To: Justice Madsen and Judge Hart, JISC Chairs

JISC Committee Members

From: Phil Brady, AOC Contracts, Public Records, and Data Dissemination Manager

CC: Clerks of the Court of Appeals and the Supreme Court

Date: March 31, 2022

Re: Proposed Change to General Rule 31

I. Executive Summary

The AC-ECMS public viewer project will result in publication of a broad array of documents on the internet in a manner widely accessible to the public. Some of these documents may contain information that is sensitive, confidential, special-handling required, or otherwise potentially offensive to either litigants or third parties. The existing General Rule 31 explicitly states that neither the Appellate Clerks nor the Courts have any obligation to review or redact any information from such documents; AOC is requesting the same protection regarding these documents.

II. Background

In April of 2018, JISC approved the development of a public access viewer for appellate court records filed electronically with the Courts of Appeals and the Supreme Court.[1] AOC staff from the Court Services Division and Information Services Division worked with the appellate clerks to develop detailed requirements for the system. This work resulted in the creation of draft Public Access Parameters Documentation in September of 2020. The draft requirements would require publication of 24 categories of documents for the Court of Appeals and 24 categories of documents for the Supreme Court. Many of these documents contain information that may be considered sensitive, confidential, or special-handling required.[2]

This is the first time AOC has been asked to maintain a portal that will broadly expose court records (other than briefs and opinions) to the public, but this issue is likely to also arise in the trial court context in the near future as eFiling is implemented across the Courts of Limited Jurisdiction Case Management System (CLJ-CMS) and Superior Court Case Management System (SC-CMS).

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[1] JISC also approved creation of a viewer for case participants for appellate cases.

[2] Based on an AOC review of a subset of 251 randomly selected documents across the document types, 27% contained elements considered sensitive, confidential, or special-handling required. This included, but was not limited to, health care and diagnosis information; juvenile data and records including names, addresses, relationships, and dates of birth; information about victims of domestic violence including names, addresses, and dates of birth; and banking information.

III. Analysis

GR31 was last updated in 2006[3], and a lot has changed both with technology generally and specifically with the role the JIS plays within the court systems. The rule predates AC-ECMS and Odyssey's Document Management System; at the time its current revision was promulgated, there was no centralized repository of court documents anywhere in the state. Circumstances are likely to change substantially more in the next several years, as trial courts begin adopting eFiling systems, either through OFS or other solutions, and there will be increasing pressure on courts to provide easier electronic access to records. It may be appropriate for the Supreme Court to update and modernize GR31 to reflect these new realities.

Existing GR 31 (e)(2) states:

> The responsibility for redacting these personal identifiers rests solely with counsel and the parties. **The Court or the Clerk will not review each pleading for compliance with this rule**. If a pleading is filed without redaction, the opposing party or identified person may move the Court to order redaction. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

[Emphasis added]. AOC asks the JISC to recommend to the Supreme Court an amendment to this provision to clarify that "The Court, the Clerk, and AOC will not review each pleading for compliance with this rule." The clause would now read:

> The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Court, the Clerk, and the Administrative Office of the Courts will not review each pleading for compliance with this rule. If a pleading is filed without redaction, the opposing party or identified person may move the Court to order redaction. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

Further, AOC asks the JISC to support that a new subsection (4) be added to subsection (g), to read:

> (4) The Administrator for the Courts is not responsible for the content of any court documents published through the JIS as part of projects approved by the JIS Committee.

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[3] After the drafting of this memo, an amendment to GR 31 was approved by the Washington Supreme Court. It made changes related to juvenile records, but did not affect the issues presented herein.

IV. Conclusion

AOC asks the JISC to recommend to the Supreme Court the above changes to GR 31 (e)(2) and (g).

V. Authority/Appendices

Attached