all hearing types counted in the judicial needs estimate. Currently bench warrant hearings are not counted. What is needed to capture to reflect a more accurate judicial needs has changed from 12 years ago when the current system was created. A large impact is the addition of photo enforcement ticket and Discover Pass ticket hearings and the significant impact on courts. There is discussion on how to measure and debate of weighted case counting measurement and its pros and cons. The additions of codes may be recommended to help capture VRV (vehicle related violations) and collect data on the photo enforcement, Discover Pass, and parking hearings. There is also a challenge of getting information from courts that do not use JIS. The committee is looking at what a new case management system may also provide to assist in ways to collect and measure information needed to determine judicial needs. Big thanks to Charlotte Jensen for her work with this workgroup.

- B. Update on Public Record Request – Judge Svaren  
Settlement negotiations continue.
- C. Legislative Committee Meeting Minutes- for review, no discussion.
- D. Rules Committee Meeting Minutes- for review, no discussion.
- E. Updated 2013-2014 Board Meeting Schedule- for review, no discussion.

**Other Business**

- A. New Court Association Coordinator for DMCJA  
Sharon Harvey starts on March 17<sup>th</sup> and will be at the next Board Meeting.
- B. Next meeting April 11, 2014, SeaTac, Washington.

Meeting Adjourned at 2:55 p.m.

DRAFT



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# District and Municipal Court Judges' Association

April 2, 2014

**President**  
JUDGE DAVID A. SVAREN  
Skagit County District Court  
600 S 3rd Street  
PO Box 749  
Mount Vernon, WA 98273-0340  
(360) 336-9319

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

**Vice-President**  
JUDGE DAVID STEINER  
King County District Court  
585 112th Ave S E  
Bellevue, WA 98004  
(206) 205-9200

**Secretary/Treasurer**  
JUDGE G. SCOTT MARINELLA  
Columbia County District Court  
535 Cameron St  
Dayton, WA 99328-1279  
(509) 382-4812

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

**Board of Governors**

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

JUDGE JOSEPH M. BURROWES  
Benton County District Court  
(509) 7535-8476

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

JUDGE MARY C. LOGAN  
Spokane Municipal Court  
(509) 623-4400

JUDGE SAMUEL MEYER  
Thurston County District Court  
(360) 786-5562

JUDGE KELLEY C. OLWELL  
Yakima Municipal Court  
(509) 573-3050

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

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

JUDGE HEIDI SMITH  
Okanogan County District Court  
(509) 422-7170

To: President Svaren, DMCJA Officers; DMCJA Board of Governors;  
From: G. Scott Marinella, DMCJA Treasurer  
Subject: Monthly Treasurer's Report for April, 2014

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

US Bank Platinum Business Money Market Account  
Fund Balance - \$100,380.95, as of February 28, 2014.

Bank of America Accounts  
Investment Account - \$216,932.08, as of March 31, 2014.  
Checking Account - \$15,168.29, as of March 31, 2014.

Total for all Accounts: \$332,481.32

EXPENDITURES

Total 2013/2014 adopted budget:	\$228,900.00
Total expenditures to date (4-2-2014):	<u>\$104,404.40</u>
Total remaining budget as of April 2, 2014:	\$124,495.60

DEPOSITS

Total deposits 2013/2014:	\$142,691.16
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## 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	\$18,046.71	\$11,953.29
5	Bookeeping Expense	\$3,000.00	\$2,400.00	\$600.00
6	Bylaws Committee	\$250.00		\$250.00
7	Conference Committee	\$3,500.00		\$3,500.00
8	Conference Incidental Fees For Members Spring Conference 2013	\$40,000.00	\$42,750.00	-\$2,750.00
9	Diversity Committee	\$2,000.00	\$792.01	\$1,207.99
10	DMCMA Education	\$5,000.00		\$5,000.00
11	DMCMA Liaison	\$500.00		\$500.00
12	DOL Liaison Committee	\$500.00	\$50.82	\$449.18
13	Education Committee**	\$8,500.00	\$2,064.76	\$6,435.24
14	Educational Grants	\$5,000.00	\$830.44	\$4,169.56
15	Judicial Assistance Committee	\$10,000.00	\$8,247.94	\$1,752.06
16	Legislative Committee	\$6,000.00	\$1,693.19	\$4,306.81
17	Legislative Pro-Tem	\$2,500.00	\$688.38	\$1,811.62
18	Lobbyist Expenses	\$1,000.00	\$480.90	\$519.10
19	Lobbyist Contract	\$55,000.00	\$14,000.00	\$41,000.00
20	Long-Range Planning Committee	\$1,500.00	\$441.82	\$1,058.18
21	MCA Liaison	\$1,500.00	\$596.31	\$903.69
22	National Leadership Grants	\$3,000.00	\$3,000.00	\$0.00
23	Nominating Committee	\$400.00		\$400.00
24	President Expense	\$7,500.00	\$1,970.03	\$5,529.97
25	Reserves Committee	\$250.00		\$250.00
26	Rules Committee	\$1,000.00	\$77.49	\$922.51
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	\$97.30	\$902.70
30	Technology Committee	\$5,000.00	\$96.10	\$4,903.90
31	Therapeutic Courts	\$2,500.00	\$532.06	\$1,967.94
32	Treasurer Expense and Bonds	\$1,000.00	\$166.28	\$833.72
33	Judicial Community Outreach	\$3,000.00	\$3,000.00	\$0.00
34	Uniform Infraction Committee	\$1,000.00		\$1,000.00
35	Systems Improvement Committee	\$5,000.00	\$145.04	\$4,854.96
36	Professional Services	\$15,000.00	\$2,236.82	\$12,763.18
	<b>TOTAL</b>	<b>\$228,900.00</b>	<b>\$104,404.40</b>	<b>\$124,495.60</b>
37	<b>TOTAL DEPOSITS MADE</b>	<b>\$142,691.16</b>		
38	<b>CREDIT CARD</b>	<b>\$610.67</b>		
	***funding will come from special funds			

DEPOSITS MADE					
Date	Chk. #	Item Committee	Debit	Deposit	Balance
					\$0.00
7/11/2013	DEP	Deposit - JASP		\$5,000.00	\$5,000.00
8/16/2013	7171	Deposit - 2013 Dues Judge Kevin A. McCann		\$750.00	\$5,750.00
9/24/2013	DEP	Deposit - 2013 Dues Adams County - Tyson Hill		\$375.00	\$6,125.00
11/19/2013	DEP	Credit Card overpayment refund		\$506.16	\$6,631.16
12/3/2013	DEP	Deposit - Dues Paid		\$824.00	\$7,455.16
12/12/2013	DEP	Deposit - Dues Paid		\$9,825.00	\$17,280.16
12/16/2013	DEP	Deposit Dues Paid		\$22,161.00	\$39,441.16
12/19/2013	DEP	Deposit Dues Paid		\$6,075.00	\$45,516.16
12/27/2013	DEP	Deposit Dues Paid		\$18,261.00	\$63,777.16
1/2/2013	DEP	Deposit Dues Paid		\$4,500.00	\$68,277.16
1/15/2014	DEP	Deposit Dues Paid		\$8,624.00	\$76,901.16
1/23/2014	DEP	Deposit Dues Paid		\$24,147.00	\$101,048.16
1/28/2014	DEP	Deposit Dues Paid		\$4,499.00	\$105,547.16
1/31/2014	DEP	Deposit Dues Paid		\$7,023.00	\$112,570.16
2/6/2014	DEP	Deposit Dues Paid		\$13,287.00	\$125,857.16
2/12/2014	DEP	Deposit Dues Paid		\$12,312.00	\$138,169.16
2/20/2014	DEP	Deposit Dues Paid		\$1,498.00	\$139,667.16
3/5/2014	DEP	Deposit Dues Paid		\$1,037.00	\$140,704.16
3/11/2014	DEP	Deposit Dues Paid		\$375.00	\$141,079.16
3/19/2014	DEP	Deposit Dues Paid		\$712.00	\$141,791.16
4/2/2014	DEP	Deposit 2013 Dues Paid - Lambo Olson		\$900.00	\$142,691.16
		TOTAL DUES PAID	\$135,160.00		
		TOTAL DEPOSITS MADE	\$142,691.16		

**CREDIT CARD BALANCE**

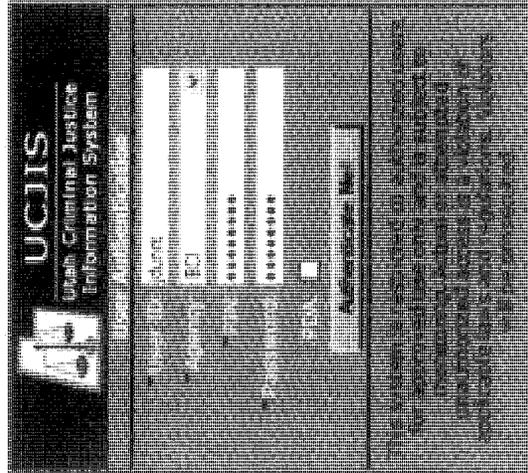
Date	Chk. #	Line Item#	Item Committee	Payment	Charge	Balance
			July Statement Amount			\$1,285.58
7/19/2013	OL		Payment made by Steiner Online	\$1,285.58		\$0.00
8/2/2013	6990	4, 15, 24	Made CC payment by GSM	\$1,285.58		-\$1,285.58
7/31/2013	Chrg	16	EIG DOTSTER - Shannon flowers		\$17.49	-\$1,268.09
8/9/2013	Chrg	4	The Deli		\$28.06	-\$1,240.03
10/16/2013	Chrg	24	Macy's East #376 - present		\$181.78	-\$1,058.25
10/16/2013	Chrg	15	Hotel and Food - see CC Stmt 10-11-13		\$390.65	-\$667.60
9/30/2013	Credit	N/A	Easy Savings Credit	\$12.76		-\$680.36
10/1/2013	Chrg	15	WSBA.ORG - JASP CLE Credit App.		\$35.00	-\$645.36
11/5/2013	Credit	N/A	Easy Savings Credit	\$5.80		-\$651.16
11/1/2013	Chrg	4	Radisson		\$145.00	-\$506.16
11/11/2013	Credit	N/A	Credit Balance Refund		\$506.16	\$0.00
2/20/2014	chrg	4	Hotel - See CC Stmt.2-11-14		\$167.48	\$167.48
2/20/2014	7302	15	Payment - chk. 7302	\$167.48		\$0.00
3/11/2014	chrg		See CC Stmt. 3-11-14		\$830.23	\$830.23
3/19/2014	7318	18,4,15	Payment - chk. 7318	\$830.23		\$0.00
4/1/2014	chrg	24	Charge - Gifts		\$610.67	\$610.67



# Log in to the UCJIS web page

ucjis.utah.gov

Utah Crime & Justice Information System - Windows Internet Explorer



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https://test.ucjis.utah.gov/webfront/loadInitialPage.do

Utah Criminal Justice Information System

UCJIS  
Utah Criminal Justice  
Information System

Transaction Code: WE

GO

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- Favorites
- Person
- Vehicle
- Other
- Inquiry
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- NCIC
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- Add Crash Data
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- Administrator
- Alert Entry
- Alert Modify
- Change PIN
- Change Password
- Citation Entry
- Crime Lab Entry
- Crime Lab Modify
- EASY Reimbursement
- Eliminating Alcohol Sales to Youth
- Endangered Person Advisory
- Online Test
- Print Email Message
- Remove User
- Requestor Profile Add
- Requestor Profile Delete
- Reset PIN
- Reset Password
- Road and Weather Update
- Send Broadcast Message
- Utah Homeland Security Msg
- Warrant Entry

Welcome JACOB DUNN, to Utah's Cr

Any unauthorized access or use is ex

of Utah and of the United States Gov

Your password expires on April 21, 20

Your pin expires on April 21, 2008

Go to Warrant  
Entry Screen

# Wizard Navigation Controls

Utah Criminal Justice Information System - Windows Internet Explorer

https://back.ucjis.utah.gov/web/fronloadctrlPage.cbr

Utah Criminal Justice Information System



**UCJIS**  
Utah Criminal Justice  
Information System

Transaction Code:

[Home](#) | [Favorites](#) | [Results](#) | [Message Logs](#) | [Broadcast](#)

New Broadcast Message

[Expand] [Collapse] [Hide]

- Favorites
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- UTAH
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- Add Crash Data
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- Administrator
- Alert Entry
- Alert Modify
- Change PIN

Answers for eWarrant # 639

Department  
Person  
Property  
Probable Cause  
Conditions  
Summary

[Back] [Save] [Cancel] [Next]

\* Officer Title:

\* Officer Agency:

\* County:

Prosecutor:

Prosecutor Office:

[Back] [Save] [Cancel] [Next]

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- Add Crash Data
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- Administrator
- Alert Entry

**eWarrant Entry**

\*ORI:

\*eWarrant Type:

\*Jurisdiction:

Case Number:

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- Favorites
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- Entry
- NCIC
- NLETS
- UTAH

- Add Cert Date
- Add Crash Data
- Add User Administrator
- Alert Entry

## eWarrant Entry

\*ORI: **UTBCI0000 - UT BURE**

\*eWarrant Type: **General Search Warrant**

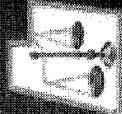
\*Jurisdiction:

Case Number:

- 3RD DIST. COURT - WEST JORDAN
- 3RD DISTRICT COURT - SALT LAKE**
- 3RD DISTRICT COURT - TOOELE
- 3RD DISTRICT CT - SILVER SUMMIT
- 4TH DISTRICT COURT - PROVO
- 7TH DISTRICT COURT - MONTICELLO
- 7th DIST. COURT - CASTLE DALE
- EIGHTH DISTRICT COURT - MANILA
- EIGHTH DISTRICT COURT - VERNAL
- EIGHTH DISTRICT COURT-DUCHESNE
- EIGHTH DISTRICT CT-ROOSEVELT
- SECOND DISTRICT COURT - OGDEN
- SEVENTH DISTRICT COURT - MOAB
- SEVENTH DISTRICT COURT - PRICE

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- UTAH

- Add Cert Date
- Add Crash Data
- Add User
- Administrator

**eWarrant Entry**

\*ORI:

\*eWarrant Type:

\*Jurisdiction:

Case Number:

**Save**

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- Administrator
- Alert Entry
- Alert Modify
- Change PIN

Answers for eWarrant # 639

[Back] [Save] [Cancel] [Next]

Department  
Person  
Property  
Probable Cause  
Conditions  
Summary

\* Officer Title:

\* Officer Agency:

\* County:

Prosecutor:

Prosecutor Office:

[Back] [Save] [Cancel] [Next]

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Asterisks indicate required fields

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- Alert Entry
- Alert Modify
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Answers for eWarrant # 639

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**Department**

Person

Property

Probable Cause

Conditions

Summary

\* Officer Title: Officer

\* Officer Agency: Garfield Co. SO

\* County:

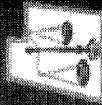
Prosecutor:

Prosecutor Office:

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Answers for eWarrant # 639

[Back] [Save] [Cancel] [Next]

Department  
 Person  
 Property  
 Probable Cause  
 Conditions  
 Summary

\* Officer Title: Officer

\* Officer Agency: Garfield Co. SO

\* County: Garfield

Prosecutor: Hamilton Burger

Prosecutor Office: Garfield County Attorney

[Back] [Save] [Cancel] [Next]

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Section Code:

Answers for eWarrant # 639

Department

**Person**

Property

Probable Cause

Conditions

Summary

[Back] [Save] [Cancel] [Next]

On the premises known as (address):

Further described as (description):

On the person(s) known as:

On the vehicle(s) described as:

\* City:

[Back] [Save] [Cancel] [Next]

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New Broadcast Message

GO

Action Code:

Answers for eWarrant # 639

Department  
Person  
Property  
Probable Cause  
Conditions  
Summary

[Back] [Save] [Cancel] [Next]

On the premises known as (address):

Provide the address of the premises to be searched.

Further described as (description):

On the person(s) known as:

On the vehicle(s) described as:

\* City:

[Back] [Save] [Cancel] [Next]

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Answers for eWarrant # 639

[Back] [Save] [Cancel] [Next]

- Department
- Person
- Property
- Probable Cause
- Conditions
- Summary

123 Fake Street in Fictionville

On the premises known as (address):

Red brick, 3-story house on south side of street

Further described as (description):

Yogi Bear, white male, 35 years of age, 536 pounds, brown hair, brown eyes.

On the person(s) known as:

Red 1994 Ford Mustang

On the vehicle(s) described as:

\* City: Fictionville

[Back] [Save] [Cancel] [Next]

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Answers for eWarrant # 639

Department

Person

Property

Probable Cause

Conditions

Summary

[Back] [Save] [Cancel] [Next]

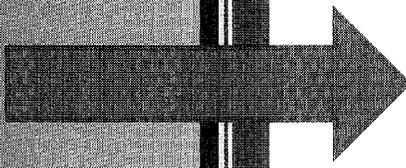
\* Description of items/property to be seized:

[Back] [Save] [Cancel] [Next]

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# Wizard Language Pops Up When Mouse Hovers



Answers for eWarrant # 639

[Back] [Save] [Cancel] [Next]

- Department
- Person
- Property
- Probable Cause
- Conditions
- Summary

1994 Ford Mustang  
Money  
Drugs  
Drug paraphernalia

\* Description of items/property to be seized:  
Provide a detailed list of the items you are searching for, starting each item on a new line. For each item, the totality of your affidavit should contain sufficient facts to believe that the item could be connected to the crime being investigated.

[Back] [Save] [Cancel] [Next]

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Answers for eWarrant # 639

Department

Person

Property

Probable Cause

Conditions

Summary

[Back] [Save] [Cancel] [Next]

< >

\* And is evidence of the crime or crimes of:

< >

\* Training/Experience:

< >

\* Probable Cause:

[Back] [Save] [Cancel] [Next]

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Answers for eWarrant # 639

Department

Person

Property

Probable Cause

Conditions

Summary

[Back] [Save] [Cancel] [Next]

Drug use, manufacturing, and distribution

\* And is evidence of the crime or crimes of:

I have been a police officer for the Ft. Collins Police Department for 16 years and have been assigned to the Drug Task Force for the past 4 years. I have obtained convictions on over 90% of arrests that I affected.

\* Training/Experience:

Confidential informant statements that drug use, manufacturing, and distribution is taking place at this location. Personally witnessed several transactions.

\* Probable Cause:

Enter (or paste in from another document) a complete statement of facts that describes with particularity your investigation, and the basis for a magistrate to issue this search warrant.

[Back] [Save] [Cancel] [Next]

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# Optional

Answers for eWarrant # 639

[Back] [Save] [Cancel] [Next]

- Department
- Person
- Property
- Probable Cause
- Conditions**
- Summary

Nighttime Warrant Reason:

No Knock Warrant Reason:

[Back] [Save] [Cancel] [Next]

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# Summary Screen

Summary for eWarrant #639	
User ID:	jdunn
Agency:	BCI
User Name:	JACOB DUNN
Email:	jacobdunn@utah.gov
ORI:	UTBCI0000
Jurisdiction:	3RD DISTRICT COURT - SALT LAKE
Type:	General Search Warrant
Case Number:	123test
Judge:	
Exclusive:	No
Status:	INITIAL
Status Time:	03-10-2008 03:10 PM
<a href="#">[Edit]</a> <a href="#">[Affidavit]</a> <a href="#">[Submit]</a> <a href="#">[Email]</a> <a href="#">[Delete]</a>	



**Summary for eWarrant #639**

User ID:	jduunt
Agency:	BCI
User Name:	JACOB DUINN
Email:	jacobduinn@utah.gov
ORI:	UTBC100000
Jurisdiction:	3RD DISTRICT COURT - SALT LAKE
Type:	General Search Warrant
Case Number:	123test
Judge:	
Exclusive:	No
Status:	INITIAL
Status Time:	03-10-2008 03:10 PM
<a href="#">[Edit]</a> <a href="#">[Affidavit]</a> <a href="#">[Submit]</a> <a href="#">[Email]</a> <a href="#">[Delete]</a>	

### Prosecutor Email Setup

\*Email Address: myfavoritepros@yehaw.com

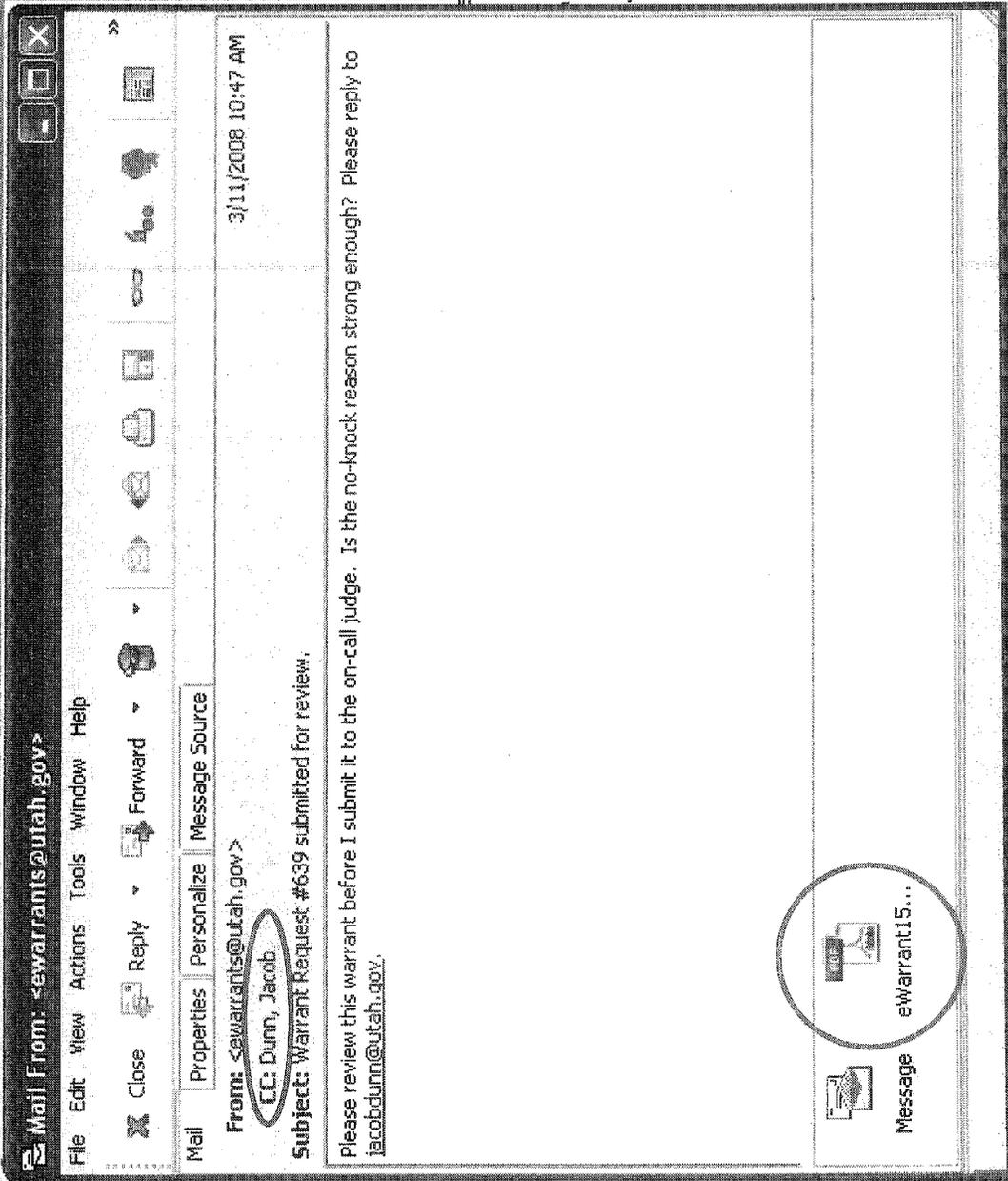
Please review this warrant before I submit it to the on-call judge. Is the no-knock reason strong enough? Please reply to jacobdunn@utah.gov.

Email Message:

Text Message Email: 8015551234@verizon.net

Submit

Cancel



Summary for eWarrant #639	
User ID:	jdunn
Agency:	BCI
User Name:	JACOB DUNN
Email:	jacobdunn@utah.gov
ORI:	UTBCI0000
Jurisdiction:	3RD DISTRICT COURT - SALT LAKE
Type:	General Search Warrant
Case Number:	1234567
Judge:	
Exclusive:	No
Status:	INITIAL
Status Time:	03-10-2008 03:10 PM
<a href="#">[Edit]</a> <a href="#">[Affidavit]</a> <a href="#">[Submit]</a> <a href="#">[Email]</a> <a href="#">[Delete]</a>	

**Affidavit Submission for eWarrant #639**

Judge:  ▼

Exclusive:

Case Number:

By submitting this affidavit, I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

**Affidavit Submission for eWarrant #639**

On Call Judge

On Call Judge

ANN BOYDEN

ANTHONY B. GUINN

BRUCE LUBECK

DENISE P. LINDBERG

DENO HIMONAS

GLENN K. IWASAKI

JOSEPH C. FRATTO

JUDITH S. ATHERTON

KATE TOOMEY

KENNETH RIGTRUP

L.A. DEVER

MARK KOURIS

MAURICE D. JONES

MICHELE CHRISTIANSEN

PAUL G. MAUGHAN

PEGGY ACOMB

RANDALL SKANICHY

ROBERT ADKINS

ROBERT FAUST

ROBERT K. HILDER

ROBIN W. REESE

ROYAL I. HANSEN

SANDRA PEULER

SHAUNA GRAVES-ROBERTSON

SHEILA K. MCCLEVE

STEPHEN L. HENRIOD

STEPHEN ROTH

TERRY CHRISTIANSEN

TEST JUDGE

Judge:

Exclusive:

Case Number:

By submitting this affidavit, I

Utah that the foregoing is true and correct.

**Affidavit Submission for eWarrant #639**

Judge: On Call Judge

Exclusive:

Case Number: 123test

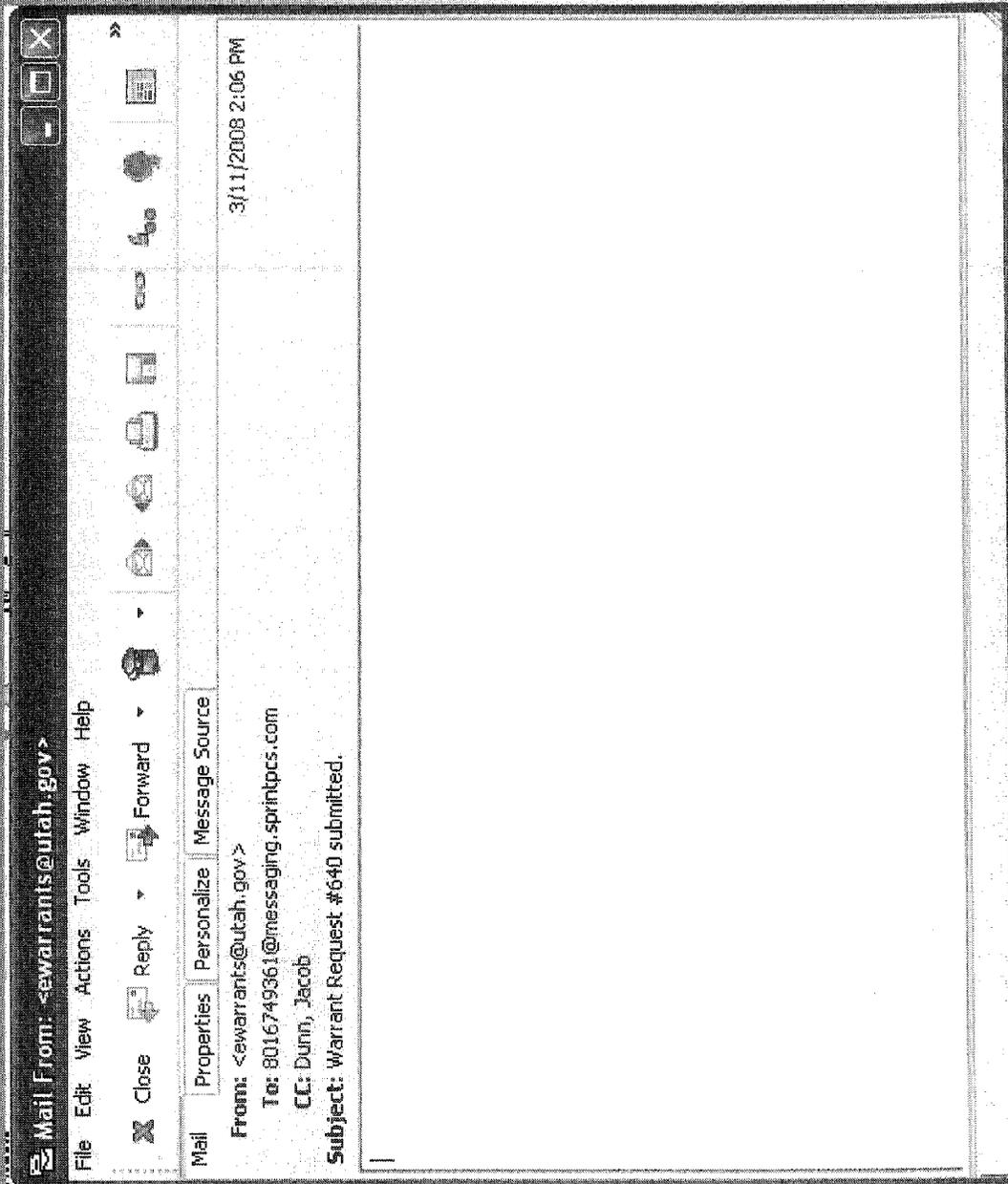
By submitting this affidavit, I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

**Summary for eWarrant #641**

User ID:	jdunn
Agency:	BCI
User Name:	JACOB DJINN
Email:	jacobdunn@utah.gov
ORI:	UTBCI0000
Jurisdiction:	3RD DISTRICT COURT - SALT LAKE
Type:	General Search Warrant
Case Number:	123test
Judge:	SHEILA K. MCCLEVE
Exclusive:	No
Status:	SUBMITTED

Status Time: 03-11-2008 02:08 PM

[\[Affidavit\]](#) [\[Retract\]](#) [\[History\]](#)





# UCJIS

Utah Criminal Justice Information System

Transaction Code: WQ



[Expand] [Collapse] [Hide]

- Favorites
- Person
- Vehicle
- Other
- Inquiry
- NCIC
- NLETS
- UTAH
- Crash Query
- Agency Trans Counts
- Alliance
- CTA Query
- Crime Lab Inquiry
- EASY COMPLIANCE
- FRAUD
- Firemarshal Inspection
- Firemarshal School Inspection
- Jail Booking Agency
- Master Index Inquiry
- Message Log
- Query Gun Background
- Range Request
- Report Gun Background
- Requestor Profile
- SISS Application
- SISS Update
- TAC Report
- User Trans Counts
- View Broadcast Messages
- Warrants by Zipcode
- Web Site
- eWarrant Jurisdiction Query
- eWarrant Query
- eWarrant Submission Query
- eWarrants Query Supervisory
- Entry

Welcome JACOB DUNN, to U

Any unauthorized access or u  
Utah and of the United State:

Your password expires on Apr  
Your pin expires on April 21,

# R

## eWarrant Search

User ID:

Agency:

ORI:

Status:

eWarrant Type:

Jurisdiction:

Case Number:

Date Range:  -

Search By Warrant Number

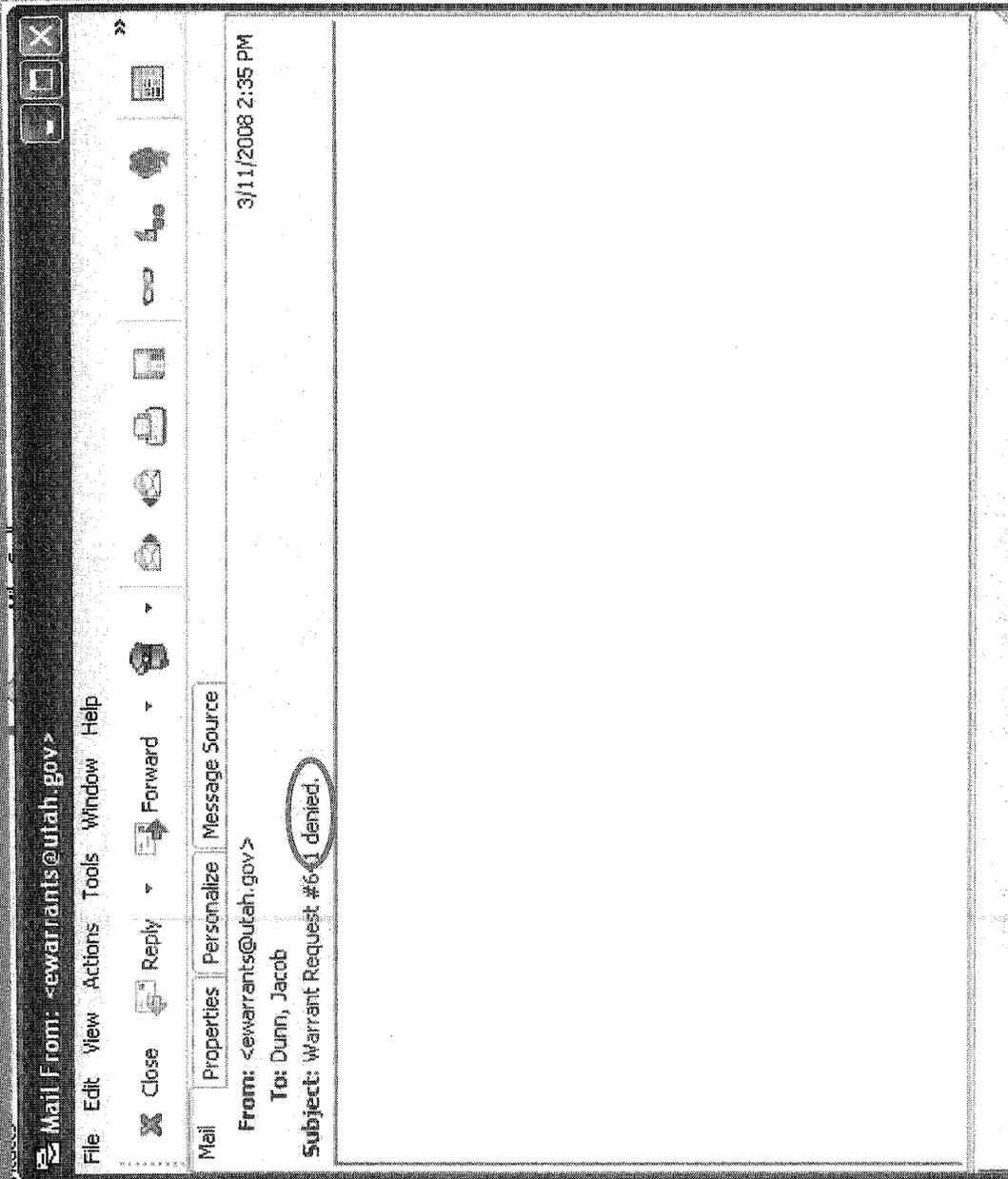
eWarrant Number:

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Actions	Number	Status	Status Time	User ID	Jurisdiction	Type
[Edit] [Affidavit] [Submit] [Email] [Delete]	631	INITIAL	03-07-2008 09:18 AM	jdunnt	3RD DIST. COURT - WEST JORDAN	General Search Warrant
[Affidavit]	633	RETRACTED [History]	03-07-2008 04:21 PM	jdunnt	3RD DIST. COURT - WEST JORDAN	General Search Warrant
[Affidavit] [Warrant] [Service]	634	APPROVED [History]	03-10-2008 01:34 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	DUI Blood Draw Warrant
[Affidavit] [Retract]	639	SUBMITTED [History]	03-11-2008 10:50 AM	jdunnt	3RD DISTRICT COURT - SALT LAKE	General Search Warrant

**Warrant is Reviewed**



Actions	Number	Status	Status Time	User ID	Jurisdiction	Type
[Edit] [Affidavit] [Submit] [Email] [Delete]	631	INITIAL	03-07-2008 09:18 AM	jdunnt	3RD DIST. COURT - WEST JORDAN	General Search Warrant
[Affidavit]	633	RETRACTED [History]	03-07-2008 04:21 PM	jdunnt	3RD DIST. COURT - WEST JORDAN	General Search Warrant
[Affidavit] [Warrant] [Service]	634	APPROVED [History]	03-10-2008 01:34 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	DUI Blood Draw Warrant
[Affidavit] [Retract]	640	SUBMITTED [History]	03-11-2008 01:55 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	DUI Blood Draw Warrant
[Affidavit]	639	RETRACTED [History]	03-11-2008 01:58 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	General Search Warrant
[Edit] [Affidavit] [Comments] [Submit] [Email] [Retract]	641	DENIED [History]	03-11-2008 02:25 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	General Search Warrant

Status History for eWarrant #641

Status Time	Status	User Name	Agency	ORI	Comments	Document
03-11-2008 02:25 PM	DENIED	TEST JUDGE	AOC	UT0100150	[View]	None
03-11-2008 02:08 PM	SUBMITTED	JACOB DUNN	BCI	UTBCI0000	None	[View]
03-11-2008 01:59 PM	INITIAL	JACOB DUNN	BCI	UTBCI0000	None	None



# UCJIS

Utah Criminal Justice Information System

Transaction Code:

[Expand] [Collapse] [Hide]

Favorites

UTAH Warrant Entry

UTAH eWarrant Jurisdiction Query

UTAH eWarrant Query

UTAH eWarrant Submission Query

UTAH eWarrants Query Supervisory

Person

Vehicle

Other

## Comments for eWarrant Request #641

You need more probable cause.

Comments:

Actions	Number	Status	Status Time	User ID	Jurisdiction	Type
[Edit] [Affidavit] [Submit] [Email] [Delete]	631	INITIAL	03-07-2008 09:18 AM	jdunnt	3RD DIST. COURT - WEST JORDAN	General Search Warrant
[Affidavit]	633	RETRACTED [History]	03-07-2008 04:21 PM	jdunnt	3RD DIST. COURT - WEST JORDAN	General Search Warrant
[Affidavit] [Warrant] [Service]	634	APPROVED [History]	03-10-2008 01:34 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	DUI Blood Draw Warrant
[Affidavit] [Retract]	640	SUBMITTED [History]	03-11-2008 01:55 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	DUI Blood Draw Warrant
[Affidavit]	639	RETRACTED [History]	03-11-2008 01:58 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	General Search Warrant
[Edit] [Affidavit] [Comments] [Submit] [Email] [Retract]	641	DENIED [History]	03-11-2008 02:25 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	General Search Warrant

**Answers for eWarrant # 641**

[\[Back\]](#) [\[Save\]](#) [\[Cancel\]](#) [\[Next\]](#)

- Department
- Person
- Property
- Probable Cause**
- Conditions
- Summary

* Officer Title:	Officer
* Officer Agency:	Garfield Co. SO
* County:	Garfield
Prosecutor:	Hamilton Buiger
Prosecutor Office:	Garfield County Attorney

[\[Back\]](#) [\[Save\]](#) [\[Cancel\]](#) [\[Next\]](#)

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**Answers for eWarrant # 641**

Department

Person

Property

Probable Cause

Conditions

Summary

[Back] [Save] [Cancel] [Next]

Drug use, manufacturing, and distribution.

\* And is evidence of the crime or crimes of:

I have been a police officer for the Fictionville Police Department for 13 years and have been assigned to the Drug Task Force for the past 4 years. I have obtained convictions on over 90% of arrests that I affected.

\* Training/Experience:

Confidential informant statements that drug use, manufacturing, and distribution is taking place at this location. Personally witnessed several transactions.

\* Probable Cause:

[Back] [Save] [Cancel] [Next]

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Answers for eWarrant # 641

Department  
Person  
Property  
Probable Cause  
Conditions  
Summary

[Back] [Save] [Cancel] [Next]

Drug use, manufacturing, and distribution.

\* And is evidence of the crime or crimes of:

I have been a police officer for the Fictionville Police Department for 13 years and have been assigned to the Drug Task Force for the past 4 years. I have obtained convictions on over 90% of arrests that I affected.

\* Training/Experience:

Confidential informant statements that drug use, manufacturing, and distribution is taking place at this location. Personally witnessed several transactions. More information.

\* Probable Cause:

[Back] **(Save)** [Cancel] [Next]

Utah Department of Public Safety  
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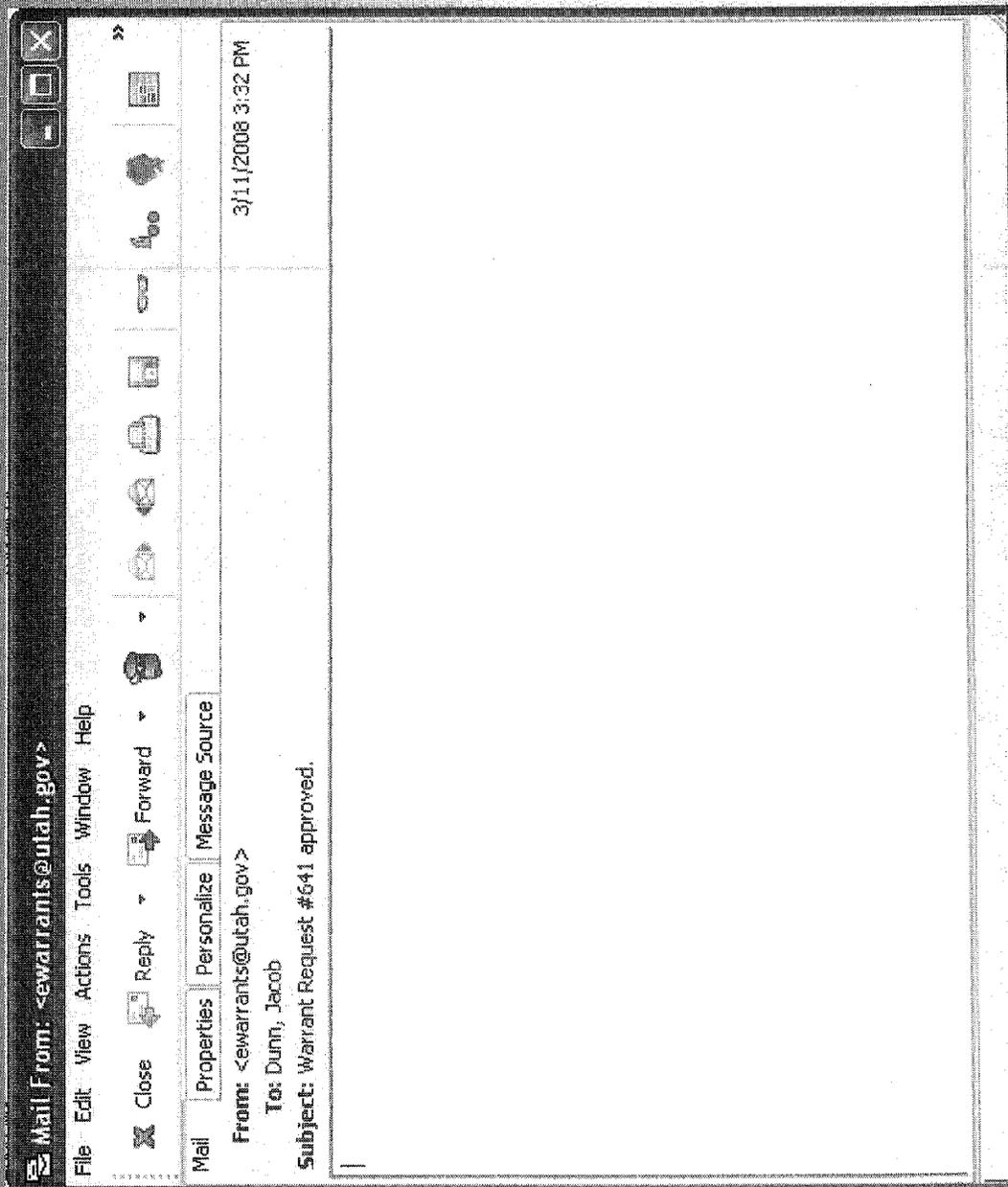
Further distribution or disclosure of this information is controlled by state and federal law.

Summary for eWarrant #641

User ID: jduint  
Agency: BCI  
User Name: JACOB DUNN  
Email: jacobdunn@utah.gov  
ORI: UTBCI0000  
Jurisdiction: 3RD DISTRICT COURT · SALT LAKE  
Type: General Search Warrant  
Case Number: 123test  
Judge: TEST JUDGE  
Exclusive: No  
Status: DENIED

Status Time: 03-11-2008 02:25 PM

[Edit] [Affidavit] [Comments] **Submit** [Email] [Retract] [History]



Actions	Number	Status	Status Time	User ID	Jurisdiction	Type
[Edit] [Affidavit] [Submit] [Email] [Delete]	631	INITIAL	03-07-2008 09:18 AM	jdunnt	3RD DIST. COURT - WEST JORDAN	General Search Warrant
[Affidavit]	633	RETRACTED [History]	03-07-2008 04:21 PM	jdunnt	3RD DIST. COURT - WEST JORDAN	General Search Warrant
[Affidavit] [Warrant] [Service]	634	APPROVED [History]	03-10-2008 01:34 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	DUI Blood Draw Warrant
[Affidavit] [Retract]	640	SUBMITTED [History]	03-11-2008 01:55 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	DUI Blood Draw Warrant
[Affidavit]	639	RETRACTED [History]	03-11-2008 01:58 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	General Search Warrant
[Affidavit] [Warrant] [Service]	641	APPROVED [History]	03-11-2008 03:22 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	General Search Warrant

IN THE 3RD DISTRICT COURT - SALT LAKE DEPARTMENT  
IN AND FOR GARFIELD COUNTY, STATE OF UTAH

---

**SEARCH WARRANT**

No. 641

COUNTY OF GARFIELD, STATE OF UTAH

To any peace officer in the State of Utah:

Proof by Affidavit under oath having been made this day before me by JACOB DUNN, I am satisfied that there is probable cause to believe

THAT

On the premises known as 123 Fake Street in Fictionville, further described as Red brick, 3-story house on south side of street;

On the person(s) of: Yogi Bear, white male, 35 years of age, 536 pounds, brown hair, brown eyes;

On the vehicle(s) described as: Red 1994 Ford Mustang;

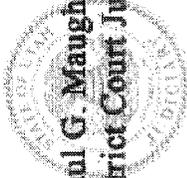
Consists of an item of, or constitutes evidence of, illegal conduct, possessed by a party to the illegal conduct.

Affiant believes the property and evidence described above is evidence of the crime or crimes of Drug use, manufacturing, and distribution..

**YOU ARE THEREFORE COMMANDED:**

to make a search of the above-named or described premises for the herein-above described property or evidence and if you find the same or any part thereof, to bring it forthwith before me at the 3RD DISTRICT COURT - SALT LAKE DEPARTMENT, County of Garfield, State of Utah, or retain such property in your custody, subject to the order of this court.

Dated: 11th day of March, 2008 /s/

  
Paul G. Maughan  
District Court Judge

# Return of Service

Actions	Number	Status	Status Time	User ID	Jurisdiction	Type
[Edit] [Affidavit] [Submit] [Email] [Delete]	631	INITIAL	03-07-2008 09:18 AM	jdunnt	3RD DIST. COURT - WEST JORDAN	General Search Warrant
[Affidavit]	633	RETRACTED [History]	03-07-2008 04:21 PM	jdunnt	3RD DIST. COURT - WEST JORDAN	General Search Warrant
[Affidavit] [Warrant] [Service]	634	APPROVED [History]	03-10-2008 01:34 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	DUI Blood Draw Warrant
[Affidavit] [Retract]	640	SUBMITTED [History]	03-11-2008 01:55 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	DUI Blood Draw Warrant
[Affidavit]	639	RETRACTED [History]	03-11-2008 01:58 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	General Search Warrant
[Affidavit] [Warrant] [Service]	641	APPROVED [History]	03-11-2008 03:22 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	General Search Warrant

**Warrant Service Entry for eWarrant #641**

\* Service Date:

\* Served On: Yogi Bear, white male, 35 years of age, 536 pounds, brown

Property Taken:

**Warrant Service Entry for eWarrant #641**

\*Service Date: 02122008

\*Served On: Yogi Bear, white male, 35 years of age, 526 pounds, brown

1994 Red Ford Mustang  
20,000 cash  
1 lb. marijuana  
6 oz. methamphetamine

Property Taken:

Submit

Cancel

Actions	Number	Status	Status Time	User ID	Jurisdiction	Type
[Edit] [Affidavit] [Submit] [Email] [Delete]	631	INITIAL	03-07-2008 09:18 AM	jdunnt	3RD DIST. COURT - WEST JORDAN	General Search Warrant
[Affidavit]	633	RETRACTED [History]	03-07-2008 04:21 PM	jdunnt	3RD DIST. COURT - WEST JORDAN	General Search Warrant
[Affidavit] [Warrant] [Service]	634	APPROVED [History]	03-10-2008 01:34 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	DUI Blood Draw Warrant
[Affidavit] [Retract]	640	SUBMITTED [History]	03-11-2008 01:55 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	DUI Blood Draw Warrant
[Affidavit]	639	RETRACTED [History]	03-11-2008 01:58 PM	jdunnt	3RD DISTRICT COURT - SALT LAKE	General Search Warrant
[Affidavit] [Warrant] [ROS]	641	SERVED [History]	03-12-2008 11:41 AM	jdunnt	3RD DISTRICT COURT - SALT LAKE	General Search Warrant

## RETURN TO SEARCH WARRANT

NO. 641

The personal property listed below or set out on the inventory attached hereto was taken from the person of Yogi Bear, white male, 35 years of age, 536 pounds, brown hair, brown eyes, by virtue of a search warrant dated the 11th day of March, 2008, and issued by Magistrate TEST JUDGE of the 3RD DISTRICT COURT - SALT LAKE DEPARTMENT:

1994 Red Ford Mustang  
20,000 cash  
1 lb. marijuana  
6 oz. methamphetamines

I, Officer JACOB DUNN of Garfield Co. SO, by whom this warrant was executed, do swear that the above listed or below attached inventory contains a true and detailed account of all the property taken by me under the warrant, on the 12th day of February, 2008.

All of the property taken by virtue of said warrant will be retained in my custody subject to the order of this court or of any other court in which the offense in respect to which the property, or things taken, is triable.

**I declare under criminal penalty of the State of Utah that the foregoing is true and correct.**





KING COUNTY DISTRICT COURT  
East Division – Redmond Courthouse

Judge Janet E. Garrow  
Janet.Garow@kingcounty.gov  
206-477-2103

8601 – 160<sup>th</sup> Avenue NE  
Redmond, WA 98052

Kathy Orozco, Court Manager  
Redmond Courthouse  
206-477-3200

TO: DMCJA Board

FROM: DMCJA Rules Committee

SUBJECT: Proposed WSBA RALJ Amendments

DATE: February 26, 2014

The Washington State Bar Association (WSBA) has proposed amendments for the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ). The following is a summary of the proposed amendments and the DMCJA Rules Committee's proposed recommendations on each.

**1. RALJ 2.2 What May be Appealed**

The proposal is to adopt the language contained in the Rules of Appellate Procedure (RAP) 2.5(a) which provides that the appellate court may refuse to review any claim of error which was not raised in the trial court. The proposed language is nearly identical to RAP 2.5.

Recommendation: No objection to proposed amendment.

**2. RALJ 5.4 An amendment to clarify the scope of when a new trial is required when an electronic record is lost or damaged.**

The current rules provides that in the event of loss or damage of the electronic record, or any significant or material portion thereof, the appellant, upon motion to the superior court, shall be entitled to a new trial, but only if the loss or damage of the record is not attributable to the appellant's malfeasance. The proposed amendment seeks to limit when a new hearing or trial is required.

Because the issue on review may relate to a pretrial motion and that electronic record may not be lost or damaged, it seems to make sense that an appellant should not be automatically entitled to a new trial. For example, if the issue related to a pretrial motion, the Superior Court could easily review the record of the motion hearing and determine whether an error was made. If so, the remedy may then be a new trial.

**Recommendation:**

There is some concern with the proposed language of the amendment. The existing first sentence of the rule clearly provides that the remedy is a new trial. Therefore it seems that the second sentence of the rule, the proposed amendment, should begin with a modifier which allow a remedy other than a new trial, and should reference a damaged record. For example:

However, if the lost or damaged record pertains to a material or significant pretrial matter, the appellant shall only be entitled to a new hearing on the matter for which the record was lost or destroyed.

The third sentence of the rule, the proposed amendment, could be simplified and clarified as to when the trial court will be required to rehear a motion or trial. For example:

Unless the appellant demonstrates that a pretrial matter or trial was materially affected by a lost or damaged electronic record, a trial court will not be required to rehear a pretrial matter or trial for which an electronic record is available for appellate review.

**3. RALJ 11.7(e) Application of Other Court Rules – Rules of Appellate Procedure**

The proposed amendment would incorporate other RAP to the RALJ for criminal cases when not in conflict with the purpose or intent of the RALJ and when application is practicable. RAP 2.4(a) (scope of review), RAP 2.5 (circumstances which may affect the scope of review), RAP 3.3 (consolidation of cases), RAP 7.2(b) (authority of trial court to settle the record), RAP 10.7 (submission if improper brief and RAP 108 additional authorities).

**Recommendation:** No objection to propose

**GR 9 COVER SHEET**  
**Suggested Change**

**RULES FOR APPEAL OF DECISIONS OF COURTS OF LIMITED JURISDICTION**  
**RALJ 2.2 – What May be Appealed**  
(Codifying scope of appeal)

**Submitted by the Board of Governors of the Washington State Bar Association**

**Purpose:** The Rules of Appellate Procedure state, “The appellate court may refuse to review any claim of error which was not raised in the trial court.” RAP 2.5(a). Formally codifying this rule for appeals from Courts of Limited Jurisdiction would aid pro se litigants in understanding the scope of appealable issues. As the Court stated in *State v. Naillieux*, 158 Wn. App. 630, 638, 241 P.3d 1280 (2010):

Our function is to review the validity of claimed errors by a trial judge who presided over a trial. That function assumes that counsel preserve the error by objecting to something the trial judge did or did not do. We do not, and should not, be in the business of retrying these cases. It is a wasteful use of judicial resources. *Id.* at 344, 835 P.2d 251; *State v. Bashaw*, 169 Wn.2d 133, 146, 234 P.3d 195 (2010); *State v. Labanowski*, 117 Wn.2d 405, 420, 816 P.2d 26 (1991). And it encourages skilled counsel to save claims of constitutional error for appeal so a defendant can get a new trial and second chance at a not guilty verdict if the first trial does not end in his favor. *Lynn*, 67 Wash.App. at 343, 835 P.2d 251.

Therefore, adding the exact language from RAP 2.5(a) to RALJ 2.2 would be consistent with existing case law.



**SUGGESTED AMENDMENT**  
**RULES FOR APPEAL OF DECISIONS OF COURTS OF**  
**LIMITED JURISDICTION (RALJ)**  
**RULE 2.2 – WHAT MAY BE APPEALED**

1           (a) - (c) [No change]

2           **(d) Errors Raised for First Time on Appeal.** The superior court may refuse to review  
3 any claim of error that was not raised in the court of limited jurisdiction. However, a party may  
4 raise the following claimed errors for the first time on appeal: (1) lack of jurisdiction, (2)  
5 failure to establish facts upon which relief can be granted, and (3) manifest error affecting a  
6 constitutional right. A party may present a ground for affirming a decision of a court of limited  
7 jurisdiction that was not presented to that court if the record has been sufficiently developed to  
8 fairly consider the ground. A party may raise a claim of error that was not raised by the party in  
9 the court of limited jurisdiction if another party on the same side of the case raised the claim of  
10 error in that court.  
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**GR 9 COVER SHEET**  
**Suggested Rule Change**

**RALJ 5.4**

**Application of Other Court Rules – Rules of Appellate Procedure**

**PURPOSE:** The Office of the King County Prosecuting Attorney is suggesting a change to the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ), to clarify the scope of a "new trial" mandated in the event of a lost electronic record.

All proceedings in courts of limited jurisdiction are preserved through an electronic record. Unfortunately, these records are occasionally lost or destroyed through computer or microphone malfunction. RALJ 5.4 provides that the remedy for a lost electronic record is "a new trial." The purpose of this suggested change is to clarify the meaning of a "new trial" when the lost or damaged electronic record pertains to a pretrial hearing, not a trial.

When a lost or damaged record pertains to the trial, RALJ 5.4's remedy is logical and easily applied on remand. However, if the lost or damaged record pertains to a pretrial hearing, the remedy is more complicated and difficult to apply. Courts of limited jurisdiction need guidance on this issue.

For example, if the lost electronic record pertains to a pretrial CrRLJ 3.5 hearing, rather than a trial, then what is the scope of the "new trial" on remand? In this situation, RALJ 5.4's remedy is ambiguous. Obviously, the appellant should be entitled to relitigate the CrRLJ 3.5 hearing for which the record was lost or destroyed. However, RALJ 5.4 does not specify that the appellant is entitled to relitigate the CrRLJ 3.5 hearing; it specifies that the appellant is entitled to "a new trial."

Assuming that "a new trial" allows the appellant to relitigate pretrial matters for which the record was lost or destroyed, it is still unclear whether the appellant is entitled to relitigate pretrial matters for which the electronic record survived.

Take, for example, a case in which a CrRLJ 3.6 suppression hearing was held on a different date than a CrRLJ 3.5 hearing. If the record of the CrRLJ 3.6 suppression hearing survived but the record of the CrRLJ 3.5 hearing was destroyed, should the appellant be entitled to relitigate both the CrRLJ 3.5 hearing and the CrRLJ 3.6 suppression hearing? Because RALJ 5.4 protects an appellant's right to obtain appellate review, and the appellant can obtain appellate review of any hearing for which the electronic hearing survived, the trial court should not be required to relitigate a hearing with a viable record that remains subject to appellate review. In that situation, relitigation of all pretrial matters is a waste of the court's limited resources and an unnecessary windfall to the appellant.

However, there are circumstances in which the lost record from one pretrial hearing may affect the proceedings in a subsequent pretrial hearing. For example, if the testimony at a CrRLJ 3.5 hearing affected the court's ruling at a subsequent CrRLJ 3.6 hearing, then the hearings are materially related and the appellant should be entitled to relitigate both hearings.

Finally, there is also a question as to whether the appellant should receive a new trial when the record of a pretrial hearing is lost but the record of the trial survived. If the relitigation of the lost pretrial hearing would not affect the trial, there is no reason to hold a new trial. The trial record is still subject to review on appeal. A new trial should be held only if relitigation of a pretrial matter affects the evidence at trial.

The remedy provided by RALJ 5.4 lacks specificity. In its current form, the rule presumes that pretrial matters and trial are heard at the same time, such that any loss of an electronic record necessarily implies the loss of a trial record. In practice, however, courts of limited jurisdiction hold numerous pretrial hearings prior to trial. Some of those pretrial hearings affect trial, and some do not.

The proposed amendment to RALJ 5.4 clarifies that the remedy for a lost or damaged record of a pretrial hearing is relitigation of the pretrial hearing for which the electronic record was lost or destroyed. The trial court need not relitigate a pretrial hearing or trial for which the electronic record survived, unless the appellant can demonstrate that a pretrial hearing or trial was materially affected by the lost electronic record.





**GR 9 COVER SHEET**  
**Suggested Rule Change**

**RALJ 11.7(e)**  
**Application of Other Court Rules – Rules of Appellate Procedure**

**PURPOSE:** The Office of the King County Prosecuting Attorney is suggesting a change to the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ), to expressly allow the application of appropriate Rules of Appellate Procedure in appeals from courts of limited jurisdiction.

The purpose of this suggested change is to clarify that the enumerated Rules of Appellate Procedure supplement the Rules for Appeal of Decisions of Courts of Limited Jurisdiction when these rules do not conflict and when application is practicable. Currently, common appellate procedures permitted by the Rules of Appellate Procedure are not expressly incorporated under the RALJ.

Specifically, the RALJ do not provide a mechanism for moving to strike a brief that fails to comply with Title 7. Compare RAP 10.7. The RALJ do not provide a standard for consolidating cases on appeal. Compare RAP 3.3. The RALJ do not define the scope of issues that may be raised for the first time on review, nor do they define the scope of review for a case that has returned to the appellate court following remand. Compare RAP 2.5. The RALJ do not expressly permit a statement of additional authorities. Compare RAP 10.8. The RALJ do not give the court of limited jurisdiction the authority to settle the record. Compare RAP 7.2

The RALJ allow a respondent to seek cross-review of a decision of the court of limited jurisdiction. RALJ 2.1(a). However, unlike the Rules of Appellate Procedure, the RALJ do not specify the scope of cross-review. Compare RAP 2.4(a).

The RALJ provide a streamlined procedure for appeals from courts of limited jurisdiction. However, in the aforementioned circumstances, the RALJ procedure would benefit from limited application of the more clearly defined Rules of Appellate Procedure.



1 signing of pleadings), CRLJ 25 (substitution of parties), CRLJ 40(b) (disqualification of judge),  
2 and CRLJ 60 (relief from judgment or order).

3       **(d) Criminal Rules for Courts of Limited Jurisdiction.** The following Criminal Rules  
4 for Courts of Limited Jurisdiction are applicable to appellate proceedings in criminal cases in the  
5 court of limited jurisdiction when not in conflict with the purpose or intent of these rules and  
6 when application is practicable: CrRLJ 1.7 (local court rules--availability), CrRLJ 1.5 (style and  
7 form), CrRLJ 3.1 (right to and assignment of lawyer), CrRLJ 8.9 (disqualification of judge),  
8 CrRLJ 8.9(c) (disqualification of judge--transfer), CrRLJ 7.8(a) (clerical mistakes), CrRLJ 8.1  
9 (time), and CrRLJ 8.2 (motions). (Editorial Note: Effective September 1, 1987, Justice Court  
10 Criminal Rules (JCrR) were retitled Criminal Rules for Courts of Limited Jurisdiction (CrRLJ).  
11 Effective September 1, 1989, Justice Court Civil Rules (JCR) were retitled Civil Rules for Courts  
12 of Limited Jurisdiction (CRLJ).)

13 <<++++>> **(e) Rules of Appellate Procedure.** The following Rules of Appellate Procedure are  
14 applicable to appellate proceedings in criminal cases in the court of limited jurisdiction when not  
15 in conflict with the purpose or intent of these rules and when application is practicable: RAP  
16 2.4(a) (scope of review), RAP 2.5 (circumstances which may affect the scope of review), RAP  
17 3.3 (consolidation of cases), RAP 7.2(b) (authority of trial court to settle the record), RAP 10.7  
18 (submission of improper brief), RAP 10.8 (additional authorities). <<++++>>



TO: DMCJA Board  
FROM: DMCJA Rules Committee  
SUBJECT: Proposed Amendments CrR 8.10 and CrRLJ 8.13  
DATE: February 26, 2014

The Washington Association of Criminal Defense Lawyer (WACDL) has proposed two new rule amendments related to a lawyer's or law enforcement officer's contact with jurors after a jury has been discharged.

Proposed CrR 8.10:

After a jury has been discharged, after a verdict has been returned, or after a mistrial has been declared, a lawyer who participated in the trial, a representative from that lawyer's office, or a law enforcement officer who participated in the trial shall not communicate to the jury information that was suppressed or excluded pursuant to a ruling by the judge in the case.

Proposed CrRLJ 8.13:

After a jury has been discharged, after a verdict has been returned, or after a mistrial has been declared, a lawyer who participated in the trial, a representative from that lawyer's office, or a law enforcement officer who participated in the trial shall not communicate to the jury information that was suppressed or excluded pursuant to a ruling by the judge in the case.

The purpose of the proposed new rules is to avoid the risk of prejudice to the jury system by prohibiting post-trial disclosure of excluded evidence to jurors.

The proponents argue that such disclosures cause the jurors to question their verdict, to feel distrust for the system, and to resent the defense for withholding information. WACDL believes jurors who are called to serve on future cases will question whether they are being similarly deprived of information, thereby decreasing their willingness to limit consideration of evidence as the juror's oath requires.

WACDL states that there are presently no clear rules governing this type of contact and that the current rules are inadequate. **RPC 3.5(c)(3)** prohibits a lawyer from communicating with a juror or prospective juror after discharge of the jury if: 1) the communication is prohibited by law or court order; 2) the juror has made known to the lawyer a desire not to communicate; or 3) the communication involves misrepresentation, coercion, duress or harassment. **RPC 8.4(d)** prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice. Two informal ethics opinions issued in 1986 and 2006 had concluded that disclosure of excluded

evidence may be prejudicial to the administration of justice and thereby violate RPC 8.4(d). (Advisory Opinions 1030 & 2133). In 2010, however, these opinions were withdrawn by Advisory Opinion 2204 which concluded that lawyers may discuss the case, including excluded evidence, as long as they are careful to do so in a manner that does not violate RPC 3.5(c)(communication involving misrepresentation, coercion, duress or harassment) or RPC 8.4(d)(conduct prejudicial to the administration of justice). In reaching its conclusion, the committee stated, "Although there are arguments in favor of a policy of strict nondisclosure, such a rule seems more appropriately addressed by way of a court rule."

Several defense attorneys submitted declarations regarding specific examples of cases in which jurors were told of excluded evidence after trial and the perceived effect such disclosures had on those jurors.

#### **DMCJA Rules Committee Comments and Recommendation**

The Committee discussed the proposed rules at its November and some members expressed concerns about the apparent breath of the rules, restraint on free speech and constitutional requirements for open access to court records and proceedings. Judge Nancy Harmon agreed to review the proposal and coordinate the committee's comments. The Committee was advised that a subcommittee of the WSBA Rules Committee had recently reviewed the proposed rules and is not support the proposed rules due to concerns related to free speech and the requirement for open courts.

The Rules Committee discussed the proposed amendments again at its February meeting, and with one exception, the committee does not support the proposed amendments. The proposed rules present issues regarding restraint of speech after a case has concluded. There are also issues regarding whether such rules would violate other Washington constitutional provisions requiring that the business of the court be conducted in the open. If a case has concluded and the jurors have completed their service it seems inconsistent with the constitutional provisions for open access to court records and proceedings to restrict information that is available to the general public. The proposed rules casts a large net and do not allow for exceptions. A party concerned about post-trial communications with jurors may request the trial court craft a specific order to address concerns associated with the case. RPC 3.5 (c) would govern the lawyer's compliance with such order.



Washington Association of  
Criminal Defense Lawyers

Douglas R. Hyldahl  
President

Teresa Mathis  
Executive Director

October 15, 2013

Chief Justice Barbara Madsen  
Washington State Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929

Dear Chief Justice Madsen,

Trust in the fairness of our criminal trial system is founded on juries considering only those facts that are properly admitted into evidence. This trust is undermined by the post-trial disclosure to jurors of facts that were excluded by the trial court judge. Unfortunately, this practice occurs with some regularity throughout the state, and is not presently addressed by court rule or by RPC. These disclosures occur in a small but significant number of cases. They are especially harmful when jurors are subject to call on another jury in the same period of jury service. They serve no legitimate purpose, and as the attached declarations show, introduce potentially great prejudice in future trials. WACDL respectfully requests that the Court implement the attached proposed rule to limit such disclosures.

Prior attempts to address post-trial communications with jurors relied on Rules of Professional Conduct 3.5(c)(3) and 8.4(d) for guidance. For instance, Informal Ethics Opinions 1030 and 2133 relied on these rules to prohibit disclosures of excluded material either during or after trial, respectively. The Committee reasoned that such disclosures could prejudice the system by casting the verdict into doubt, causing jurors in future trials to be less willing to rely solely on admitted evidence in reaching a verdict. Advisory Opinion 2204 (2010) withdrew Opinions 1030 and 2133. The Committee noted, however, that "[a]lthough there are arguments in favor of a policy of strict non-disclosure, such a rule seems more appropriately addressed by way of a court rule." Presently, lacking any guiding rule, trial courts have been reluctant to grant motions in limine limiting post-trial disclosures. Given the manner in which post-trial disclosures undermine jurors' confidence in our system of justice, and the lack of any legitimate purpose or utility, a clear rule limiting such contact is necessary.

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wacdl.org

WACDL Member Joe Campagna will be the spokesperson required by General Rule 9. Please let him know if you would like any additional information or are unable to open the attachments. He can be reached by email at [campagna@sgb-law.com](mailto:campagna@sgb-law.com) or by phone at (206) 622-8000.

Sincerely,



Doug Hyldahl  
WACDL President



Joe Campagna  
Co-Chair, WACDL Talking to Juries Task Force

## GR 9 COVER SHEET

A. **Name of Proponent.** The Washington Association of Criminal Defense Lawyers (WACDL) requests this rule change.

B. **Spokesperson.** Joseph A. Campagna, on behalf of WACDL, will serve as spokesperson for the proposed rule.

C. **Purpose.**

- I. Post-trial disclosure of excluded evidence creates a high risk of prejudice to the jury system.

Post-trial disclosure to jurors of excluded evidence undermines confidence in the fairness of our trial system and prejudices the administration of justice. It suggests to jurors in the present case that they were deprived of important information in reaching their verdict. It implies that if they had received fuller information, they might have reached a different verdict. As a result, it may cause jurors to question in future trials whether they are being similarly deprived, and may decrease the willingness to limit consideration of evidence as the juror's oath requires. There are no legitimate countervailing reasons for the disclosures. There are also presently no clear rules governing this sort of contact. As a result, the proposed rule is necessary.

The attached declarations demonstrate several recent examples of prejudicial post-trial disclosures. The declarations provided represent only a small sample of reported disclosures of which WACDL is aware. They are intended to illustrate, not to exhaustively document, the problem. As the supporting materials demonstrate, disclosures harmful to the trial process have occurred in municipal, district, and superior courts throughout Washington. The perceived effects of these disclosures included leaving the jurors visibly upset, and causing them to resent the defense for withholding information, to feel that they are never told the full truth, to wonder whether they can trust the system, and even to question their decision to acquit. These sort of reactions, from jurors who may be called again in future service, are significantly damaging to a fair trial process.

2. Prior attempts to address the problem have met with limited success.

Prior attempts to address this problem have not been adequate. The Rules of Professional Conduct currently prohibit post-discharge contact with jurors that “involves misrepresentation, coercion, duress or harassment.” RPC 3.5(c)(3). The Rules also prohibit “conduct that is prejudicial to the administration of justice.” RPC 8.4(d). Informal Ethics Opinion 1030 (1986) concluded that under RPC 8.4(d), “it is improper for a lawyer to disclose information to the jurors which is inadmissible because it is prejudicial,” where the juror was subject to call on another jury in the same period of jury service. Informal Ethics Opinion 2133 (2006) extended this reasoning to disclosures post-jury service. The Committee reasoned that:

Disclosure to discharged jurors of evidence that was excluded by the trial court may have a prejudicial effect on the system of justice by suggesting the juror was deprived of reliable evidence casting the juror’s verdict in doubt. This, in turn, may make jurors less willing to rely on the evidence admitted by the trial court in future trials and may decrease the willingness to limit consideration of evidence in a future case as the juror’s oath requires.

In 2006, relying on Informal Opinion 2133, the Seattle City Attorney’s Office and several public defender agencies directed their attorneys to refrain from commenting on or disclosing matters that are not part of the evidentiary record. The directive adopted Opinion 2133’s conclusion that the disclosure of excluded evidence tended to undermine a jury’s confidence in their verdict, and was consequently prejudicial to the administration of justice.

Opinion 2133 was short lived. In 2010, Advisory Opinion 2204 withdrew Opinions 1030 and 2133, concluding that, because jurors are presumed to follow the court’s instructions, post-trial disclosure of excluded evidence should not constitute a per se violation of RPC 8.4(d). The Committee noted, however, that “[a]lthough there are arguments in favor of a policy of strict non-disclosure, such a rule seems more appropriately addressed by way of a court rule.” Presently, lacking any guiding rule, trial courts have been reluctant to grant motions in limine limiting post-trial disclosures.

3. The proposed rule addresses the risk of prejudice with minimally restrictive limits on post-trial contact.

The proposed rule places appropriate and reasonable limits on post-trial disclosures. First, as shown by the attached supporting documents, and as discussed in Opinion 2133, the potential prejudice is high. Second, there are no legitimate countervailing interests to balance against the potential prejudice. There are generally two legitimate reasons to have post-trial contact with jurors—to determine whether the verdict may be subject to legal challenge and to obtain informal feedback and evaluation on the lawyer’s performance. *See, e.g.*, ABA Standards for Criminal Justice, Prosecution Function and Defense Function, (3d Ed. 1993), Prosecution Function Standard 3-5.4(c) and Defense Function Standard 4-7.3(c). Post-trial disclosures of excluded information serve neither of these purposes. Finally, the restrictions on disclosures are minimal. The proposed rule does not limit post-trial contact entirely, as many federal courts do. For instance, Western District of Washington Local Civil Rule 47(d) and Local Criminal Rule 31(f) both prohibit any post-trial contact with jurors without prior leave of the court, except in criminal cases with a hung jury. The proposed rule does not limit contact to this degree, but rather continues to permit contact with former jurors for all appropriate reasons and without first obtaining judicial approval.

**D. Hearing.** The proponents request a public hearing on this matter. Changes to rules affecting the jury trial process implicate fundamental constitutional rights and are the appropriate subject of public hearing and comment.

**E. Expedited consideration.** WACDL does not request expedited consideration of the proposed rule.



1 [PROPOSED] CrR 8.10

2 POST-TRIAL CONTACT WITH JURORS

3 After a jury has been discharged, after a verdict has been returned, or after a  
4 mistrial has been declared, a lawyer who participated in the trial, a representative from  
5 that lawyer's office, or a law enforcement officer who participated in the trial shall not  
6 communicate to the jury information that was suppressed or excluded pursuant to a  
7 ruling by the judge in the case.  
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9  
10 [PROPOSED] CrRLJ 8.13

11 POST-TRIAL CONTACT WITH JURORS

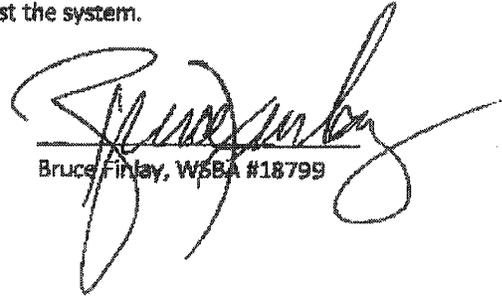
12 After a jury has been discharged, after a verdict has been returned, or after a  
13 mistrial has been declared, a lawyer who participated in the trial, a representative from  
14 that lawyer's office, or a law enforcement officer who participated in the trial shall not  
15 communicate to the jury information that was suppressed or excluded pursuant to a  
16 ruling by the judge in the case.  
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Declaration of Counsel

I, Bruce Finlay, swear that the following is true and accurate to the best of my knowledge and belief, subject to the penalty of perjury under the laws of the State of Washington.

- I tried a second-strike child molestation case in Thurston County Superior Court.
- The jury was not allowed to hear about the defendant's prior conviction for child molestation.
- After a not guilty verdict, the judge ordered the parties to remain in the courtroom, and then he went to the jury room.
- The judge then left and the attorneys were allowed to talk to the jury. I learned from the jurors that the judge had told them that the defendant had a prior conviction for child molestation. Several of the female jurors were hysterical and crying.
- My impression was that the jurors were left with the feeling that they are never told the full truth and they wonder whether they can trust the system.

10-9-13 Shelton, WA  
Date and Place

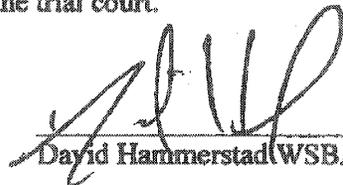
  
Bruce Finlay, WSB #18799

DECLARATION OF COUNSEL

I, David Hammerstad, swear that the following is true and accurate to the best of my knowledge and belief, subject to penalty of perjury under the laws of the State of Washington.

- In the Fall of 2006 I represented a client charged with Child Molestation in the First Degree in King County Superior Court (Regional Justice Center). A mistrial was declared after the jury deadlocked, 11-1 in favor of acquittal. After the verdict a supervisor from the prosecutor's office, standing in for the trial prosecutor, told the jury that the defendant was a Registered Sex Offender, a fact which was excluded from evidence at trial after a Motion in Limine was granted by the trial court.
- In the Spring of 2007 I represented a client charged with three felony charges (2 counts of Felony Violation of a No-Contact Order and 1 count of Telephone Harassment). After the defendant was acquitted on two of the three counts and the jury deadlocked 8-4 in favor of acquittal on the third count, the trial prosecutor informed the jury that the defendant was facing additional charges against the same alleged victim, a fact which was excluded from evidence at trial after a Motion in Limine was granted by the trial court.

10/8/13 Seattle, WA  
Date & Place

  
\_\_\_\_\_  
David Hammerstad WSBA #34255

**Fred Rice**

---

**From:** aaron kivat <aaron@kivatlaw.com>  
**Sent:** Wednesday, October 09, 2013 11:47 AM  
**To:** fred.rice@wacdl.org  
**Subject:** Excluded Evidence Reveal to Jurors

I, Aaron Kivat, hereby declare under penalty of perjury of the State of Washington, as follows:

On August 21, 2013 through August 23, 2013 I was in trial in front of the Honorable Judge Eide in the King County District Court - Burien Division. (State of Washington vs. Jessica Murray, 2Z0670590).

The trial was a DUI that had a breath test reading of .24/.26 with an accident. The prosecutor had stipulated pretrial to not introduce the breath test reading at trial as the arresting officer had neglected to ask the defendant to remove her mouth jewelry (a tongue stud and several lip piercings) prior to the testing.

At motions in limine, I was also able to exclude the testimony of the driver of the vehicle that was allegedly struck by the defendant, as the prosecutor had not given sufficient notice of their intent to call him as a witness.

After 10 minutes of deliberation the jury acquitted.

After releasing the jury, we asked to speak with them in the hall if they chose to do so. Both the trial deputy prosecutor and I spoke with the jury. They hugged my client and were almost apologetic that she had to go through this process. The trial deputy made no mention of any excluded evidence and simply asked about how he had done.

As we were rapping up and saying our goodbyes, the trial deputy's supervisor approached the jury and introduced herself and asked if she could have a word with them. I was already on my way out the door, so I left.

The next day I wrote the supervisor an email asking if she had disclosed the breath test results to the jury. She responded that "I did speak with them regarding the BAC and the states witness to give perspective on how (the trial deputy) framed the case."

--  
Regards,

Aaron Kivat  
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## AFFIDAVIT

I, Albert A. Rinaldi, Jr. declare under the penalty of perjury according to the laws of the State of Washington that this declaration is true and correct.

I recently had a Jury trial in Seattle District Court before Judge Joanna Bender. My client was Andrew Chrisman who was charged with Driving While Under the Influence of Intoxicants in State of Washington vs. Chrisman #2Z0626726. The State was represented by Rule 9 Chris Fyall. The arresting was Trooper M. Ledesma.

At the start of the trial the State indicated that it would not introduce any evidence of the speed of the Defendant's vehicle because the radar technician who was requested by the Defense was unavailable.

The Jury returned a verdict of Not Guilty on August 13, 2013. Judge Bender released the Jury and indicated that members of the Jury could speak to both or either counsel if they wanted to do so.

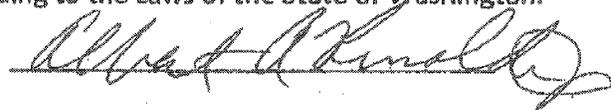
Both counsel went into the Jury room where all the Jurors remained to speak with us. This is often done in Jury trials in which I have participated. Trooper Ledesma came into the Jury room as well. I initially objected because it did not seem appropriate to have the arresting officer there because it may well have had an effect on the Juror's ability to speak freely. The Trooper insisted on remaining in the Jury room. He engaged in conversations with the Jurors and some of them appeared to be irritated with his questions. At one point a Juror simply said that he did not like the fact that the Trooper slowed his vehicle down by using his gears instead of applying his brakes when it was nighttime and the Defendant was behind the Trooper. (The Trooper had testified that he wanted to see the reaction of the Defendant.) Further the Trooper told the Jury that he had obtained a radar reading on the Defendant's vehicle, which was not presented to the Jury.

I do not know if any of these Jurors were called to serve again as Jurors. I believe that these Jurors would have been tainted by the discussion with the Trooper. I further believe it is inappropriate to tell the Jury of evidence that was not admissible in a trial.

Submitted under the penalty of Perjury according to the Laws of the State of Washington.

Dated this 14 day of October 2013

Place signed Seattle, wa

  
Signature

Declaration of Counsel

I, Maria Fernanda Torres, swear that the following is true and accurate to the best of my knowledge and belief, subject to the penalty of perjury under the laws of the State of Washington.

- In 2004, I defended a client in Seattle Municipal Court. The court had excluded evidence of a prior DUI conviction, which was then revealed by the prosecutor to the jurors after an acquittal. The impact on the jurors was obvious; their reaction seemed to signal they questioned their decision to acquit immediately.
- In 2006, I defended a client in Seattle Municipal Court. The court had excluded my client's prior theft conviction. My client was acquitted. Knowing that prosecutor would want to tell the jurors about it, I raised it with the judge and asked that the prosecutor not be allowed to tell the jurors about the excluded conviction. The prosecutor was unable to articulate a specific reason why sharing this information with the jurors was necessary or important, other than a vague "they should know." The judge denied my request, noting, in part, that the jurors were done with their service. Here, I did not get a sense of what impact this information had on the jurors.
- Following my experience in 2006, I submitted a request to the Rules of Professional Conduct Committee at the Washington State Bar Association, and the response was informal opinion 2133. Previously, there was informal opinion 1030 only, which was specific to jurors who were not done with their service.
- Opinion 2133 addressed the concerns I had, particularly in the DUI case, which is that the jurors would be tainted for all *future* service.
- I believe Advisory Opinions 2133 and 1030 have both since been withdrawn.

Seattle, WA  
Date and Place

  
Maria Fernanda Torres, WSBA #34587

ROBERT PEREZ, ESQ.  
SARAH J. PEREZ, ESQ.

THE LAW OFFICES OF ROBERT PEREZ  
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Bellevue, Washington 98005  
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(425) 748-5005 VOICE  
(425) 748-5007 FAX

## DECLARATION OF ROBERT PEREZ

I, Robert Perez, hereby declare:

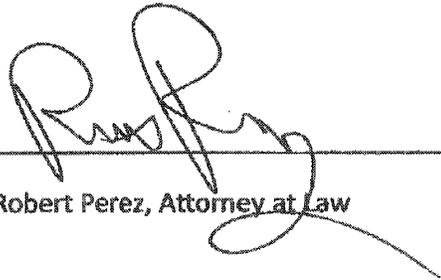
1. I am over the age of eighteen years. I have personal knowledge of the facts set forth in this declaration, except as to those matters stated on information or belief and as to those matters, I do believe them to be true.
2. In November 2010 a mistrial was declared in the Rape trial titled State v. Matthew Torre, Snohomish County Case No. 09-1-00769-6. The mistrial was declared by Snohomish County Superior Court Judge Downes. The jury hung 8-4 in favor of the defense.
3. Mr. Torre had a previous conviction in the State of Maine for a related sex offense. In pretrial motions, Judge Downes had ruled any reference to that conviction inadmissible at trial.
4. After the jury was discharged, I personally spoke with members of the jury. During this conversation, an attorney from the Snohomish County prosecutor's office and the Snohomish County detective assigned to the case were both present.
5. In response to a juror's question as to why the case had even been prosecuted, the Detective told the jury that Mr. Torre had "a prior". Before the prosecutor had a chance to speak up, I informed the jury that it would be inappropriate for either counsel to discuss certain topics, in an attempt to discreetly caution the prosecutor not to further taint this future jury pool.
6. The prosecutor stated to the jury several times that he would not comment on past incidents but that "this was a righteous prosecution". He repeated that phrase several times to nodding jurors in an obvious allusion to the Detective's assertion.
7. It was evident during this conversation that the government wanted to give the jurors information about Mr. Torre's past that would support their position that this was a "righteous prosecution" based on the revelation by law enforcement. I believe that

several of the jurors present were incensed to learn that they might have voted Not Guilty for a man who had prior history.

8. After the case was set for re-trial, the government dismissed the case, ending any further issues or need to litigate over the actions of the State. But it was clear to me that the jurors in the case left feeling upset and I believe they resented the defense for "withholding" information from them. I believe that the next time these citizens are called for jury duty, they will be certain that evidence is being withheld from them and they will likely resent the defense because of this.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed in Bellevue, Washington October 8, 2013



Robert Perez, Attorney at Law

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**ABA Standards for Criminal Justice  
Prosecution Function and  
Defense Function  
Third Edition**

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The commentary contained herein does not necessarily represent the official position of the ABA. Only the text of the black-letter standards has been formally approved by the ABA House of Delegates as official policy. The commentary, although unofficial, serves as a useful explanation of the black-letter standards.

Project of the  
American Bar Association  
Criminal Justice Standards Committee  
Criminal Justice Section  
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202/331-2260

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# ABA Standards for Criminal Justice Prosecution Function and Defense Function Third Edition

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Defense Function Black-Letter Standards approved

ABA House of Delegates

February 1991

Commentary completed

July 1992

Prosecution Function Black-Letter Standards approved

ABA House of Delegates

February 1992

Commentary completed

July 1993

problems, however. It may have a tendency to make jury service, already unpopular with many persons, even more onerous because of the fear of invasion of privacy. It may also have the appearance, even if unintended, of an effort to intimidate jurors. To minimize these risks, the prosecutor should be careful to conduct any investigations of jurors in a manner that scrupulously avoids invasions of privacy. Except in unusual circumstances of necessity, the prosecutor should limit the inquiry to records already in existence rather than, for example, questioning contemporaneously a potential juror's neighbors.

#### *Use of Voir Dire*

The process of voir dire examination of prospective jurors by lawyers is often needlessly time consuming and is frequently used to influence the jury in its view of the case. In those jurisdictions that retain the practice of permitting the prosecutor to conduct the questioning of jurors, the responsibility must rest with the prosecutor, supervised by the court, to limit questions to those that are designed to lay a basis for the lawyer's challenges. The observation that the voir dire may be used to influence the jury in its view of the case is rejected as an improper use of the right of reasonable inquiry to ensure a fair and impartial jury.

The use of the voir dire to inject inadmissible evidence into the case is a substantial abuse of the process. Treatment of legal points in the course of voir dire examination should be strictly confined to those inquiries bearing on possible bias in relation to the issues of the case.

### **Standard 3-5.4 Relations With Jury**

(a) A prosecutor should not intentionally communicate privately with persons summoned for jury duty or impaneled as jurors prior to or during trial. The prosecutor should avoid the reality or appearance of any such communications.

(b) The prosecutor should treat jurors with deference and respect, avoiding the reality or appearance of currying favor by a show of undue solicitude for their comfort or convenience.

(c) After discharge of the jury from further consideration of a case, a prosecutor should not intentionally make comments to or ask questions of a juror for the purpose of harassing or embarrassing the juror in any way which will tend to influence judgment in future jury service. If the prosecutor believes that the verdict may be subject to legal challenge, he or she may properly,

3-5.4 *Criminal Justice Prosecution Function and Defense Function Standards*

**if no statute or rule prohibits such course, communicate with jurors to determine whether such challenge may be available.**

***History of Standard***

Section (a) has been revised stylistically and by addition of the word "intentionally" to exclude unintentional conversations with jurors. Section (a) has also been revised by deleting the phrase "concerning the case" which appeared in the previous edition after the word "jurors" in the first sentence and deleting the word "improper" which also appeared in the previous edition before the word "communications" in the second sentence. These deletions reflect the view that the prosecutor should not talk on any subject to people he or she knows are jurors before or during the trial.

Section (b) is unchanged. Section (c) has been revised stylistically and the last sentence is new to this edition.

***Related Standards***

ABA Model Code of Professional Responsibility DR 7-108(A), (B), (C), (D); EC 7-36 (1969)

ABA Model Rules of Professional Conduct 3.5(a), (b); 4.4 (1983)

ABA Standard for Criminal Justice 4-7.3 (3d ed. 1993)

ABA Standard for Criminal Justice 15-4.7 (2d ed. 1980)

NDAA National Prosecution Standard 87.4 (2d ed. 1991)

***Commentary***

***Communication with Jurors Before or During Trial***

Discussing the case privately with a juror before verdict is a gross impropriety and may also be criminal conduct.<sup>1</sup> Moreover, it is improper for a prosecutor knowingly to engage in any conversation with a jury member, however innocent in purpose or trivial in content, since the mere fact that counsel is seen conversing with a juror may raise the question of whether the juror reached the verdict solely on the evidence.<sup>2</sup> The prosecutor's legitimate communication must be with the jury as an

1. See, e.g., *Gold v. United States*, 352 U.S. 985 (1957); *State v. Socolofsky*, 666 P.2d 725 (Kan. 1983).

2. Cf. *Smith v. Phillips*, 455 U.S. 209 (1982).

entity—not with jurors individually. For obvious reasons, these strictures apply as well to communications with persons summoned for jury duty who may or may not be impaneled as jurors in a particular case.

#### *Attitude Toward Jury*

The prosecutor should avoid undue solicitude for the comfort or convenience of the judge or jury and should avoid any other conduct calculated to gain special or unfair consideration. The prosecutor should not address jurors individually by name, for example. Just as respect for the position of the judge requires that the judge be addressed formally as “your honor,” the jury’s symbolic position as representatives of the community in the courtroom requires that a degree of formality be observed in addressing the jury. A typical form of address is, of course, “ladies and gentlemen of the jury” or “members of the jury.”

#### *Posttrial interrogation*

Since it is vital to the proper functioning of the jury system that jurors not be influenced in their deliberations by fears that they subsequently will be harassed by lawyers or others who wish to learn what transpired in the jury room, neither the prosecutor nor defense counsel should discuss a case with jurors after trial in a way that is critical of the verdict.<sup>3</sup> Where prevailing law permits such inquiries, the prosecutor may discuss a case with former jurors for the purpose of ascertaining the existence of juror misconduct. However, the prosecutor must carefully avoid any harassment of the jurors in the course of such inquiries. Finally, it is not improper, in states where the law and ethics codes so permit, for the prosecutor to communicate in an informal manner for the purpose of self-education with former jurors who are willing to talk about their jury service.

### **Standard 3-5.5 Opening Statement**

The prosecutor’s opening statement should be confined to a statement of the issues in the case and the evidence the prosecutor intends to offer which the prosecutor believes in good faith will be available and admissible. A prosecutor should not allude to any evidence

3. See also Standard 3-5.10.

***Related Standards***

ABA Model Code of Professional Responsibility DR 7-106(C)(1), (2);  
DR 7-108(E) (1969)

ABA Model Rules of Professional Conduct 3.4(e); 3.5(a), (b); 4.4 (1983)

ABA Standards for Criminal Justice 3-5.3 (3d ed. 1993)

ABA Standards for Criminal Justice 15-2.4 (2d ed. 1980)

***Commentary***

***Preparation for Jury Selection***

The selection of a jury is an important phase of the trial and requires the alert attention of the lawyer. As elsewhere in the trial, in the selection of the jury the advocate's decisions must be made under time pressure. They can be made wisely only if the lawyer has prepared adequately before trial.

***Pretrial Investigation of Jurors***

Pretrial investigation of jurors may permit a more informed exercise of challenges than reliance solely upon voir dire affords. The practice of conducting out-of-court investigations of jurors presents serious problems, however. It may have a tendency to make jury service, already unpopular with many persons, even more onerous because of the fear of invasion of privacy. It may also have the appearance, even if unintended, of an effort to intimidate jurors. To minimize these risks, counsel should be careful to conduct investigations of jurors in a manner that scrupulously avoids invasions of privacy. Except in unusual circumstances of necessity, counsel should limit the inquiry to records already in existence rather than, for example, questioning contemporaneously a potential juror's neighbors.

**Standard 4-7.3 Relations With Jury**

(a) Defense counsel should not intentionally communicate privately with persons summoned for jury duty or impaneled as jurors prior to or during the trial. Defense counsel should avoid the reality or appearance of any such communications.

(b) Defense counsel should treat jurors with deference and respect, avoiding the reality or appearance of currying favor by a show of undue solicitude for their comfort or convenience.

(c) After discharge of the jury from further consideration of a case, defense counsel should not intentionally make comments to or ask questions of a juror for the purpose of harassing or embarrassing the juror in any way which will tend to influence judgment in future jury service. If defense counsel believes that the verdict may be subject to legal challenge, he or she may properly, if no statute or rule prohibits such course, communicate with jurors to determine whether such challenge may be available.

### *History of Standard*

Section (a) has been revised stylistically and by addition of the word "intentionally" to exclude unintentional conversations with jurors. Section (a) has also been revised by deleting the phrase "concerning the case," which appeared in the previous edition after the word "jurors" in the first sentence, and deleting the word "improper," which also appeared in the previous edition before the word "communications" in the second sentence. These deletions reflect the view that counsel should not talk on any subject to people he or she knows are jurors before or during the trial.

Sections (b) and (c) have been revised stylistically.

### *Related Standards*

ABA Model Code of Professional Responsibility DR 7-108(A), (B), (C), (D); EC 7-36 (1969)

ABA Model Rules of Professional Conduct 3.5(a), (b); 4.4 (1983)

ABA Standards for Criminal Justice 3-5.4 (3d ed. 1993)

ABA Standards for Criminal Justice 15-4.7 (2d ed. 1980)

### *Commentary*

#### *Communication with Jurors Before or During Trial*

Discussing the case privately with a juror before verdict is a gross impropriety, and may also be criminal conduct.<sup>1</sup> Moreover, it is improper for counsel knowingly to engage in *any* conversation with a jury member, however innocent in purpose or trivial in content, since the

1. See also ABA Model Rule of Professional Conduct 3.4(e); ABA Model Code of Professional Responsibility DR 7-106(C)(1).

mere fact that counsel is seen conversing with a juror may raise the question of whether the juror reached the verdict solely on the evidence. Defense counsel's legitimate communication must be with the jury as an entity—not with jurors individually. For obvious reasons, these strictures apply as well to communications with persons summoned for jury duty who may or may not be impaneled as jurors in a particular case.

#### *Attitude Toward Jury*

Counsel should avoid undue solicitude for the comfort or convenience of the judge or jury and should avoid any other conduct calculated to gain special or unfair consideration. Counsel should not address jurors individually by name, for example. Just as respect for the position of the judge requires that the judge be addressed formally as "your honor," the jury's symbolic position as representatives of the community in the courtroom requires that a degree of formality be observed in addressing the jury. A typical form of address is, of course, "ladies and gentlemen of the jury" or "members of the jury."

#### *Posttrial interrogation*

Since it is vital to the proper functioning of the jury system that jurors not be influenced in their deliberations by fears that they subsequently will be harassed by lawyers or others who wish to learn what transpired in the jury room, neither defense counsel nor the prosecutor should discuss a case with jurors after trial in a way that is critical of the verdict. Where prevailing law permits such inquiries, a lawyer may discuss a case with former jurors for the purpose of ascertaining the existence of juror misconduct. However, the lawyer must carefully avoid any harassment of the jurors in the course of such inquiries. Finally, it is not improper, in states where the law and ethical codes so permit, for counsel to communicate in an informal manner for the purpose of self-education with former jurors who are willing to talk about their jury service.

#### **Standard 4-7.4 Opening Statement**

Defense counsel's opening statement should be confined to a statement of the issues in the case and the evidence defense counsel believes in good faith will be available and admissible. Defense counsel should not allude to any evidence unless there is a good faith



March 3, 2014

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

Dear Judge Svaren:

In 2012, the Board for Judicial Administration (BJA) held a retreat to discuss issues of governance and allocation of Administrative Office of the Courts (AOC) resources dedicated to supporting boards, commissions, committees, task forces, and workgroups. The BJA agreed to divide these issues between two workgroups. The BJA recently adopted recommendations made from the workgroup charged with looking at all judicial branch committees and identifying opportunities to improve efficiency and effectiveness by merging or restructuring some groups. The workgroup reviewed 205 committees of associations, boards and commissions. Although the BJA realizes that examining the efficiency and relevance of any committee is actually the responsibility of that organization and its own related committees, the BJA is undertaking the job of examining each of its own BJA committees and workgroups and is asking that every association, board or commission do the same.

This workgroup recommended, and the BJA adopted the following:

- Every BJA authorized entity shall review and assess their current committee structure and align their committees with the proposed standard for creating, managing, and reviewing committees.
- All committees will adopt a charter containing the following information: Committee title; authorization (court rule, court order, bylaw, statute or other); charge or purpose; AOC staff support required; policy area; other branch committees addressing the same topic; other branch committees to partner with; committee type: standing, subcommittee, workgroup; committee membership; term limit; duration/review date; budget; reporting requirements (i.e., quarterly to the BJA, the authorizing organization and/or other entities addressing same topic); and expected deliverables or recommendations.
- Create and adopt a standard for committees that would include an agreement on the following items: 1) committee types; 2) committee duration limit to two years unless specifically extended after review; 3) commitment to periodic review, including a reporting requirement on activities, decisions, and initiatives; 4) formal request for AOC staff support and resources.

Letter to Honorable David Svaren  
March 3, 2014  
Page 2 of 2

The BJA is currently re-examining and chartering our standing committees pursuant to this recommendation. We anticipate that the body will examine other committees, workgroups and task forces which were previously created by the BJA and determine whether they should continue in their current form or be incorporated into a standing committee.

The workgroup also focused on how the AOC uses its staff and resources, recognizing the need to prioritize requests for resources so the core work of the judicial branch can be done effectively. The demand for staff support and proliferation of committees and workgroups often create a strain on resources and result in limited support.

Recognizing the limited AOC staff and resources, the BJA requests that all judicial branch entities which operate committees under their authority using AOC staff or resources discuss and consider implementing the proposed chartering and committee standards. We hope these discussions will help define the core mission of the committees and possibly result in the merging or elimination of duplicative committees which require judicial and AOC resources.

If your organization has recently done work like this we encourage you to share the results. The BJA is interested in creating a central repository for charter documents so they are centrally located and can be accessible to others. This repository could function as a resource for all the judicial branch entities and staff and would facilitate collaboration and information sharing. If your organization has not done work like this recently, we urge you to adopt the recommendations of the BJA workgroup as outlined earlier in this letter. Staff will follow-up in June to determine whether you have any finalized documents that you can share.

If you would like a template for the committee charter, please contact Beth Flynn at [beth.flynn@courts.wa.gov](mailto:beth.flynn@courts.wa.gov) or (360) 357-2121.

If you have any questions regarding this request, please contact Shannon Hinchcliffe at [shannon.hinchcliffe@courts.wa.gov](mailto:shannon.hinchcliffe@courts.wa.gov) or (360) 705-5226.

Thank you for your consideration of this information.

Sincerely,



Barbara Madsen, Chair  
Board for Judicial Administration



Kevin Ringus, Member Chair  
Board for Judicial Administration

cc: Ms. Michelle Pardee



TO: President David Svaren and DMCJA Board  
FROM: Judge Janet Garrow, Chair, DMCJA Rules Committee  
SUBJECT: Proposed Amendments to GR 15  
DATE: March 25, 2014

The Judicial Information Services Committee (JISC) has proposed amendments to GR 15, Destruction, Sealing and Redaction of Court Records, which have been published for comment by the Supreme Court. The DMCJA Rules Committee previously submitted comments on the JIS Data Dissemination Committee's initial draft. The DMCJA Board adopted those comments and forwarded them to the JIS Data Dissemination chair. A copy of the Board's comment letter is attached to this memo. Some, but not all of DMCJA comments were incorporated into the JISC's current rule proposal.

A subcommittee of the Rules Committee, Judges Harmon, Dacca and Robertson, reviewed the current JISC rule proposal. Although many suggestions could be made to improve the proposal, the subcommittee suggests two primary comments be made:

1. The use of "court records" potentially conflicts with the definition of "case records" in GR 31.1, which has been adopted without an effective date. Section (b)(1) of that rule states: "Case records are records that relate to in-court proceedings, including case files, dockets, calendars, and the like. Public access to these records is governed by GR 31, which refers to these records as "court records," and not by this GR 31.1." This potential confusion could be avoided by clarifying GR 31.1 before it goes into effect.
2. In two areas, superior court rules are referenced without a corresponding mention of the analogous court of limited jurisdiction rule:
  - a. GR 15(c)(4)(B) refers to CR 12(f) in the context of whether an order to seal or redact should be issued. CR 12(f) refers to motions to strike in the context of Defenses & Objections; the analogous CLJ rule, CRLJ 12(f), is identical, so CRLJ 12(f) should also be referenced. (Note: This section also mentions CR 26(c), but there is no analogous rule for the courts of limited jurisdiction.)
  - b. GR 15(f)(3) refers only to the "Superior Court Rules" in the context of making a "good faith reasonable effort" to provide notice of an attempt to unseal or unredact records in a civil case. The specific CR section is not identified, but it

would appear to be encompassed by the "Process" rules, CR 4, 4.1 and 4.2. The CLJ civil rules have similar provisions regarding process, CRLJ 4 and 4.2, so the Courts of Limited Jurisdiction Rules should also be referenced.

If the Supreme Court adopts the JISC's recommendation, the Rules Committee recommends that Section (c)(2)(B) be amended to include the word "factors" before the colon, to make it congruent with Section (c)(2)(A). The amended sentence would read: "For any court record that was not a part of the court's decision-making process, the court must consider and apply the following factors:"

The Rules Committee recommends that the DMCJA Rules Committee pass along these comments and consider submitting the Board's previous comments on the proposed amendments to GR 15.

#### Attachments

JISC proposed amendments to GR 15

DMCJA Board's October 21, 2013 comment letter regarding proposed amendments to GR 15

## Suggested Amendments to GR 15

Submitted by the Judicial Information System Committee

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### Purpose:

The Judicial Information Systems Committee (JISC) is proposing amendments to GR 15, Destruction and Sealing of Court Records. Current GR 15 language does not provide trial courts enough guidance in considering a Motion to Seal or Redact court records. Courts must use the rule in conjunction with case law to meet Washington Constitution, Article I, Section 10 standards. Due to the amount of case law that trial courts and litigants must consider, GR 15 language should be updated with current standards.

The goals of the proposed amendments are to incorporate the current case law on sealing and redacting court records, address juvenile offender records in the rule consistent with chapter 13.50 RCW, provide a basis for sealing non-conviction adult and juvenile court records, emphasize that party names may not be redacted consistent with the principal that the existence of a sealed or redacted adult case is always available to the public, and provide that Orders to Seal or Redact shall contain an expiration date unless specific to a juvenile record.

The Data Dissemination Committee (DDC) initiated the amendments and held a public hearing in Everett on April 12, 2013. Written and oral comments were received by the DDC throughout the drafting process, and two drafts were circulated to stakeholders in July, 2013, and in September, 2013. The supporting documentation to the proposed GR 15 amendments can be located on the JIS Data Dissemination Committee webpage at [www.courts.wa.gov](http://www.courts.wa.gov), located [here](#).

The JISC forwards this proposed GR 15 draft as a much needed language update to allow the rule to remain consistent with current case law and statutory changes.

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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 a~~ "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~~ "Strike" applies to ---Aa motion or order to strike and ~~is~~ not a motion or order to seal or destroy.
- (9) ~~Vacate. To r~~ "Vacate" means to nullify or cancel.

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(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 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 and apply the applicable factors and enter specific written findings on the record to justify any sealing or redaction, or denial of a motion to seal or redact.

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

*GR 15(c)(2)(A) 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 13.50.050. 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 incorporates Seattle Times v. Ishikawa, 97 Wn.2d 30 (1982), State v. Sublett, 176 Wn.2d 58, at FN 8 (2012), and other current Washington caselaw.*

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

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

(ii) Should any nonparty with an interest in nondisclosure have been provided notice and an opportunity to be heard and has that notice and opportunity to be heard been provided.

COMMENT

*Bennett et al v. Smith Bunday Berman Britton, PS, 176 Wn.2d 303 (2013), 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. One of the concerns intended to be addressed by this rule is whether the press should have received notice.*

(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:

(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.

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or

- (B) 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) (A) 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 duration specified in an Order Sealing or Redacting shall be no longer than necessary to serve its purpose. 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. 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.
- (B) 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. This subsection shall not apply to a court if the court's Order to Seal has been destroyed.

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

1 distinction between the adult criminal system and the juvenile offender system lies in the 1977 Juvenile  
2 Justice Act's policy of responding to the needs of juvenile offenders. Such a policy has been found to be  
3 rehabilitative in nature, whereas the criminal system is punitive. State v. Rice, 98 Wn.2d 384 (1982);  
4 State v. Schaaf, 109 Wn.2d 14(1987); Monroe v. Soliz, 132 Wn.2d 414, 420 (1997); State v. Bennett, 92  
5 Wn. App. 637 (1998). Legacy JIS systems do not have the functionality to automatically unseal or  
6 unredact a court record upon the expiration of an Order to Seal or Redact.

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

13  
14 COMMENT

15 Existence of a case can no longer be determined for the purpose of public access and viewing, if the case  
16 cannot be found by an index search. Redacting the name of a party in the index would prevent the public  
17 from moving for access to a redacted record under section (f). The policy set forth in this section is  
18 consistent with existing policy when the entire file is ordered sealed, as reflected in section (c) (9).  
19

20 (7)-(3)A No court record shall not be sealed under this section  
21 rule when redaction will adequately resolve protect the  
22 issues before interests of the court pursuant to subsection  
23 (2) above proponent.

24  
25 (8) Motions to Seal/Redact when Submitted Contemporaneously  
26 with Document Proposed to be Sealed or Redacted - Not to be  
27 Filed.

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

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

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

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

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

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original unredacted document.

(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

*The rule incorporates the procedure established by State v. McEnroe, 174 Wn.2d 795 (2012).*

(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, a pardon has been granted, 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.

(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

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

3  
4                    (D) Before a court file is made available for  
5 examination, the clerk shall prevent access to the  
6 sealed court records.

7                    (11)-(6) Procedures for Redacted Court Records. When a court record  
8 is redacted pursuant to a court order, the original court  
9 record shall be replaced in the public court file by the  
10 redacted copy. The redacted copy shall be provided by the  
11 moving party and shall be a complete copy of the original  
12 filed document, as redacted. The original unredacted court  
13 record shall be sealed following the procedures set forth  
14 in (c) (5).

15  
16 (d) Procedures for Vacated Criminal Convictions, Dismissals and  
17 Acquittals, Pardons and Preliminary Appearance Records.

18  
19                    (1) In cases where a criminal conviction has been vacated and  
20 an order to seal entered, the information in the public  
21 court indices shall be limited to the case number, case  
22 type with the notification "DV" if the case involved  
23 domestic violence, the adult's defendant's or juvenile's  
24 name, and the notation "vacated."

25  
26                    (2) In cases where a defendant has been acquitted, a charge has  
27 been dismissed, a pardon has been granted, or the subject  
28 of a motion to seal or redact is a court record of a  
29 preliminary appearance, pursuant to CrR 3.2.1 or CrRLJ  
30 3.2.1, or a probable cause hearing, where charges were not  
31 filed, and an order to seal entered, the information in the  
32 public indices shall be limited to the case number, case  
33 type with the notification "DV" if the case involved  
34 domestic violence, the adult's defendant's or juvenile's  
35 name, and the notation "non conviction."

36  
37 (e) Procedures for Sealed Juvenile Offender Adjudications, Deferred  
38 Dispositions, and Diversion Referral Cases. In cases where an  
39 adjudication for a juvenile offense, a juvenile diversion  
40 referral, or a juvenile deferred disposition has been sealed  
41 pursuant to the provisions of RCW 13.50.050 (11) and (12), the  
42 existence of the sealed juvenile offender case shall not be  
43 accessible to the public.

44  
45 COMMENT

46 GR 15(e) does not address whether the applicable factors identified in Section (c)(2)(A)(i)-(v) must be  
47 considered by the court before sealing Juvenile Offender records pursuant to RCW 13.50.050.  
48 RCW 13.50.050 (11) addresses sealing of juvenile offender court records in cases referred for diversion.  
49 RCW 13.40.127 prescribes the eligibility requirements and procedure for entry of a deferred disposition  
50 in juvenile offender cases, and the process for subsequent dismissal and vacation of juvenile offender  
51 cases in which a deferred disposition was completed. Records sealing provisions for deferred  
52 dispositions are contained in RCW 13.50.050. RCW 13.40.127(10)(a)(ii) provides for administrative  
53 sealing of deferred disposition in certain circumstances. RCW 13.50.050(14)(a) states that:

54 "Any agency shall reply to any inquiry concerning confidential or sealed records that  
55 records are confidential, and no information can be given about the existence or  
56 nonexistence of records concerning an individual."

1 This remedial statutory provision is a clear expression of legislative intent that the existence of juvenile  
2 offender records that are ordered sealed by the court not be made available to the public. Records sealed  
3 pursuant to RCW 13.40.127 have the same legal status as records sealed under RCW 13.50.050. RCW  
4 13.40.127(10)(c). The statutory language of 13.50.050(14)(a), included above, differs from statutory  
5 provisions governing vacation of adult criminal convictions, reflecting the difference in legislative intent  
6 found in RCW 9.94A.640, RCW 9.95.240, and RCW 9.96.060.

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

11  
12 (1) Order Required.

13 (A) Sealed or redacted court records may be examined by  
14 the public only after the court records have been  
15 ordered unsealed or unredacted pursuant to this  
16 section ~~ex~~, after entry of a court order allowing  
17 access to a sealed court record or redacted portion  
18 of a court record, or after an order to seal or  
19 redact the record has expired. Compelling  
20 circumstances for unsealing or unredaction exist when  
21 the proponent of the continued sealing or redaction  
22 fails to overcome the presumption of openness under  
23 the factors in section (c) (2). The court shall enter  
24 specific written findings on the record supporting  
25 its decision.

26  
27 (B) If the time period specified in the Order to Seal or  
28 Redact has expired, the sealed or redacted court  
29 records shall be unsealed or unredacted without  
30 further order of the court in accordance with this  
31 rule. This subsection shall not apply to a court if  
32 the court's Order to Seal has been destroyed.

33  
34 (2) Criminal Cases. A sealed or redacted portion of a court  
35 record in a criminal case shall be ordered unsealed or  
36 unredacted only upon proof of compelling circumstances,  
37 unless otherwise provided by statute, and only upon motion  
38 and written notice to the persons entitled to notice under  
39 subsection (c) (1) of this rule except:

40  
41 (A) If a new criminal charge is filed and the existence  
42 of the conviction contained in a sealed record is an  
43 element of the new offense, or would constitute a  
44 statutory sentencing enhancement, or provide the  
45 basis for an exceptional sentence, upon application  
46 of the prosecuting attorney the court shall nullify  
47 the sealing order in the prior sealed case(s).

48  
49 (B) If a petition is filed alleging that a person is a  
50 sexually violent predator, upon application of the  
51 prosecuting attorney the court shall nullify the  
52 sealing order as to all prior criminal records of  
53 that individual.

54  
55 (3) Civil Cases. A sealed or redacted portion of a court record  
56 in a civil case shall be ordered unsealed or unredacted  
57 only upon stipulation of all parties or upon motion and

1 written notice to all parties and proof that identified  
2 compelling circumstances for continued sealing or redaction  
3 no longer exist, or pursuant to RCW chapter 4.24 RCW or CR  
4 26(j). If the person seeking access cannot locate a party  
5 to provide the notice required by this rule, after making a  
6 good faith reasonable effort to provide such notice as  
7 required by the Superior Court Rules, an affidavit may be  
8 filed with the court setting forth the efforts to locate  
9 the party and requesting waiver of the notice provision of  
10 this rule. The court may waive the notice requirement of  
11 this rule if the court finds that further good faith  
12 efforts to locate the party are not likely to be  
13 successful.  
14

#### 15 COMMENT

16 In State v. Richardson, 177 Wn.2d 351(2013), there was a motion in the trial court to unseal a 1993  
17 criminal conviction, which had been sealed in 2002, under an earlier version of GR 15. The State  
18 Supreme Court remanded to the trial court for further proceedings, because there was no record of  
19 considering the Ishikawa factors. The Supreme Court held that "compelling circumstances" for  
20 unsealing exist under GR 15 (e) when the proponent of sealing fails to overcome the presumption of  
21 openness under the five-factor Ishikawa analysis. In either case, the trial court must apply the factors.  
22

23 (4) Juvenile Proceedings. Inspection of a sealed juvenile  
24 court record is permitted only by order of the court upon  
25 motion made by the person who is the subject of the record,  
26 except as otherwise provided in RCW 13.50.010(8) and  
27 13.50.050(23). Any adjudication of a juvenile offense or a  
28 crime subsequent to sealing has the effect of nullifying  
29 the sealing order, pursuant to RCW 13.50.050(16).  
30 Unredaction of the redacted portion of a juvenile court  
31 record shall be ordered only upon the same basis set forth  
32 in section (2), above.  
33

34 (g) ~~(f)~~ Maintenance of Sealed Court Records. Sealed court records  
35 are subject to the provisions of RCW 36.23.065 and can be  
36 maintained in mediums other than paper.  
37

38 (h) ~~(g)~~ Use of Sealed Records on Appeal. A court record, or any  
39 portion of it, sealed in the trial court, shall be made  
40 available to the appellate court in the event of an appeal.  
41 Court records sealed in the trial court shall be sealed from  
42 public access in the appellate court, subject to further  
43 order of the appellate court.  
44

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

46 (1) The court shall not order the destruction of any court  
47 record unless expressly permitted by statute. The court  
48 shall enter written findings that cite the statutory  
49 authority for the destruction of the court record.  
50

51 (2) In a civil case, the court or any party may request a  
52 hearing to destroy court records only if there is express  
53 statutory authority permitting the destruction of the court  
54 records. In a criminal case or juvenile proceeding, the  
55 court, any party, or any interested person may request a  
56

1 hearing to destroy the court records only if there is  
2 express statutory authority permitting the destruction of  
3 the court records. Reasonable notice of the hearing to  
4 destroy must be given to all parties in the case. In a  
5 criminal case, reasonable notice of the hearing must also  
6 be given to the victim, if ascertainable, and the person or  
7 agency having probationary, custodial, community placement,  
8 or community supervision over the affected adult or  
9 juvenile.

10  
11 (3) When the clerk receives a court order to destroy the entire  
12 court file the clerk shall:

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

19 (B) The accounting records shall be sealed.

20  
21 (4) When the clerk receives a court order to destroy specified  
22 court records the clerk shall:

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

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

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

35  
36  
37 (5) Destroying Records.

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

41 (B) ~~(4)~~ Trial Exhibits. Notwithstanding any other provision  
42 of this rule, trial exhibits may be destroyed or  
43 returned to the parties if all parties so stipulate  
44 in writing and the court so orders.

45  
46  
47 (j) Effect on Other Statutes. Nothing in this rule is intended to  
48 restrict or to expand the authority of clerks under existing  
49 statutes, nor is anything in this rule intended to restrict or  
50 expand the authority of any public auditor in the exercise of  
51 duties conferred by statute.  
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56



WASHINGTON  
COURTS

# District and Municipal Court Judges' Association

**President**

JUDGE DAVID A. SVAREN  
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October 21, 2013

**President-Elect**

JUDGE VERONICA ALICEA-GALVAN  
Des Moines Municipal Court  
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Honorable Justice Mary Fairhurst, Chair, JISC  
Washington State Supreme Court  
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**Vice-President**

JUDGE DAVID STEINER  
King County District Court  
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Dear Justice Fairhurst:

**Secretary/Treasurer**

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

Re: Proposal to Amend GR 15

The Rules Committee of the DMCJA Board reviewed a draft proposal to amend GR 15, dated August 9, 2013, and presented a memo to the DMCJA Board. At its September Board meeting, the DMCJA Board voted unanimously to accept the Rules Committee memo, which is attached, along with comments to the draft proposal itself. Both the memo and the comments are attached to this letter.

**Past President**

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

Thank you for considering these comments. If you have any questions regarding this recommendation, please let me know.

**Board of Governors**

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

Sincerely,

JUDGE JOSEPH M. BURROWES  
Benton County District Court  
(509) 7535-8476

Judge David A. Svaren,  
President, DMCJA Board

JUDGE JEFFREY J. JAHNS  
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JUDGE HEIDI SMITH  
Okanogan County District Court  
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cc: Stephanie Happold, AOC  
Jennifer Krebs, AOC  
Michelle Pardee, AOC

Attachments:  
August 15, 2013, Memo from DMCJA Rules Committee  
August 9, 2013, draft amendments to GR 15, with margin comments

# Memorandum

To: DMCJA Board  
From: DMCJA Rules Committee  
Date: 8/15/2013  
Re: Proposed Amendments to GR 15

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## 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.3<sup>rd</sup> 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 the 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 ~~to~~ a 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 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,

Commented [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.

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

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

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

Commented [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.

Commented [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?

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 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.

Commented [Jeg7]: Delete?

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

Commented [Jeg8]: Establishing the basis for

Commented [Jeg9]: Or denial

Commented [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?

- (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.

Commented [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

CR 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 CR 15, 3.1(f).

The applicable factors the court shall consider in a Motion to Seal or Redact incorporate current Washington caselaw, including:

~~Federated Publications v. Kurtz, 91 Wn.2d 254 (1980)~~

~~Seattle Times v. Ishikawa, 97 Wn.2d 20 (1982)~~

~~Allied Daily Newspapers v. Eikenberry, 121 Wn.2d 205 (1993)~~

~~State v. Benschub, 128 Wn.2d 254 (1995)~~

~~Rufer v. Abbot Laboratories, 154 Wn.2d 530 (2005)~~

~~Dreiling v. Jain, 151 Wn.2d 900 (2004)~~

~~State v. Walden, 148 Wn. App. 952 (2009)~~

~~State v. Coleman, 151 Wn. App. 614, at FN 12 (2009)~~

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

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

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

Commented [jeg13]: Good cause for what?

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

Commented [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:

Commented [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.

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

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.

Commented [Jeg17]: And criminal charges were not subsequently filed

Commented [Jeg18]: Why is this needed if the personal identifier redaction rule applies?

#### 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.

Commented [Jeg19]: Note that the term "court file" is used here, not "court record".

Commented [Jeg20]: This provision applies in adult criminal cases and all civil cases, including family law, adoption, etc?

Commented [Jeg21]: Is it intended that this provision will be prospective?

Commented [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 schedules?

#### 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 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.

Commented [Jeg23]: There should be no current support for the proposition that the policy underlying the adult criminal system is simply punitive.

Commented [Jeg24]: This is a big concern. How will courts keep track of this information?

(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).~~

**Commented [Jeg25]:** This prohibition conflicts with the opinions in *Indigo Real Estate v. Ronsay*, 151 Wn.941 App (2009) and *Hundtlofe 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 *Hundtlofe*.

**Commented [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 initials or "Janeer John Doe" allowed?

~~(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).~~

**Commented [Jeg27]:** Is this all done ex parte or is opposing counsel provided a copy of the motion and document sought to be sealed or redacted?

**Commented [Jeg28]:** Given the developing caselaw, the number of factors could change.

~~(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.~~

~~(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.~~

**Commented [Jeg29]:** Or redact?

**Commented [Jeg30]:** If the documents are returned there is no record for appellate review.

**Commented [Jeg31]:** Must the order of denial contain specific findings and conclusions?

**Commented [Jeg32]:** How would there ever be a record for appellate review if the documents are returned?

**Commented [Jeg33]:** Is this sentence necessary? The order may have allow some redaction.

**Commented [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.

Commented [Jeg35]: Court file is used here.

Commented [Jeg36]: Court file is used here.

Commented [Jeg37]: Court records is used here.

Commented [Jeg38]: Court file vs. court record

~~(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 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.

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

Commented [SUN40]: DDC requested further review and discussion regarding (9) and asked for comments from interested parties.

Commented [SUN41]: Possible comment added after subsection discussing financial restraints/computer system upgrades.

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

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

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

Commented [Jeg45]: Juvenile offense and juvenile proceedings are used in the rule, and the distinction is not always clear.

~~(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 13.50.585.

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."

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 9.95.340, and RCW 9.96.060.

Commented [Jeg46]: Is this COMMENT really needed?

Commented [Jeg47]: The Court is not an agency.

- (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

Commented [Jeg48]: Unredaction... awkward word choice. Grounds and Procedure for Requesting the Reversion of an Order Sealing or Redacting Court Records [Court files?]

Commented [Jeg49]: Court files too?

Commented [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).

Commented [SUN51]: DDC requested further review as it relates to the *Dannett* case.

Commented [Jeg52]: Note: court record is used here.

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.

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

- (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 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.

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

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

Commented [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.

Commented [jeg57]: CRLJ 26 as well?

Commented [jeg58]: CLJ Rules?

Commented [jeg59]: Or sworn declaration?

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.

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

- ~~(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.

Commented [jeg61]: And Redacted?

Commented [jeg62]: And redacted?

Commented [jeg63]: Court files?

~~(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.

Commented [Jeg64]: And Redacted?

Commented [Jeg65]: And redacted?

~~(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.

Commented [Jeg66]: Any court record, any court file?

(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 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.

Commented [Jeg67]: Definition of "juvenile proceeding"

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

Commented [Jeg68]: Court file is used here and the subsection A uses court records.

(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.

Commented [Jeg69]: Why the exception for accounting records?

Commented [Jeg70]: Public access.

(B) The accounting records shall be sealed.

Commented [Jeg71]: Is this because of the Auditor? If they are sealed, the Auditor cannot see them.

(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.

Commented [Jeg72]: Available for public access.

(5) Destroying Records.

(A) This subsection shall not prevent the routine destruction of court records pursuant to applicable

Commented [Jeg73]: Does this include court files?

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.~~

**Commented [jg74]:** 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?

**Commented [jg75]:** After any applicable appeal period has expired or appeals exhausted?

(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.



**Pardee, Michelle**

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**Subject:** Supreme Court Rule re: Appointed Counsel

**From:** Blecha, Julie [<mailto:julie.blecha@sos.wa.gov>]  
**Sent:** Monday, March 10, 2014 9:38 AM  
**To:** Marler, Dirk  
**Subject:** FW: Supreme Court Rule re: Appointed Counsel

Good morning, Dirk. I'm working with the Superior Court Clerks to revise and update the *County Clerks and Superior Court Clerks* retention schedule. Lynne Alfasso has been my amazingly helpful "go-to" person for years, but she now suggests that I contact you with my future records retention questions.

I am drafting a records series to cover the certifications of compliance required to be filed quarterly "in each court in which the attorney has been appointed as counsel" by Supreme Court Order #25700-A-1004. In an attempt to gather viewpoints on how long the Superior Court Clerks need to/should keep this certificates, I have contacted WAPA, WDA, ODA, and would also like AOC's point of view.

This information will be shared first with the Clerks, and ultimately with the Local Records Committee when they consider approving the retention schedule pursuant to RCW 40.14.070.

The results of my poll, so far, range from "until superseded" to "PERMANENT". Any perspective AOC would like to share would be valued highly.

Thank you.

**Julie Blecha**  
Local Government Records Retention Specialist  
(360) 586-4902





# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW  
STANDARDS FOR INDIGENT DEFENSE AND  
CERTIFICATION OF COMPLIANCE

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**ORDER**

NO. 25700-A-1004

The Washington State Bar Association having recommended the adoption of New Standards for Indigent Defense and Certification of Compliance, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

- (a) That the standards and certificate as attached hereto are adopted.
- (b) That the New Standards for Indigent Defense, except Standard 3.4, will be published in the Washington Reports and will become effective September 1, 2012. New Standard 3.4 will be published in the Washington Reports and become effective on September 1, 2013.

DATED at Olympia, Washington this 15<sup>th</sup> day of June, 2012.

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
12 JUN 15 AM 8:00  
BY RONALD R. CARPENTER  
CLERK

639/7

IN THE MATTER OF THE ADOPTION OF NEW STANDARDS FOR INDIGENT DEFENSE  
AND CERTIFICATION OF COMPLIANCE

Madsen, C. J.

Chambers, J.

M. Johnson

Wiggins, J.

Eric J. [unclear]

Stevens, J.

Gonzalez, J.

## STANDARDS FOR INDIGENT DEFENSE

The following Standards for Indigent Defense are adopted pursuant to CrR 3.1, CrRLJ 3.1 and JuCR 9.2 and shall have an effective date concurrent with the effectiveness of amendments to those rules approved by the Court July 8, 2010 (effective July 1, 2012);

### Standard 3: Caseload Limits and Types of Cases

- 3.1 The contract or other employment agreement or government budget shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle.
- 3.2 The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. As used in this Standard, "quality representation" is intended to describe the minimum level of attention, care, and skill that Washington citizens would expect of their state's criminal justice system.
- 3.3 **General Considerations**  
Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort in each case type specified. Caseload limits assume a reasonably even distribution of cases throughout the year.

The increased complexity of practice in many areas will require lower caseload limits. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources. Attorney caseloads should be assessed by the workload required, and cases and types of cases should be weighted accordingly.

If a defender or assigned counsel is carrying a mixed caseload including cases from more than one category of cases, these standards should be applied proportionately to determine a full caseload. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the caseload should be based on the percentage of time the lawyer devotes to public defense.

The experience of a particular attorney is a factor in the composition of cases in the attorney's caseload.

The following types of cases fall within the intended scope of the caseload limits for criminal and juvenile offender cases in Standard 3.4 and must be taken into account when assessing an attorney's numerical caseload: partial case representations, sentence violations, specialty or therapeutic courts, transfers, extraditions, representation of material witnesses, petitions for conditional release or final discharge, and other matters that do not involve a new criminal charge.

## STANDARDS FOR INDIGENT DEFENSE

**Definition of case:** A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. In courts of limited jurisdiction multiple citations from the same incident can be counted as one case.

### 3.4 Caseload Limits

The caseload of a full-time public defense attorney or assigned counsel should not exceed the following:

150 Felonies per attorney per year; or

300 Misdemeanor cases per attorney per year or, in jurisdictions that have not adopted a numerical case weighting system as described in this Standard, 400 cases per year; or

250 Juvenile Offender cases per attorney per year; or

80 open Juvenile Dependency cases per attorney; or

250 Civil Commitment cases per attorney per year; or

1 Active Death Penalty trial court case at a time plus a limited number of non death penalty cases compatible with the time demand of the death penalty case and consistent with the professional requirements of Standard 3.2 or

36 Appeals to an appellate court hearing a case on the record and briefs per attorney per year. *(The 36 standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. If attorneys do not have significant appellate experience and/or the average transcript length is greater than 350 pages, the caseload should be accordingly reduced.)*

Full time Rule 9 interns who have not graduated from law school may not have caseloads that exceed twenty-five percent (25%) of the caseload limits established for full time attorneys. *[Effective September 1, 2013]*

### 3.5 Case Counting

The local government entity responsible for employing, contracting with or appointing public defense attorneys should adopt and publish written policies and procedures to implement a numerical case-weighting system to count cases. If such policies and procedures are not adopted and published, it is presumed that attorneys are not engaging in case weighting. A numerical case weighting system must:

- A. recognize the greater or lesser workload required for cases compared to an average case based on a method that adequately assesses and documents the workload involved;
- B. be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;

## STANDARDS FOR INDIGENT DEFENSE

- C. not institutionalize systems or practices that fail to allow adequate attorney time for quality representation; and
- D. be periodically reviewed and updated to reflect current workloads; and
- E. be filed with the State of Washington Office of Public Defense.

Cases should be assessed by the workload required. Cases and types of cases should be weighted accordingly. Cases which are complex, serious, or contribute more significantly to attorney workload than average cases should be weighted upwards. In addition, a case weighting system should consider factors that might justify a case weight of less than one case.

Notwithstanding any case weighting system, resolutions of cases by pleas of guilty to criminal charges on a first appearance or arraignment docket are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients, and must be counted as one case.

### 3.6 Case Weighting

The following are some examples of situations where case weighting might result in representations being weighted as more or less than one case. The listing of specific examples is not intended to suggest or imply that representations in such situations should or must be weighted at more or less than one case, only that they may be, if established by an appropriately adopted case weighting system.

- A. **Case Weighting Upwards:** Serious offenses or complex cases that demand more-than-average investigation, legal research, writing, use of experts, use of social workers and/or expenditures of time and resources should be weighted upwards and counted as more than one case.
- B. **Case Weighting Downward:** Listed below are some examples of situations where case weighting might justify representations being weighted less than one case. However, care must be taken because many such representations routinely involve significant work and effort and should be weighted at a full case or more.
  - i. Cases that result in partial representations of clients, including client failures to appear and recommencement of proceedings, preliminary appointments in cases in which no charges are filed, appearances of retained counsel, withdrawals or transfers for any reason, or limited appearances for a specific purpose (not including representations of multiple cases on routine dockets).
  - ii. Cases in the criminal or offender case type that do not involve filing of new criminal charges, including sentence violations, extraditions,

## STANDARDS FOR INDIGENT DEFENSE

representations of material witnesses, and other matters or representations of clients that do not involve new criminal charges. Non-complex sentence violations should be weighted as at least 1/3 of a case.

- iii. Cases in specialty or therapeutic courts if the attorney is not responsible for defending the client against the underlying charges before or after the client's participation in the specialty or therapeutic court. However, case weighting must recognize that numerous hearings and extended monitoring of client cases in such courts significantly contribute to attorney workload and in many instances such cases may warrant allocation of full case weight or more.
- iv. Cases on a criminal or offender first appearance or arraignment docket where the attorney is designated, appointed or contracted to represent groups of clients on that docket without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal). In such circumstances, consideration should be given to adjusting the caseload limits appropriately, recognizing that case weighting must reflect that attorney workload includes the time needed for appropriate client contact and preparation as well as the appearance time spent on such dockets.
- v. Representation of a person in a court of limited jurisdiction on a charge which, as a matter of regular practice in the court where the case is pending, can be and is resolved at an early stage of the proceeding by a diversion, reduction to an infraction, stipulation on continuance, or other alternative non-criminal disposition that does not involve a finding of guilt. Such cases should be weighted as at least 1/3 of a case.

### Related Standards

American Bar Association, *Standards for Criminal Justice*, 4-1.2, 5-4.3.

American Bar Association *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. [\[Link\]](#)

American Bar Association, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, May 13, 2006, *Formal Opinion 06-441*. [\[Link\]](#)

The American Council of Chief Defenders *Statement on Caseloads and Workloads*, (2007). [\[Link\]](#)

American Bar Association *Eight Guidelines of Public Defense Related to Excessive Caseloads*. [\[Link\]](#)

National Advisory Commission on Criminal Standards and Goals, *Task Force on Courts*, 1973, Standard 13.12.

American Bar Association *Disciplinary Rule 6-101*.

American Bar Association *Ten Principles of a Public Defense Delivery System*. [\[Link\]](#)

## STANDARDS FOR INDIGENT DEFENSE

*ABA Standards of Practice for Lawyers who Represent Children in Abuse & Neglect Cases*, (1996)  
American Bar Association, Chicago, IL.

The American Council of Chief Defenders Ethical Opinion 03-01 (2003).

National Legal Aid and Defender Association, *Standards for Defender Services*, Standards IV-I.

National Legal Aid and Defender Association, *Model Contract for Public Defense Services* (2002). [\[Link\]](#)

NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001). [\[Link\]](#)

City of Seattle Ordinance Number: 121501 (2004). [\[Link\]](#)

Seattle-King County Bar Association Indigent Defense Services Task Force, Guideline Number 1.

Washington State Office of Public Defense, *Parents Representation Program Standards Of Representation* (2009). [\[Link\]](#)

*Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001). [\[Link\]](#)

### 5.2 Administrative Costs

- A. Contracts for public defense services shall provide for or include administrative costs associated with providing legal representation. These costs should include but are not limited to travel, telephones, law library, including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training, meeting the reporting requirements imposed by these standards, and other costs necessarily incurred in the day-to-day management of the contract.
- B. Public defense attorneys shall have 1) access to an office that accommodates confidential meetings with clients and 2) a postal address, and adequate telephone services to ensure prompt response to client contact.

### 6.1 Investigators

Public defense attorneys shall use investigation services as appropriate.

### Standard 13: Limitations on Private Practice

Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

### Standard 14: Qualifications of Attorneys

14.1 In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:

- A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and

## STANDARDS FOR INDIGENT DEFENSE

- B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and
- C. Be familiar with the Washington Rules of Professional Conduct; and
- D. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; and
- E. Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and
- F. Be familiar with mental health issues and be able to identify the need to obtain expert services; and
- G. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

### 14.2 Attorneys' qualifications according to severity or type of case<sup>1</sup>:

- A. **Death Penalty Representation.** Each attorney acting as lead counsel in a criminal case in which the death penalty has been or may be decreed and which the decision to seek the death penalty has not yet been made shall meet the following requirements:
  - i. The minimum requirements set forth in Section 1; and
  - ii. At least five years criminal trial experience; and
  - iii. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
  - iv. Have served as lead or co-counsel in at least one aggravated homicide case; and
  - v. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
  - vi. Have completed at least one death penalty defense seminar within the previous two years; and
  - vii. Meet the requirements of SPRC 2.<sup>2</sup>

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<sup>1</sup> Attorneys working toward qualification for a particular category of cases under this standard may associate with lead counsel who is qualified under this standard for that category of cases.

<sup>2</sup>SPRC 2 APPOINTMENT OF COUNSEL.

*At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct appeal. Notwithstanding RAP 15.2(f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.*

## STANDARDS FOR INDIGENT DEFENSE

The defense team in a death penalty case should include, at a minimum, the two attorneys appointed pursuant to SPRC 2, a mitigation specialist and an investigator. Psychiatrists, psychologists and other experts and support personnel should be added as needed.

### **B. Adult Felony Cases - Class A**

Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
  - a. has served two years as a prosecutor; or
  - b. has served two years as a public defender; or two years in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in three felony cases that have been submitted to a jury.

### **C. Adult Felony Cases – Class B Violent Offense**

Each attorney representing a defendant accused of a Class B violent offense as defined in RCW 9A.20.020 shall meet the following requirements.

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
  - a. has served one year as a prosecutor; or
  - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury.

### **D. Adult Sex Offense Cases**

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*A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.*

*At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel. [\[Link\]](#)*

## STANDARDS FOR INDIGENT DEFENSE

Each attorney representing a client in an adult sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(C); and
- ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

**E. Adult Felony Cases - All other Class B Felonies, Class C Felonies, Probation or Parole Revocation**

Each attorney representing a defendant accused of a Class B felony not defined in Section 2(C) or (D) above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
  - a. has served one year as a prosecutor; or
  - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and
- iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor if available.

**F. Persistent Offender (Life Without Possibility of Release) Representation**

Each attorney acting as lead counsel in a “two-strikes” or “three strikes” case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:

- i. The minimum requirements set forth in Section 1;<sup>3</sup> and
- ii. Have at least:
  - a. four years criminal trial experience; and
  - b. one year experience as a felony defense attorney; and
  - c. experience as lead counsel in at least one Class A felony trial; and
  - d. experience as counsel in cases involving each of the following:
    1. Mental health issues; and

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<sup>3</sup> RCW 10.101.060 (1)(a)(iii) provides that counties receiving funding from the state Office of Public Defense under that statute must require “attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies.”

## STANDARDS FOR INDIGENT DEFENSE

2. Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and
3. Expert witnesses; and
4. One year of appellate experience or demonstrated legal writing ability.

### G. Juvenile Cases - Class A

Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
  - a. has served one year as a prosecutor; or
  - b. has served one year as a public defender; one year in a private criminal practice; and
- iii. Has been trial counsel alone of record in five Class B and C felony trials; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

### H. Juvenile Cases - Classes B and C

Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
  - a. has served one year as a prosecutor; or
  - b. has served one year as a public defender; or one year in a private criminal practice, and
- iii. has been trial counsel alone in five misdemeanor cases brought to a final resolution; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor if available.

### I. Juvenile Sex Offense Cases

Each attorney representing a client in a juvenile sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(H); and
- ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

## STANDARDS FOR INDIGENT DEFENSE

- J. Juvenile Status Offenses Cases.** Each attorney representing a client in a “Becca” matter shall meet the following requirements:
- i. The minimum requirements as outlined in Section 1; and
  - ii. Either:
    - a. have represented clients in at least two similar cases under the supervision of a more experienced attorney or completed at least three hours of CLE training specific to “status offense” cases; or
    - b. have participated in at least one consultation per case with a more experienced attorney who is qualified under this section.
- K. Misdemeanor Cases**  
Each attorney representing a defendant involved in a matter concerning a simple misdemeanor or gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1.
- L. Dependency Cases**  
Each attorney representing a client in a dependency matter shall meet the following requirements:
- i. The minimum requirements as outlined in Section 1; and
  - ii. Attorneys handling termination hearings shall have six months dependency experience or have significant experience in handling complex litigation.
  - iii. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.
  - iv. Attorneys representing children in dependency matters should have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state Office of Public Defense resource attorney or other attorney qualified under this section.
- M. Civil Commitment Cases**  
Each attorney representing a respondent shall meet the following requirements:
- i. The minimum requirements set forth in Section 1; and
  - ii. Each staff attorney shall be accompanied at his or her first 90 or 180 day commitment hearing by a supervisor; and
  - iii. Shall not represent a respondent in a 90 or 180 day commitment hearing unless he or she has either:
    - a. served one year as a prosecutor, or
    - b. served one year as a public defender, or one year in a private civil commitment practice, and
    - c. been trial counsel in five civil commitment initial hearings; and

## STANDARDS FOR INDIGENT DEFENSE

- iv. Shall not represent a respondent in a jury trial unless he or she has conducted a felony jury trial as lead counsel; or been co-counsel with a more experienced attorney in a 90 or 180 day commitment hearing.

### **N. Sex Offender "Predator" Commitment Cases**

Generally, there should be two counsel on each sex offender commitment case. The lead counsel shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Have at least:
  - a. Three years criminal trial experience; and
  - b. One year experience as a felony defense attorney or one year experience as a criminal appeals attorney; and
  - c. Experience as lead counsel in at least one felony trial; and
  - d. Experience as counsel in cases involving each of the following:
    - 1. Mental health issues; and
    - 2. Sexual offenses; and
    - 3. Expert witnesses; and
  - e. Familiarity with the Civil Rules; and
  - f. One year of appellate experience or demonstrated legal writing ability.

Other counsel working on a sex offender commitment cases should meet the Minimum Requirements in Section 1 and have either one year experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.

### **O. Contempt of Court Cases**

Each attorney representing a respondent shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Each attorney shall be accompanied at his or her first three contempt of court hearings by a supervisor or more experienced attorney, or participate in at least one consultation per case with a state Office of Public Defense resource attorney or other attorney qualified in this area of practice.

### **P. Specialty Courts**

Each attorney representing a client in a specialty court (e.g., mental health court, drug diversion court, homelessness court) shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. The requirements set forth above for representation in the type of practice involved in the specialty court (e.g., felony, misdemeanor, juvenile); and
- iii. Be familiar with mental health and substance abuse issues and treatment alternatives.

## STANDARDS FOR INDIGENT DEFENSE

### 14.3 Appellate Representation.

Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:

- A. The minimum requirements as outlined in Section 1; and
- B. Either:
  - i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or
  - ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing or other comparable work.
- C. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions, and meet the requirements of SPRC 2.

**RALJ Misdemeanor Appeals to Superior Court:** Each attorney who is counsel alone for a case on appeal to the Superior Court from a Court of Limited Jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing an RALJ appeal.

### 14.4 Legal Interns

- A. Legal interns must meet the requirements set out in APR 9.
- B. Legal interns shall receive training pursuant to APR 9 and in offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held.

# STANDARDS FOR INDIGENT DEFENSE

## CERTIFICATION OF COMPLIANCE

“Applicable Standards” required by CrR3.1/ CrRLJ 3.1 / JuCR9.2

For criminal and juvenile offender cases, a signed certification of compliance with Applicable Standards must be filed by an appointed attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel.

The certification must be in substantially the following form:

### SEPARATE CERTIFICATION FORM

_____ Court of Washington for
----------------------------------

Certification of Appointed Counsel of  
Compliance with Standards Required by  
CrR 3.1 / CrRLJ 3.1 / JuCR 9.2

The undersigned attorney hereby certifies:

1. Approximately \_\_\_\_% of my total practice time is devoted to indigent defense cases.
2. I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent persons and that:
  - a. **Basic Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1.
  - b. **Office:** I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.
  - c. **Investigators:** I have investigators available to me and will use investigation services as

## STANDARDS FOR INDIGENT DEFENSE

appropriate, in compliance with Standard 6.1.

- d. **Caseload:** I will comply with Standard 3.2 during representation of the defendant in my cases.  
[Effective 9/1/13: I should not accept a greater number of cases (or a proportional mix of different case types) than specified in Standard 3.4, prorated if the amount of time spent for indigent defense is less than full time, and taking into account the case counting and weighting system applicable in my jurisdiction.]

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Defendant's Lawyer, WSBA#

Date

## **RCW 40.14.070**

### **Destruction, disposition, donation of local government records — Preservation for historical interest — Local records committee, duties — Record retention schedules — Sealed records.**

(1)(a) County, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.

(b) A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.

(2)(a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:

(i) The records are six or more years old;

(ii) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or

(iii) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the local records committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

(b)(i) Records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020 that are not required in the current operation of the law

enforcement agency or for pending judicial proceedings shall, following the expiration of the applicable schedule of the law enforcement agency's retention of the records, be transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval. Upon electronic retention of any document, the association shall be permitted to destroy the paper copy of the document.

(ii) Any sealed record transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval, including records sealed after transfer, shall be electronically retained in such a way that the record is clearly marked as sealed.

(iii) The Washington association of sheriffs and police chiefs shall be permitted to destroy both the paper copy and electronic record of any offender verified as deceased.

(c) Any record transferred to the Washington association of sheriffs and police chiefs pursuant to (b) of this subsection shall be deemed to no longer constitute a public record pursuant to RCW 42.56.010 and shall be exempt from public disclosure. Such records shall be disseminated only to criminal justice agencies as defined in RCW 10.97.030 for the purpose of determining if a sex offender met the criteria of a sexually violent predator as defined in chapter 71.09 RCW and the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420.

Electronic records marked as sealed shall only be accessible by criminal justice agencies as defined in RCW 10.97.030 who would otherwise have access to a sealed paper copy of the document, the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420, and the system administrator for the purposes of system administration and maintenance.

(3) Except as otherwise provided by law, county, municipal, and other local government agencies may, as an alternative to destroying noncurrent public records having no further administrative or legal value, donate the public records to the state library, local library, historical society, genealogical society, or similar society or organization.

Public records may not be donated under this subsection unless:

- (a) The records are seventy years old or more;
- (b) The local records committee has approved the destruction of the public records; and
- (c) The state archivist has determined that the public records have no historic interest.

[2011 c 60 § 18; 2005 c 227 § 1; 2003 c 240 § 1; 1999 c 326 § 2; 1995 c 301 § 71; 1982 c 36 § 6; 1973 c 54 § 5; 1971 ex.s. c 10 § 1; 1957 c 246 § 7.]

**Notes:**

**Effective date -- 2011 c 60:** See RCW 42.17A.919.

Copying, preserving, and indexing of documents recorded by county auditor: RCW 36.22.160 through 36.22.190.

Destruction and reproduction of court records: RCW 36.23.065 through 36.23.070.





WASHINGTON  
COURTS

**DMCJA Reserves Committee Meeting**  
Friday, March 14, 2014 (11:30am – 12:00 p.m.)  
AOC SeaTac offices

**MEETING MINUTES**

**Members:**

Judge Veronica Alicea-Galvan, Chair  
Judge G. Scott Marinella  
~~Judge David Steiner~~

**Guests:**

Judge David Svaren

**AOC Staff:**

Ms. Michelle M. Pardee

1) Banking Alternatives for Special Fund

Members discussed that due to the poor consumer services we continue to receive from Bank of America, the funds should be transferred to another bank such as US Bank. The best time for this to happen is in conjunction with the incoming custodian in June 2014 and the current custodian Judge Svaren can close the Bank of America account and then the new custodian can open a new account with US Bank for the Special Funds.

2) Special Funds dues- \$25

Members discussed that the Board of Governors decided to temporarily discontinue the collection of these funds from our members in 2011. Because we currently have no specific expenditure on the horizon, the DMCJA Reserves Committee recommends we not collect Special Fund dues in 2015.

3) Strategic plan for use of Special Funds

The funds, totaling \$48,540.07, have been accumulated over a substantial period of time wherein members paid \$25.00 per year. The members have not paid the \$25 dues since 2011 and if there is a need to fund activities that DMCJA can't use public funds for, it could quickly deplete this fund. This includes expenditures 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. Therefore, the current and incoming custodians should look at options in order to best maximize return.

4) Recommendations to the Board

A. The current account with Bank of America be closed and the funds be put in a new account at US Bank. This should be done in conjunction with the incoming Special Funds Custodian in June 2014.

B. Special Fund dues not be collected in 2015.

C. The current and new custodian look at options in order to best maximize return and make recommendations to the Board of Governors.





WASHINGTON  
COURTS

## DMCJA Rules Committee

Wednesday, February 26, 2014 (12:00 p.m. – 1:00 p.m.)  
Via Teleconference

### MEETING MINUTES

**Members:**

Chair, Judge Garrow  
Vice Chair, Judge Dacca  
Judge Buttorff  
Judge S. Buzzard  
Judge Fraser  
Judge Grant  
Judge Harmon  
Judge Robertson  
Judge Steiner  
Judge Szambelan  
Ms. Linda Hagert, DMCMA Liaison

**AOC Staff:**

Ms. J Krebs

Judge Garrow called the meeting to order at 12:06 p.m.

The Committee discussed the following items:

**1. January 2014 meeting minutes**

The January 2014 Rules Committee meeting minutes were approved as presented.

**2. Amendments to CrRLJ 8.13 regarding communications with jurors, proposed by WACDL**

Judge Harmon reviewed this proposal and prepared a memo for the Committee. Judge Robertson also advised that a subcommittee of the WSBA Rules Committee had reviewed the proposed rules and was not supportive. The Committee discussed the proposed amendments and expressed concern that the proposed rules present issues regarding restraint of speech after a case has concluded. Also, if a case has concluded and the jurors have completed their service it seems inconsistent with constitutional provisions regarding open access to court records and proceedings to restrict information that would still be available to the general public. It would also appear to be unnecessary because a party concerned about post-trial communications with jurors could request the trial court craft a specific order to address concerns associated with the case, and RPC 3.5(c) would govern the lawyer's compliance with such order. Judge Dacca stated that he was in favor of the proposed amendments, for the practical reasons cited in the proponents' memo. The majority of the Committee was not in favor of the rule as currently drafted. It was motioned, seconded and passed for Judge Garrow to adapt Judge Harmon's memo for presentation to the DMCJA Board outlining the reasons the Committee is not in favor of the amendment. Judge Dacca opposed the motion.

### **3. Proposed amendments to RALJ 2.2, 5.4 & 11.7, published by the Supreme Court**

Judge Garrow reviewed the proposed RALJ amendments and presented a memo to the Committee. The proposal with the potential for greatest impact on courts of limited jurisdiction (CLJs) is RALJ 5.4, which addresses the effect of lost or damaged electronic transcripts from CLJs for appeal purposes. The current remedy if a transcript has significant deficiencies is to require a new trial. This proposal would only require re-trying the particular hearing or proceeding that lacks a record. The Committee was supportive of the concept and agreed that Judge Garrow's proposed language fixed a potential ambiguity in the way it is currently worded. It was motioned, seconded and passed to present Judge Garrow's memo to the DMCJA Board.

### **4. Proposed amendments to GR 15**

Judge Garrow stated that the Data Dissemination Committee of the JISC brought forth this proposal to amend GR 15, an earlier version of which the DMCJA commented upon. Judge Garrow requested that "fresh eyes" review the proposal and a subcommittee was formed consisting of Judge Robertson, Judge Harmon and Judge Dacca. J Krebs will send the Subcommittee the information related to the proposal. Judge Garrow requested that the Subcommittee present its findings and recommendation at the next Rules Committee meeting so a report could be forwarded to the Board in time for its April meeting.

### **5. Proposed amendments to GR 33**

Judge Garrow stated that the Access to Justice Board was proposing amendments to GR 33 to better reflect the American with Disabilities Act. Judge Garrow stated that she had reviewed the proposal and saw no reason for the DMCJA to comment on it. The Committee agreed with Judge Garrow's recommendation.

### **6. Other Business and Next Meeting Date**

After discussion, the Committee set its next meeting for Thursday, March 20, 2014 at noon.

There being no further business, the meeting was adjourned.

KING COUNTY DISTRICT COURT  
East Division – Redmond Courthouse

**Judge Janet E. Garrow**  
206-477-2103

8601 160th Ave NE  
Redmond, WA 98052-3548

**Kathy Orozco**  
Court Manager

TO: Judge David Svaren, President and DMCJA Board  
FROM: Judge Janet Garrow, Chair, DMCJA Rules Committee  
SUBJECT: Proposal to Amend IRLJ 3.5  
DATE: March 25, 2014

The attached letter with a rule amendment request was sent to me by attorney Steven A. Hemmat. He is requesting DMCJA consider amending IRLJ 3.5 in several respects. One suggestion is to amend IRLJ 3.5 and eliminate the “local option”, thereby requiring all courts of limited jurisdiction to accept and decide contested and mitigated infractions via written statements. He also proposes written findings of fact be required for mitigation and contested hearings by mail and that a uniform time period be provided in the rule for submission of written statements.

The DMCJA Rules Committee discussed his various proposals at its March 20, 2014 meeting. The infraction caseload and resources of CLJ differ across the state. The Committee concluded that the “local option” should be maintained and did not support the other suggested amendments. The Committee is passing this information along to the Board so it is aware of the request and can decide whether the DMCJA Board wants to take any action.

Attachment

CC: DMCJA Rules Committee  
J Krebs, AOC Staff



THE LAW OFFICE OF  
**Steven A. Hemmat**  
A PROFESSIONAL SERVICE CORPORATION

Steven A. Hemmat, Attorney at Law  
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Phone (206) 682-5200  
Fax (206) 682-5202

March 12, 2014

Judge Janet E. Garrow  
King County District Court, East Division  
8601 - 160<sup>th</sup> Avenue N.E.  
Redmond, WA 98052-3548

Re: Proposed changes to IRLJ 3.5

Dear Judge Garrow:

My name is Steven Hemmat, and I have been licensed to practice law in Washington state for over 25 years. I have a law office located in Seattle.

According to the Judicial Information System (JIS), in 2013 the State of Washington filed a total of 867,875 traffic infractions, with 1,038,971 charges. The gross revenue from traffic infractions in 2013 amounted to \$126,095,483. In addition, more than 370,000 in-court hearings were held in 2013 for traffic infractions in Washington state. See enclosure(s). What these statistics do not address are the significant costs to the court system and taxpayers to adjudicate these traffic infractions. In my experience, a person seeking a court hearing uses a significant amount of public resources: judge, bailiff, court clerk, law enforcement officer, prosecutor and other court personnel. The amount of time allocated for each hearing will vary, but it is often not less than 30 to 45 minutes. With a typical traffic infraction ranging between \$93 to \$175, this is a poor use of judicial and public resources.

My law office recently developed a website called eTicketbuster.com. eTicketbuster™ (eTicketbuster) provides limited scope legal assistance ("unbundled legal services") for drivers to challenge Washington state traffic infractions. eTicketbuster provides assistance to drivers in drafting and filing their documents properly to obtain a Decision on Written Statement (DWS) as authorized by the Infraction Rules for Courts of Limited Jurisdiction (IRLJ) 2.4(a)(4), 2.6(c), 3.5 and local court rules. In developing our website, we consulted with the Washington State Bar Ethics Hotline and other colleagues to make sure our service fully complies with the Rules of Professional Conduct. eTicketbuster provides a needed service for many Washington drivers and greater access to justice for those who would otherwise be unable to afford it. For example, the typical cost of a party attorney in a traffic infraction case is on average \$200-\$300, and this excludes the traffic infraction amount. eTicketbuster and the decision on written statement process provides individuals with an additional choice on how to contest a traffic infraction in

Washington state. It is also much more economical for the courts to adjudicate written statements rather than having full court hearings. In fact, I would assert that making it easier for people to use the written statement process for traffic infractions will greatly benefit the courts – both financially and in freeing up in-court time to address other important matters which are adjudicated in district and municipal courts (criminal, anti-harassment, stalking, protection orders, unlawful detainer, etc.).

Patrick Palace, WSBA President, authored an article in the December 2013-Jan 2014 issue of NW Lawyer where he advocated for the legal profession to “imagine a new way to do business” and to embrace current and future technologies to serve the enormous market of unmet need. This article spoke to us at eTicketbuster, since we are pioneering a new model to bring greater access to justice for people seeking to contest their traffic infractions. We held a phone conference with Mr. Palace, who was supportive of our efforts. When we discussed some of the barriers we have come across in assisting clients, he suggested that we prepare proposed amendments to rules and submit them to the District and Municipal Court Judges’ Association.

The key court rule relating to decisions on written statements is IRLJ 3.5. Currently, this rule is a “local option” where each district and municipal court in the State of Washington can decide whether or not to permit written statements. This has created a patchwork of local rules throughout Washington state in the various district and municipal courts. With over one year of operating eTicketbuster and assisting well over 200 clients, my office has attempted to address this state-wide patchwork by analyzing the local rules of each district and municipal court.

I request that the Rules Committee of the District and Municipal Court Judges’ Association, which you chair, consider amending IRLJ 3.5 with our suggested amendments. Our suggested amendments, which are enclosed, are tailored to address several key issues and concerns.

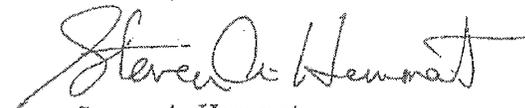
1. **Removing local option for decision on written statements.** This would create uniformity of permitting all courts to adjudicate traffic infractions using a decision by written statement, and allow greater access to justice for the public. This is a much more efficient and economical process in which to adjudicate traffic infractions for those litigants who choose to do so. It also saves the courts and law enforcement enormous amounts of time and money. Of course, there are many litigants who may still wish to represent themselves *pro se* or hire an attorney to appear in court. These will remain their options as well.
2. **Governing written statements by IRLJ 3.1(b) Discovery.** We have found that there are inconsistencies with some courts not affording those who choose to use the written statement option the same opportunity to seek discovery as those who might seek to litigate the matter in court. This should be clarified by expressly permitting discovery for written statements per IRLJ 3.1(b) under the same rules governing an in-court contested hearing.

3. **Written findings of fact.** Currently, many court decisions on written statements find a litigant to have committed the infraction, dismiss the infraction, mitigate the infraction, or occasionally permit a deferral – with no findings of fact. We assert that it would add to the legitimacy of the process and provide greater accountability to the public if a judge is required to issue some written findings of fact with the decision on written statement.
4. **Uniformity of submitting statements.** We suggest adding a new section (c) to IRLJ 3.5 that will, in part, add uniformity of when to submit written statements. Currently, courts vary on when they accept written statements – ranging from two weeks prior to the previously scheduled contested hearing date to just before the trial.
5. **Decisions to be made in county where infraction was issued.** Under our proposed section (c), we address the concern that some courts adjudicating red light camera infractions permit a private out of state service to decide whether or not a violation occurred. Our proposed language requires that the court in the county in which the infraction was issued should determine the decision by written statement.

We understand that your rules committee may have other concerns relating to the court rules. However, JIS statistics demonstrate that even if a small fraction of the 370,000 in-court hearings could be reduced by adopting these proposed amendments, district and municipal court budgets throughout the state could save potentially millions of dollars each year. In a time where many court budgets are being reduced, this will be a major financial benefit. These amendments will create greater judicial efficiencies and reduce opportunity costs by creating more access to in-court hearings for other important litigation. Furthermore, these proposed amendments will serve the public by creating greater access to justice by making the decision on written statement process more available to *pro se* individuals and attorneys when contesting traffic infractions.

We urge you to consider the proposed amendments to IRLJ 3.5 above and invite you to contact us with any further questions, comments, or concerns. Thank you so much for all your time and consideration in this matter.

Sincerely yours,

  
Steven A. Hemmat

Enclosure(s)

cc: ✓ DMCJA  
Patrick Palace, WSBA President (via email)

RULE IRLJ 3.5

DECISION ON WRITTEN STATEMENTS

~~(Local Option)<sup>1</sup>~~

(a) Contested Hearings. The court shall examine the citing officer's report and any statement submitted by the defendant. The examination shall take place within 120 days after the defendant filed the response to the notice of infraction. The examination may be held in chambers and shall not be governed by the Rules of Evidence but shall be governed by IRLJ 3.1(b) Discovery.

(1) Factual Determination. The court shall determine whether the plaintiff has proved by a preponderance of all evidence submitted that the defendant has committed the infraction with written findings of fact.

(2) Disposition. If the court determines that the infraction has been committed, it may assess a penalty in accordance with rule 3.3.

(3) Notice to Parties. The court shall notify the parties in writing whether an infraction was found to have been committed and what penalty, if any, was imposed.

(4) No Appeal Permitted. There shall be no appeal from a decision on written statements.

(b) Mitigation Hearings. Mitigation hearings based upon written statements may be held in chambers.

<sup>1</sup> Local option language should be omitted at IRLJ 2.4(b)(4) and 2.6(e) and any other reference in the IRLJ.

(c) A party seeking a decision by written statement shall submit such statement at least five calendar days prior to the trial date. All decisions on written statements shall be determined by a court in the county where the infraction was issued.

[Adopted as JTIR effective January 1, 1981. Changed from JTIR to IRLJ effective September 1, 1992; amended effective September 1, 1997; amended effective January 3, 2006.]

***Courts of Limited Jurisdiction***  
***January 2013 through December 2013***  
***Year-to-Date Caseload Report***

## Courts of Limited Jurisdiction Glossary

This glossary is included to assist in understanding the statistical tables.

### INFRACCTIONS - CASE TYPES

Infractions are identified and defined under RCW 46.63.020 and include violations of traffic statutes, laws, or ordinances that are not punishable by a jail sentence. There are three types of infractions:

**Traffic Infractions** - Cases that pertain to (1) the operation or condition of a vehicle whether it is moving, standing, or stopping, and (2) pedestrian offenses.

**Non-Traffic Infractions** - Cases including violations of RCW 18.27.340 and 18.106.020, contracting and plumbing license violations, and offenses decriminalized under municipal code, such as dog leash violations in some municipalities.

**Parking Infractions** - Cases pertaining only to violations of parking statutes and ordinances.

### INFRACCTIONS - FILINGS

**Notices of Infraction Filed** - Individual Uniform Court Docket forms received by the reporting court during the period. Each notice of infraction can contain up to three charges. Previously closed matters that have been reopened (for example, FTA's) are not counted. Violations charged are shown separately.

**Number of Violations Charged** - All violations for these infractions filed during the period as recorded on the Uniform Court Docket under the section entitled, "and did then and there commit each of the following offenses/infractions." There will be at least one, and no more than three, violations per notice of infraction (increased from two, effective January 1, 1995).

### PROCEEDINGS (Used in several reporting categories)

Proceedings include all hearings held in open court. A proceeding is conducted in "open court" if it is held in a courtroom with the judge, at least one of the parties to the action is present, and court is "in session." Hearings outside the courtroom, such as those in chambers, should only be considered to be in open court if they are "on the record" (electronically recorded where statute requires).

### INFRACTION PROCEEDING TYPES

**Mitigation Hearing** - A hearing at which the offender agrees to having committed the offense but wishes to explain the circumstances to the court, pursuant to provisions of RCW 46.63.100. Witnesses may not be required to attend but may attend voluntarily.

**Contested Hearing** - A hearing at which the defendant contests the infraction pursuant to the provisions of RCW 46.63.090. Witnesses, including the citing officer, may be required to attend.

**Show Cause Hearing** - A hearing resulting from a failure by the defendant to appear for a requested mitigation or contested hearing. If the show cause hearing is followed immediately by a contested or mitigation hearing, the second hearing is also reported in the appropriate category.

Other Hearing on the Record - Any hearing, other than those above, that meets the criteria for proceedings that must be electronically recorded where statute requires. Routine paper signing is not counted in this category. Two criteria are used to determine this type of hearing. First, at the onset of the hearing, the judge states the name and number of the case and the names of the attorneys for the parties who are represented. Second, a record of the proceeding must be kept according to the appropriate method (i.e., electronically recorded where statute requires or recorded on the docket).

#### **DISPOSITIONS (Used in several reporting categories)**

A disposition is the resolution of an issue that has been brought before the court.

#### **INFRACTION DISPOSITION TYPES**

Each violation charged has one disposition. This includes all dispositions within the report period, regardless of when the charge was originally filed.

**Paid** - An instance when the defendant has paid the penalty in full for the infraction offense without an appearance in court by the defendant or his or her representative. The Abstract of Judgment will be marked as "P."

**Committed--Failure to Respond/Failure to Appear** - An instance when the defendant failed to respond to a notice of infraction (FIR) or failed to appear for a scheduled hearing (FTA). This represents a final disposition regardless of any subsequent actions or payments.

**Committed** - A decision by the court that a defendant committed the infraction that was charged. This includes charges in which the defendant failed to meet the conditions of a deferred finding agreement (described below) associated with a traffic infraction charge.

**Not Committed** - A decision by the court that a defendant has not committed the infraction that was charged.

**Dismissed** - An infraction charged against the defendant and rejected by the court. This includes charges dismissed as a result of defendant's successful completion of the conditions of a deferred finding agreement.

#### **TRAFFIC INFRACTIONS - DEFERRED FINDINGS**

Those traffic infractions for which the court defers findings for up to one year and imposes specific conditions and costs on the defendant, as authorized by SSB 2776 - Chapter 110, Laws of 2000 (effective June 8, 2000). At the end of the deferral period, if the defendant has successfully met those conditions and has not committed another traffic infraction, the court may dismiss the charge. If the defendant fails or re-commits, the court will enter a judgment of committed and impose appropriate penalties. Outcomes for these deferrals are included in the appropriate "Committed" or "Dismissed" disposition counts.

#### **APPEALS (Used in several reporting categories)**

All cases that have been appealed to the superior court. Appeals are counted by case rather than by charge.

#### **INFRACTIONS - REVENUE**

All monies received during the report period for penalties and assessments in connection with infractions, regardless of when the original infractions were filed or processed. Effective July 22, 2001 this includes a \$12 JIS fee (raised from the \$10 fee in effect from June 9, 1994 through

# Caseloads of the Courts of Washington

## Cases Filed - January 2013 through December 2013

Page 1 of 4

District/Courts	----- Infraction -----			----- Misdemeanors -----			Civil Protection Orders (1)	Civil	Small Claims	Felony Complaints	Parking(2)	Total
	Traffic	Non-Traffic	DUI/Phy Control	Other Traffic	Non-Traffic							
State/County	524,439	18,249	20,340	40,175	31,634	10,172	126,375	13,690	6,454	28,032	819,560	
Municipal	84,581	2,122	3,184	14,767	20,529	0	10	0	14	27,660	182,867	
Municipal Courts	258,855	10,493	8,206	38,874	58,583	252	215	0	5	851,502	1,226,985	
State Total	887,875	30,864	31,730	93,816	110,746	10,424	126,600	13,690	6,473	907,194	2,199,412	
Adams County												
Othello D	1,276	4	44	199	113	30	417	9	0	0	2,092	
...Othello M	364	39	23	124	170	0	0	0	0	5	725	
Othello D Total	1,640	43	67	323	283	30	417	9	0	5	2,817	
Ritzville D	6,221	11	38	196	65	6	125	7	0	0	6,669	
...Ritzville M	173	1	5	11	28	0	0	0	0	0	218	
Ritzville D Total	6,394	12	43	207	93	6	125	7	0	0	6,887	
Adams County	8,034	55	110	530	376	36	542	16	0	5	9,704	
Asotin County												
Asotin D	650	56	46	135	241	92	600	0	0	110	1,930	
...Asotin M	152	0	12	17	30	0	0	0	0	0	211	
...Clarkston M	241	14	24	140	362	0	0	0	0	4	785	
Asotin D Total	1,043	70	82	292	633	92	600	0	0	114	2,926	
Asotin County	1,043	70	82	292	633	92	600	0	0	114	2,926	
Benton County												
Benton D	19,569	355	508	1,476	882	108	5,236	367	0	102	28,603	
...Kennewick M	7,295	404	174	1,119	1,881	0	0	0	0	220	11,093	
...Prosser M	507	11	20	163	52	0	0	0	0	59	812	
...Richland M	3,998	150	190	1,071	871	0	0	0	0	190	6,470	
...W. Richland M	277	17	16	45	106	0	0	0	0	79	540	
Benton D Total	31,646	937	908	3,674	3,792	108	5,236	367	0	650	47,515	
Benton County	31,646	937	908	3,674	3,792	108	5,236	367	0	650	47,515	

# Caseloads of the Courts of Washington

## Revenue - January 2013 through December 2013

Page 1 of 1

--- Misdemeanors ---

District Courts	Infractions	Parking (1)	Non-Traffic	Traffic	Court Costs Recovered	PSEA-2	Civil and Small Claims	Other Revenue	Total
State/County	72,909,640	1,300,291	15,693,609	2,029,830	2,317,145	12,826,144	10,860,977	12,388,910	130,326,546
Municipal	12,941,347	1,863,922	3,825,123	1,446,113	1,624,714	2,719,564	8,620	1,473,356	25,902,759
Municipal Courts	40,244,496	50,530,694	8,402,497	2,564,340	3,016,452	9,246,767	15,114	7,551,145	121,571,506
State Total	126,095,483	53,694,907	27,921,229	6,040,283	6,958,311	24,792,475	10,884,711	21,413,412	277,800,811
Adams County									
Othello D	229,165	0	56,741	4,957	7,317	44,812	36,154	5,321	384,467
...Othello M	91,595	126	62,834	7,608	10,526	23,741	0	5,875	202,305
Othello D Total	320,760	126	119,575	12,565	17,843	68,553	36,154	11,196	586,772
Ritzville D	838,115	0	45,912	7,126	12,783	134,563	11,758	6,734	1,057,011
...Ritzville M	26,238	0	8,385	1,076	3,213	5,134	15	1,772	45,833
Ritzville D Total	864,353	0	54,297	8,202	15,996	139,717	11,773	8,506	1,102,844
Adams County	1,185,113	126	173,872	20,767	33,839	208,270	47,927	19,702	1,689,616
Asotin County									
Asotin D	95,504	7,643	63,618	18,653	490	23,190	56,216	187	265,501
...Asotin M	27,450	0	9,888	819	478	5,387	14	8	44,044
Clarkston M	62,078	296	63,048	10,317	29	15,127	110	137	151,142
Asotin D Total	185,032	7,939	136,554	29,789	997	43,704	56,340	332	460,687
Asotin County	185,032	7,939	136,554	29,789	997	43,704	56,340	332	460,687
Benton County									
Benton D	2,829,829	5,811	766,531	155,281	211,648	520,429	439,003	252,502	5,183,034
...Kennewick M	1,289,453	6,063	481,990	368,981	165,051	314,103	115	187,163	2,812,919
...Prosser M	83,312	3,716	53,743	14,853	13,804	22,246	0	10,526	202,200
...Richland M	620,206	7,545	468,697	208,017	96,506	182,657	80	129,439	1,713,147

# Caseloads of the Courts of Washington

## Traffic Infractions - January 2013 through December 2013

Page 1 of 1

District Courts	Violations Disposed						Proceedings					
	Filings	Charges	Committed	FTR/FTA	Paid	Not Committed	Dismissed	Deferred Finding	Contested Hearing	Mitigation Hearing	Show Cause Hearing	Other Hearing
State/County	524,439	604,742	133,921	125,936	243,028	7,033	88,560	30,370	65,849	76,001	1,008	50,550
Municipal	84,581	103,483	33,133	18,855	27,314	1,356	21,109	6,628	13,357	19,024	946	13,557
Municipal Courts	258,855	330,746	107,338	83,565	91,084	8,091	70,182	27,238	37,942	55,807	2,583	35,207
State Total	867,875	1,038,971	274,392	228,356	361,426	16,480	179,851	64,236	117,158	150,832	4,537	99,314
Adams County												
Othello D	1,276	1,660	603	352	576	39	136	35	84	205	0	2
...Othello M	364	441	242	114	139	24	45	7	55	93	1	0
Othello D Total	1,640	2,101	845	466	715	63	181	42	139	298	1	2
Ritzville D	6,221	6,687	1,077	1,208	3,433	0	621	441	216	837	13	0
...Ritzville M	173	197	52	45	69	0	31	10	4	36	0	1
Ritzville D Total	6,394	6,884	1,129	1,253	3,502	0	652	451	220	873	13	1
Adams County	8,034	8,985	1,974	1,719	4,217	63	833	493	359	1,171	14	3
Asotin County												
Asotin D	650	755	175	145	301	18	139	86	28	215	0	27
...Asotin M	152	188	41	26	77	19	53	25	7	50	0	7
Clarkston M	241	308	137	52	70	11	91	17	9	249	0	18
Asotin D Total	1,043	1,251	353	223	448	48	283	130	44	514	0	52
Asotin County	1,043	1,251	353	223	448	48	283	130	44	514	0	52
Benton County												
Benton D	19,569	23,089	7,304	3,896	8,454	310	3,541	1,600	2,007	3,982	432	3,930
...Kennewick M	7,295	9,949	4,235	1,804	1,801	164	2,307	480	973	1,982	471	1,884
...Prosser M	507	645	328	109	73	0	110	14	62	211	7	53
...Richland M	3,998	4,714	1,663	716	1,093	28	1,064	283	569	895	174	1,189
...W. Richland M	277	316	118	36	107	2	120	35	28	79	19	140
Benton D Total	31,646	38,713	13,648	6,561	11,528	504	7,142	2,412	3,639	7,149	1,103	7,196

**Pardee, Michelle**

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**From:** District and Municipal Court Judges' Association  
<DMCJA@LISTSERV.COURTS.WA.GOV> on behalf of Payne, Pamela  
**Sent:** Monday, March 31, 2014 8:09 AM  
**To:** DMCJA@LISTSERV.COURTS.WA.GOV  
**Subject:** [DMCJA] Notice #2 - Obtain RACFIDs for JABS Logon Changes  
**Attachments:** Judicial Access Browser System - Enhanced Security.pdf

*This message is being sent on behalf of Bill Cogswell, Associate Director, Information Services Division, AOC*

**Judicial Access Browser System (JABS) Logon Changes Coming Within 80 Days--  
Court action will be required before changes take effect.**

**JABS Logon Will Require a Resource Access Control Facility Identification (RACFID) and Password**

As a result of the security breach in 2013, the Administrative Office of the Courts (AOC) has been working diligently to review our current IT systems and to implement changes necessary to make judicial data secure. JABS provides access to significant amounts of sensitive judicial information. In order to strengthen security, **JABS users will need an active RACFID and password to access JABS.**

In order to prepare for the new JABS logon process, each JABS user must have an active RACFID and password for at least one court in the state. If JABS users do not also use JIS or SCOMIS, their RACFIDs may have been deleted due to inactivity. If a RACFID is not used for more than a year, it is deleted. JABS users who do not have an active RACFID will have to get one.

It is critical that courts identify all of their JABS users and ensure they each have an active RACFID and password before the JABS logon change takes effect. **After the change takes effect, you will not be able to log onto JABS without an active RACFID and password.**

Additional information, including implementation dates, will be provided in the coming weeks.

Directions for requesting RACFIDs: [Answer ID # 853 – Request a new User ID.](#)

Information about how the enhanced JABS security will function is in the attached document. If you do not receive an attachment, please access the document at this link: [Enhanced JABS Security Functionality.](#)

If you have questions, please contact AOC Customer Services through the [eService Ask a Question](#) section, Topic 1, or call 1-800-442-2169, option 1.

Thank you

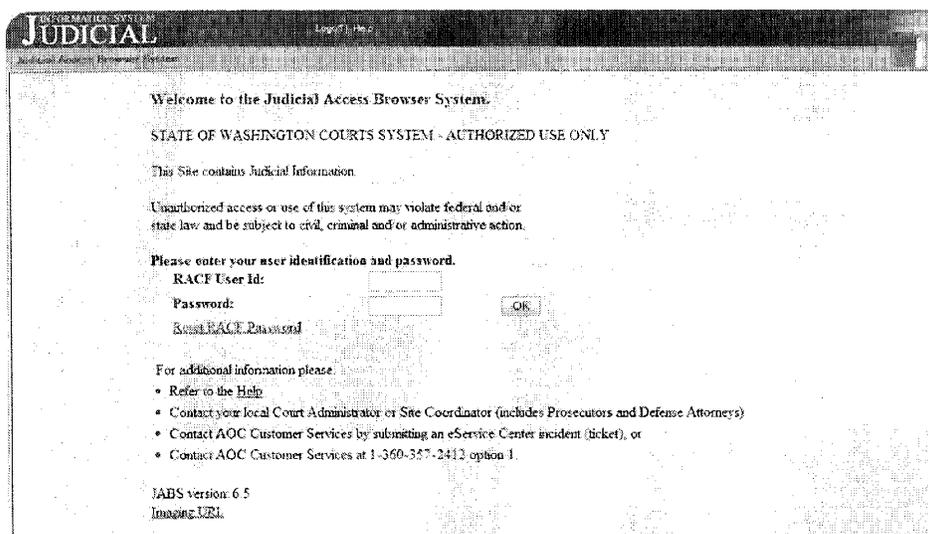
Bill Cogswell  
Associate Director/Information Services Division  
Administrative Office of the Courts



## Judicial Access Browser System (JABS) Enhanced Security

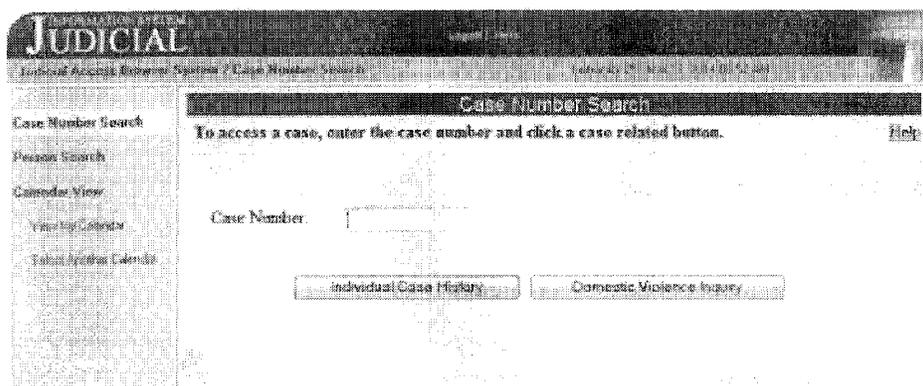
Q) What changes are being made to the Judicial Access Browser System (JABS) to enhance the security?

A) Effective May 29, 2014 a Resource Access Control Facility Identification (RACF ID) and password will be required to log into the JABS application. Each JABS User will be required to have a valid RACF ID and Password.



Court users that have multiple JIS User IDs can have all of their JIS User IDs associated with one RACF ID. This will allow JABS users who have multiple roles or work at multiple courts to utilize one RACF ID to access JABS for all courts/roles.

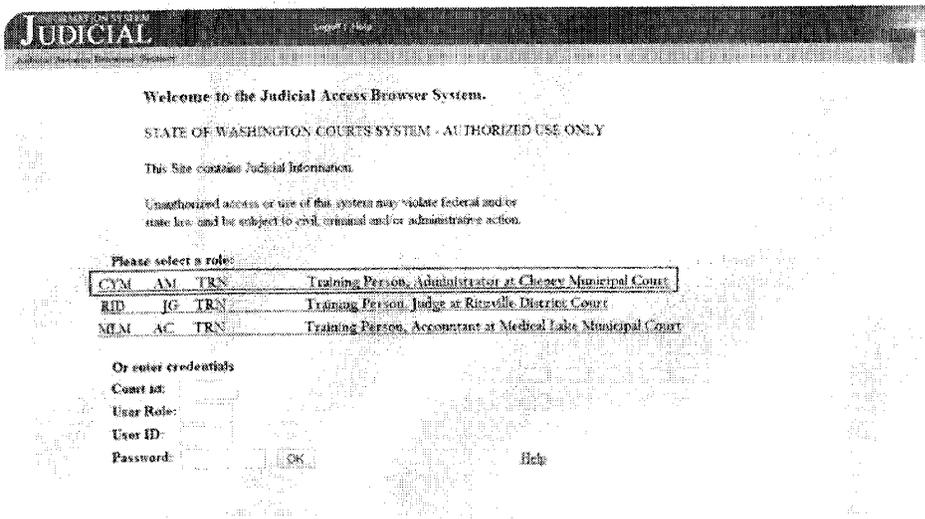
If only one JIS User ID is associated with a RACF ID, **and the JIS User ID record is designated as the default**, the JABS Case Search screen will appear upon entry of the RACF ID and password.



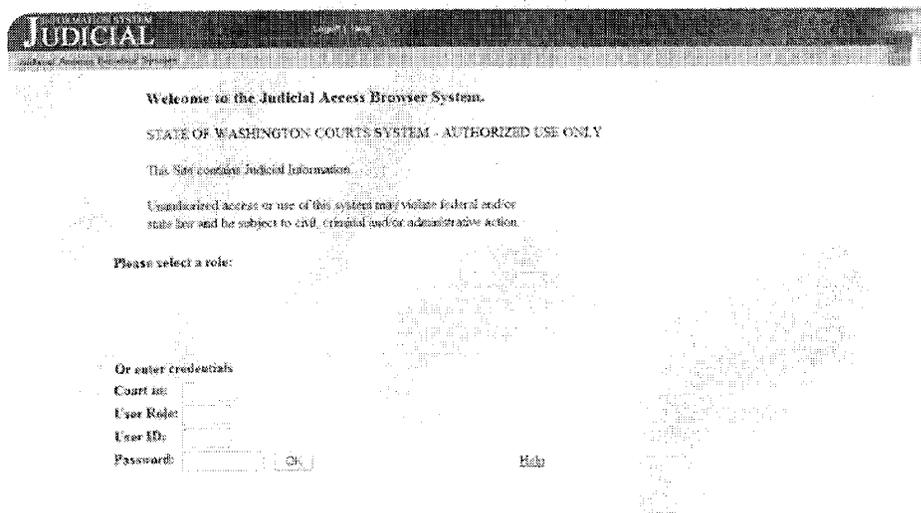
# Judicial Access Browser System (JABS) Enhanced Security

If the RACF ID is associated with one or more JIS User IDs and none of them are designated as the default ID for that person, a list of user IDs will appear.

- The user may click on one of the listed records to access JABS using that record. An additional password will not be required.
- The user may choose to enter another JIS User ID record other than those displayed. The Court ID, User Role (i.e., JG, AC, CL), the User ID (initials), and Password can all be manually added in the fields below "Or enter credentials."

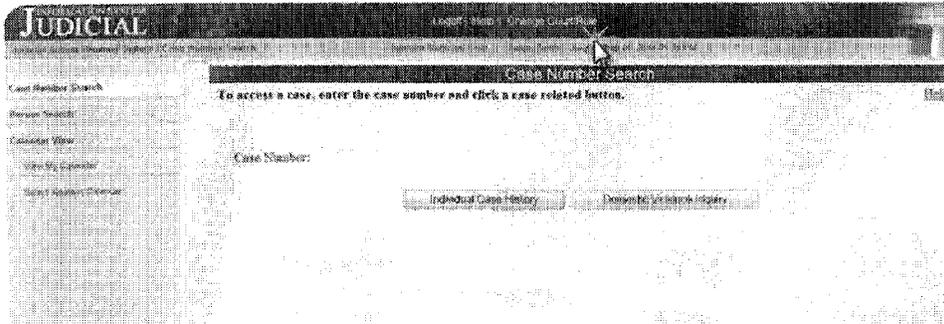


If the RACF ID has not been associated with any JIS User IDs, the user will be required to enter the JIS User ID record and Password manually in the fields below "Or enter credentials."

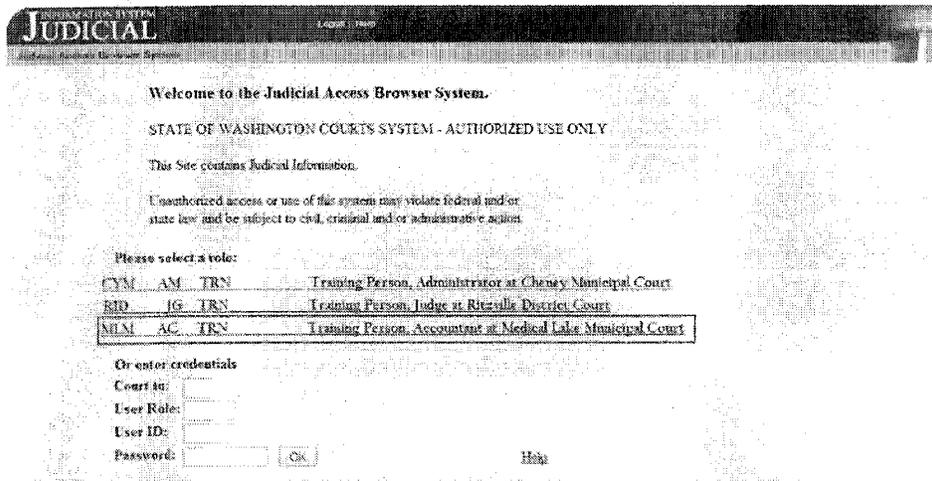


## Judicial Access Browser System (JABS) Enhanced Security

With this new functionality users that have multiple JIS User records will be able to change their court or their role in JABS without entering the RACF ID and Password again. Simply click "Change Court/Role" on the main search screen:



The JIS User ID list page will appear. The user can either select another JIS User ID record or manually enter another JIS User ID record by filling in the boxes at "Or enter credentials."



Site Coordinators will be required to set up JABS users in their court. For court users who work in multiple courts, there may be the need to coordinate with Site Coordinators from other courts.

See also:

- For information about requesting RACF IDs see eService [Answer ID # 853 - Request a new User ID.](#)





**DMCJA BOARD MEETING**  
**FRIDAY, APRIL 11, 2014**  
**12:30 P.M. – 3:30 P.M.**  
**AOC SEATAC OFFICE**  
**SEATAC, WA**

<b>S U P P L E M E N T A L   A G E N D A</b>		<b>T A B</b>
Call to Order		
Minutes – March 14, 2014 (for approval)		1
Treasurer’s Report – <i>Judge Marinella</i>		
Special Fund Report – <i>Judge Svaren</i>		
eWarrants Presentation – <i>Detective Chris Leyba, Seattle Police Department</i>		2
Standing Committee Reports None		
JIS Status Update – <i>Vicky Cullinane, AOC</i>		
<p>Action</p> <p>A. Rules Committee – <i>Judge Garrow</i></p> <p>1) Proposed WSBA RALJ Amendments</p> <p>a. <u>RALJ 2.2 What May be Appealed</u>  Rules Committee Recommendation: No objection to amendment.</p> <p>b. <u>RALJ 5.4 Clarify scope of when new trial required-electronic record lost or damaged</u>  Rules Committee Recommendation: Some concern. See tab 4 for detail.</p> <p>c. <u>RALJ 11.7(e) Application of Other Court Rules- Rules of Appellate Procedure</u>  Rules Committee Recommendation: No objection to amendment.</p> <p>2) Proposed Amendments to CrR 8.10 and CrRLJ 8.13  Rules Committee Recommendation: Not support. See tab 4 for detail.</p> <p>B. BJA Recommendations for Committees Review – <i>Judge Svaren</i></p> <p>1) Request for judicial branch entities that operate committees under authority using AOC staff or resources consider implementing BJA proposed chartering and committee standards.</p>		3

<p>Discussion</p> <ul style="list-style-type: none"> <li>A. Rules Committee – <i>Judge Garrow</i> <ul style="list-style-type: none"> <li>1) Proposed Amendments to GR 15 (action at next Board meeting)</li> </ul> </li> <li>B. Secretary of State Records Retention for Certification of Compliance (New Standards for Indigent Defense) – <i>Judge Svaren</i></li> </ul>	4
<p>Liaison Reports</p> <p style="text-align: center;">DMCMA   MCA   SCJA   WSBA   WSAJ   AOC   BJA</p>	
<p>Information</p> <ul style="list-style-type: none"> <li>A. Update on Public Record Request – <i>Judge Svaren</i></li> <li>B. Reserves Committee Recent Meeting Minutes</li> <li>C. Rules Committee <ul style="list-style-type: none"> <li>1) Recent Meeting Minutes</li> <li>2) Proposed Amendments to IRLJ 3.5</li> </ul> </li> <li>D. JABS Logon Changes</li> <li><b>E. House Judiciary Committee Request for Interim Public Defense Work Group</b></li> </ul>	5         <b>X</b>
<p>Other Business</p> <ul style="list-style-type: none"> <li>A. Next Meeting April 25-26, 2014, Woodinville, WA</li> </ul>	
<p>Adjourn</p>	



Internet Email: [opd@opd.wa.gov](mailto:opd@opd.wa.gov)

**WASHINGTON STATE  
OFFICE OF PUBLIC DEFENSE**

(360) 586-3164  
FAX (360) 586-8165

April 4, 2014

The Honorable David A. Svaren  
Skagit County District Court  
President, District & Municipal Court Judges Association  
600 South 3rd Street  
Mount Vernon, WA 98273-3800

RE: House Judiciary Committee Request for Interim Public Defense Work Group

Dear Judge Svaren:

As you already may know, the chair and ranking member of the House Judiciary Committee have asked the Washington State Office of Public Defense to “convene a work group to examine the cost of misdemeanor public defense in Washington’s courts of limited jurisdiction.” (See enclosed letter from Representatives Laurie Jinkins and Jay Rodne.) The group is tasked with creating an inventory of public defense costs and revenue in the misdemeanor courts, as well as identifying possible additional costs associated with implementing the Supreme Court’s Standards for Indigent Defense and noting best practices for alternative case resolution that may mitigate costs. A report of the group’s findings is due to the Judiciary Committee in late fall.

I am writing today to ask you to appoint two representatives of your organization to participate in the work group, which will include delegates from cities, counties, public defenders, prosecutors, and judges. The group likely will meet several times between mid-May and mid-November, at either SeaTac or Olympia. It would be helpful to receive the names and contact information for your representatives by Monday, May 5.

I look forward to working with your organization on this project, which I’m hopeful will ultimately assist cities, counties, and the state in providing quality public defense services to indigent persons who have a constitutional right to counsel.

Sincerely,

Joanne I. Moore,  
Director

Enclosure

Copies to: Representative Laurie Jinkins, Chair, House Judiciary Committee  
Representative Jay Rodne, Ranking Member, House Judiciary Committee

State of  
Washington  
House of  
Representatives



March 13, 2014

Joanne Moore, Director  
Washington State Office of Public Defense  
711 Capitol Way S., Ste. 106  
P.O. Box 40957  
Olympia, WA 98504-0957

RE: House Judiciary Committee Request for Misdemeanor Public Defense Review

Dear Ms. Moore:

As you know, many Washington cities and counties believe they face significant new costs for public defense services, particularly with the January 2015 implementation of misdemeanor attorney caseload standards required by the Supreme Court's Standards for Indigent Defense. This past legislative session the House Judiciary Committee heard compelling testimony that local governments need new revenue authority to adequately fund public defense in the misdemeanor courts. We also heard examples of some intriguing local reforms that are expected to mitigate impacts on public defense.

The Judiciary Committee would like to be able to consider a more comprehensive statewide analysis of these issues in the 2015 legislative session. To that end, we respectfully request that the Office of Public Defense (OPD) convene an interim work group to examine the cost of misdemeanor public defense in Washington's courts of limited jurisdiction. Recognizing the short time frame involved, we recommend a relatively small core work group consisting of at least two representatives each of county and city associations, misdemeanor judges, public defenders, and prosecutors. We expect there are others who will be very interested in the topic and hope you will structure your discussions in a way that other voices will be included in the dialogue.

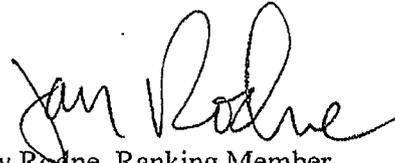
In addition to an inventory of current public defense costs in the misdemeanor courts and revenue generated by these courts, we would like your analysis to also address potential impacts associated with implementing the Standards for Indigent Defense, including additional costs associated with misdemeanor attorney caseload standards as well as best practices for alternative case resolution that may mitigate costs. To the extent practicable, it would be helpful to see an individualized analysis for each misdemeanor court in the state.

We welcome periodic updates on your progress and look forward to receiving a report of your findings in time for our fall Committee Assembly meeting, which is not yet scheduled but typically occurs in late November or early December.

Best regards,



Laurie Jenkins, Chair,  
House Judiciary Committee



Jay Roene, Ranking Member  
House Judiciary Committee

cc: Association of Washington Cities  
Washington State Association of Counties  
District and Municipal Judges Association  
Washington Association of Prosecuting Attorneys  
Washington Defender Association