

BOARD FOR JUDICIAL ADMINISTRATION



**WASHINGTON
COURTS**

MEETING PACKET

**FRIDAY, SEPTEMBER 17, 2010
9:30 A.M.**

**AOC SEATAC OFFICE
SEATAC, WASHINGTON**

Board for Judicial Administration Membership

VOTING MEMBERS:

Chief Justice Barbara Madsen, Chair
Supreme Court

Judge Michael Lambo, Member Chair
District and Municipal Court Judges'
Association
Kirkland Municipal Court

Judge Marlin J. Appelwick
Court of Appeals, Division I

Judge Rebecca M. Baker
Superior Court Judges' Association
Ferry/Stevens/Pend Oreille Superior Courts

Judge C. C. Bridgewater
Court of Appeals, Division II

Judge Stephen Brown, President
District and Municipal Court Judges'
Association
Grays Harbor County District Court

Judge Ronald Culpepper
Superior Court Judges' Association
Pierce County Superior Court

Judge Susan Dubuisson
District and Municipal Court Judges'
Association
Thurston County District Court

Judge Deborah Fleck
Superior Court Judges' Association
King County Superior Court

Judge Jack Nevin
District and Municipal Court Judges'
Association
Pierce County District Court

Justice Susan Owens
Supreme Court

Judge Kevin Ringus
District and Municipal Court Judges'
Association
Fife Municipal Court

Judge Dennis Sweeney, Presiding Chief
Judge
Court of Appeals, Division III

Judge Stephen Warning, President
Superior Court Judges' Association
Cowlitz County Superior Court

Judge Chris Wickham
Superior Court Judges' Association
Thurston County Superior Court

NON-VOTING MEMBERS:

Mr. Jeff Hall
State Court Administrator

Judge Laura Inveen, President-Elect
Superior Court Judges' Association
King County Superior Court

Ms. Paula Littlewood, Executive Director
Washington State Bar Association

Mr. Salvador Mungia, President
Washington State Bar Association

Mr. Steven G. Toole, President-Elect
Washington State Bar Association

Judge Gregory Tripp, President-Elect
District and Municipal Court Judges'
Association
Spokane County District Court

Board for Judicial Administration

September 17, 2010
 9:30 a.m. – Noon
 AOC SeaTac Office
 SeaTac, Washington

Agenda

1. Call to Order	Chief Justice Barbara Madsen Judge Michael Lambo	
2. Welcome and Introductions	Chief Justice Barbara Madsen Judge Michael Lambo	
3. Executive Session (BJA Members Only) (9:30)	Chief Justice Barbara Madsen Judge Michael Lambo	
Action Items		
4. August 20, 2010 Meeting Minutes (9:50) Action: Motion to approve the minutes of the August 20 meeting	Chief Justice Barbara Madsen Judge Michael Lambo	Tab 1
5. Legislative Dinners (9:55) Action: Motion to approve the proposed Legislative Dinner costs	Ms. Mellani McAleenan	Tab 2
Reports and Information		
7. Washington Problem Solving Courts (10:00)	Judge Harold D. Clark III	Tab 3
8. Access to Justice Board Resolution on Immigration and Civil Rights Issues (10:15)	Judge Steven Gonzalez	
9. Proposed WSBA Bylaws (10:20)	Judge Stephen Warning	Tab 4
10. BJA Public Records Act Work Group Report (10:35)	Judge Marlin Appelwick	Tab 5
11. GR 29 Work Group (10:55)	Mr. Jeff Hall	Tab 6
12. Open Courts Work Group Report (11:05)	Judge Christine Quinn-Brintnall	Tab 7
13. Access to Justice Board Report (11:15)	Mr. M. Wayne Blair	
14. Washington State Bar Association (11:20)	Mr. Salvador Mungia Ms. Paula Littlewood	
15. Reports from the Courts (time permitting) Supreme Court Court of Appeals Superior Courts Courts of Limited Jurisdiction	Justice Susan Owens Judge Dennis Sweeney Judge Stephen Warning Judge Stephen Brown	

16. Association Reports (time permitting) County Clerks Superior Court Administrators District and Municipal Court Administrators	Mr. Kevin Stock Ms. Delilah George Ms. Peggy Bednared	
17. Administrative Office of the Courts (time permitting)	Mr. Jeff Hall	
18. State Budget Presentation (11:30)	Dr. Arun Raha	
19. Other Business Next meeting: October 15 Beginning at 9:30 a.m. at the AOC SeaTac Office, SeaTac	Chief Justice Barbara Madsen Judge Michael Lambo	

**Board for Judicial Administration
Meeting Minutes**

**August 20, 2010
AOC SeaTac Office
SeaTac, Washington**

Members Present: Chief Justice Barbara Madsen, Chair; Judge Michael Lambo, Member-Chair; Judge Marlin Appelwick; Judge Rebecca Baker; Judge Stephen E. Brown; Judge Ronald Culpepper; Judge Susan Dubuisson; Judge Deborah Fleck; Mr. Jeff Hall; Judge Laura Inveen; Mr. Sal Mungia; Judge Kevin Ringus; Judge Dennis Sweeney; Judge Gregory Tripp; Judge Stephen Warning; and Judge Chris Wickham

Guests Present: Judge Andrea Darvas, Ms. Delilah George (by phone), Ms. Lynne Jacobs, Ms. Catherine Moore, and Mr. Kevin Stock

Staff Present: Ms. Beth Flynn, Ms. Shannon Hinchcliffe, Mr. Dirk Marler, Ms. Mellani McAleenan, Dr. Carl McCurley, and Mr. Chris Ruhl

The meeting was called to order by Judge Lambo.

Recognition of Judge Sweeney's Service as Chair of the Washington State Center for Court Research Advisory Board

Chief Justice Madsen thanked Judge Sweeney for his outstanding service as the first Chair of the Washington State Center for Court Research (WSCCR) Advisory Board.

Judge Ann Schindler will be taking over as Chair of the WSCCR Advisory Board.

June 18, 2010 Meeting Minutes

Judge Fleck asked that some revisions be made to the "Trial Court Operations Funding" section of the minutes. Judge Fleck will work with Ms. Flynn to revise the minutes.

Judge Brown asked that the wording in the first paragraph of the "State Budget Forecast" section be revised for clarity. Mr. Hall will work with Ms. Flynn to reword that portion of the minutes.

It was moved by Judge Fleck and seconded by Judge Warning to approve the June 18, 2010 BJA meeting minutes with the requested revisions to the "Trial Court Operations Funding" and "State Budget Forecast" sections. The motion carried.

Civil Legal Aid Oversight Committee Appointment

It was moved by Judge Dubuisson and seconded by Judge Fleck to reappoint Judge Erik Rohrer to the Civil Legal Aid Oversight Committee. The motion carried.

Justice in Jeopardy Implementation Committee Appointment

It was moved by Judge Warning and seconded by Judge Wickham to appoint Judge Theresa Doyle to the Justice in Jeopardy Implementation Committee. The motion carried.

Proposed WSBA Bylaws

Mr. Mungia gave an overview of the Bylaws review process that has been undertaken by the Washington State Bar Association (WSBA).

Ms. Moore reported that the WSBA Bylaws Review Committee had some philosophical discussions on what it means to be a member of the WSBA. It was their belief as a committee that simply being inactive did not accurately reflect the position judges hold. That is why they decided to create a judicial membership category which has been approved by the Supreme Court. Ms. Moore explained that as judicial members, judges would need to verify their contact information once a year and pay a membership fee which would cover the costs associated with judicial membership. In addition, judges going into private practice after being on the bench would need to attend a readmission course.

There was concern by some Board for Judicial Association (BJA) members of paying dues into an association that takes positions on political issues that might come before a judge in the future. Any move to bring judges under the influence and policies of the WSBA is troublesome.

There was also a question regarding if judges must be members of the WSBA. Mr. Mungia responded that the WSBA does not have a position on whether *State v. Monfort* requires that judges be members of the WSBA and instead that dispute may be between the State Supreme Court and judges. Mr. Mungia stated that in his opinion *Monfort* is not the clearest case and that he has heard different interpretations of it. Mr. Mungia stated that whether or not judges must be members of the WSBA the WSBA is attempting to make a classification for judges that will meet the objectives of the WSBA while hopefully satisfying the concerns of judges.

The WSBA is very happy to continue to talk about this and work toward a resolution and they appreciate the opportunity to work with the judges and come up with a solution.

This issue will be on the September BJA agenda and the BJA will take no action at this time.

Judge Lambo thanked Ms. Moore and Mr. Mungia for their work on this issue.

Implementation of Revised Rules CrR 3.1 and CrRLJ 3.1

Judge Lambo reported that he received a copy of a letter from the District and Municipal Court Judges' Association (DMCJA) to the Supreme Court regarding their concerns about the implementation of the amendment to CrRLJ 3.1(d)(4). They requested that the Supreme Court consider delaying the implementation of this rule.

Judge Brown said the rule goes into effect September 1, 2010 and judges are concerned about the implementation. The rule requires courts to certify that a public defender is qualified under new guidelines before being appointed to a case. Since the guidelines have not been approved by the Supreme Court, judges wonder if they can appoint any public defenders. There is really no direction in what to do in the process. As an organization they are not having any input as to what these standards might be. No one has contacted them to assist in developing the standards. They do know there have been some indigent defense standards developed but they are not sure if those are the standards that will be adopted by the Supreme Court. Unless some standards are coming out in the next few days, they would like to see the effective date delayed.

It was moved by Judge Warning and seconded by Judge Brown that the BJA request that the Supreme Court delay the effective date of the recently adopted amendments to CrR 3.1, CrRLJ 3.1, and JuCR 9.2, currently scheduled to become effective on September 1, 2010, until the Standards for Indigent Defense Services have been approved by the Supreme Court. The motion carried.

Chief Justice Madsen indicated that the Supreme Court became concerned after receiving letters and phone calls regarding the implementation of the rule. This issue will be on their September En Banc agenda.

GR 29 Work Group

Judge Baker reported that the GR 29 Work Group met twice and the group feels that this needs to be pursued but not necessarily with an amendment to GR 29. The work group agrees that GR 29 should not be modified at this time. There needs to be a work group created to develop standards for judges to be educated about these issues which will prevent difficulties and problems in managing their workplaces. There is a need to have other stakeholders involved in developing those standards.

The work group envisions the development of a benchbook that would take into account the wide diversity and various court structures throughout the state and the different levels of court. There could be training at the spring 2011 conferences and the benchbook could be distributed there.

Judge Dubuisson suggested that the Presiding Judges Education Committee might be able to work on this. Next year they will be concentrating on personnel issues and they are looking for issues that are important to judges. They will train using webinars and maybe one in-person meeting.

Mr. Hall stated that this is a resource question for the Administrative Office of the Courts (AOC). He will determine what level of resources will be required and determine if AOC is able to take on this project with existing resources. He will develop a charter and bring this information back to the BJA in September.

BJA Dues Update

Last November the BJA decided to send dues notices to all judges and reminder notices were sent in May. There are currently 147 judges who have not paid their BJA dues which amounts to approximately \$7,000 in uncollected dues. This is more than double the number of judges who had not paid during the last dues cycle.

There is currently about \$20,000 in the account and the funds are usually spent on the legislative dinners prior to the legislative session.

Washington State Bar Association

Mr. Mungia reported that the WSBA Moderate Means Program will be run through the three law schools and attorneys will be solicited in the fall. The program will be rolled out in 2011.

The Board of Governors voted down the use of the national bar exam but they are considering using components of it in their testing. The Board of Governors has formed a committee to further study this matter.

Mr. Mungia invited everyone to attend the WSBA Annual Awards Banquet on September 23.

Reports from the Courts

Supreme Court: Chief Justice Madsen reported that the Supreme Court is in summer recess. She attended her first Council of Chief Justices Conference in July and it was very successful. She instituted a new En Banc process for the Court and have added a

second day for the Supreme Court to meet separately on administrative matters and case-related.

Court of Appeals: Judge Sweeney reported that Judge Jill Johanson and Judge Laurel Siddoway prevailed in their races in the primary election. The Court of Appeals is hoping for the best and expecting the worst on the budget.

Superior Court Judges: Judge Warning reported that the Superior Court Judges' Association (SCJA) legislative agenda consists largely of "leave us alone" requests. Becca funding is being discussed and the SCJA is working with AOC on bail decisions.

Courts of Limited Jurisdiction: Judge Brown reported that Judge Brian Altman was appointed to a superior court position. The DMCJA has been dealing with a few issues from the Department of Licensing (DOL). Earlier this year DOL destroyed records if they were not in conformance with their practices. A lot of work has been done to correct this issue. They met with DOL executive leadership and agreed to meet on an annual basis with DOL. The second issue was a failure to update the Model Traffic Ordinance which caused a substantial problem. The AOC stepped in and worked out the right process to deal with that. The DMCJA is also working on the longstanding issue of part-time district court judges. The current provision states the salary of a part-time judge is a proration of the full-time salary based on their workload. About 7 of the 18 district court PT judges are substantially underpaid based on the judicial workload report. Last year at the association level they proposed a bill to try to change this. It did not go anywhere and they are looking at it again. They are also considering taking the issue to the Salary Commission.

Association Reports

County Clerks: Mr. Stock stated the Clerks are looking at budget reductions and are fighting to maintain revenue. They are educating themselves internally with best practices to help offset some of the cuts they have to make. They also received some of the DOL fallback and will have an education session with DOL at their fall conference. They are not pursuing anything on their own legislatively, but are working with WACO on one item.

Superior Court Administrators: Ms. George shared that the Superior Court Administrators completed an education survey to determine the education needs of the administrators. Their Education Committee decided to hold two 90-minute ECCL trainings and have them recorded and available online for those who are unable to participate.

District and Municipal Court Managers: Ms. Jacobs reported that their fall regionals are coming up. So far, the registration numbers are very low and they are a little nervous about the low numbers. They might consider pooling resources for future

education sessions. They will meet next Thursday to discuss the DOL issue. Their Education Committee is considering a mandatory college for court administrators and will bring this idea up at next Court Management Council meeting.

Administrative Office of the Courts

Mr. Hall stated that the Governor is considering direct agency reductions in the budget. Chief Justice Madsen and AOC staff have had discussions with the Governor and her staff regarding the Governor's authority to reduce the judicial branch's budget. Temporarily, budget cuts have been avoided but there will be a negative cash flow in the next 30-60 days and Mr. Hall anticipates that the Governor may enact an executive order requiring agency budget cuts but it is unknown if it would include the judicial branch. Mr. Hall anticipates the budget problems will worsen and budget reductions will be required prior to the start of the legislative session.

The Judicial Information System Committee (JISC) met Wednesday and adopted a motion for a rule change regarding electronic signatures.

There being no further business, the meeting was adjourned.

2010 LEGISLATIVE DINNERS

Proposed Schedule

Arrive at 5:30 p.m.; dinners begin at 6:00 p.m.

Day	Date	City/Tentative Location
Wednesday	11.17.10	Vancouver @ The Heathman
Tuesday	11.30.10	Seattle (SeaTac) @ The Radisson
Tuesday	12.7.10	Olympia @ TBD
TBD	TBD	Tri-Cities @ Red Lion Hotel (overnight)
TBD	TBD	Spokane @ Anthony's at Spokane Falls (overnight)
TBD	TBD	Yakima @ Birchfield Manor (overnight)

**POLICY STATEMENT BY
THE BOARD FOR JUDICIAL ADMINISTRATION
ON
GENERAL WATER RIGHT ADJUDICATIONS**

At its meeting on July 16, 2004, the Board for Judicial Administration approved the following statement of judicial policy:

A. CRITERIA FOR EVALUATING PROPOSALS ON WATER COURTS AND ALTERNATIVE PROPOSALS:

1. **Increased capacity.** A proposal should increase the system's capacity to hear a greater number of general water right adjudications.
2. **Timely and fair decisions.** A proposal should result in timely decisions, while still maintaining fundamental fairness and due process.
3. **Adequate and stable funding.** A proposal should provide a solid mechanism for ensuring adequate and stable funding, both at the outset and in future years.
4. **Efficiency and cost-effectiveness.** A proposal should provide for efficient use of limited resources. For example, expertise and specialization developed by judicial officers and staff in one general adjudication should be used in other adjudications.
5. **Flexibility.** A proposal should provide sufficient flexibility to allow for the assignment of judges, staff, and resources to the areas with the greatest need. A proposal should be sufficiently flexible to allow for the adoption of specialized rules that could streamline the procedures for general adjudications.
6. **Comprehensive solution.** A proposal should provide a comprehensive solution to the need for change.
7. **Accountability.** A proposal should provide for accountability to the public. Any new judicial entities must be accountable to the Washington State Supreme Court.

B. WATER COURT IMPLEMENTATION

1. **Creating a Water Court.** If the State decides to increase the number of ongoing general adjudications, then a new, specialized water court should be created to hear the cases. The water court should be separate from the superior courts.
2. **Types of Cases to Be Heard.** The water court should hear not only the general adjudications, but also other related water resource cases, such as appeals from PCHB's water resource decisions and challenges to administrative rules on in-stream flows. The water court's jurisdiction over these cases should be exclusive.
3. **State Funding.** The water court must be funded by the State. The counties and superior courts lack the resources to handle general adjudications.
4. **Selecting Judges.** Water court judges should be selected by competitive elections, although each newly-created judge position should initially be filled by gubernatorial appointment from a slate of nominees submitted by the Supreme Court.

5. **Terms of Judges.** Water court judges should serve at least six-year terms due to the length of time it takes for new judges to get up to speed on these cases. The terms should be initially staggered so that the judges are not all subject to election in the same year.
6. **Judicial Referees/ Commissioners.** The water court judges should be assisted by experienced judicial referees/commissioners, who would hold hearings and make initial decisions, subject to review by the judges. The judges would also decide the broader and more complicated issues.
7. **Staffing.** The water court should have its own, adequately funded clerk's office and administrative staff. Processing of general adjudications, and their large volume of paperwork, requires a coordinated and specialized use of technology, procedures, and staff resources.
8. **Organization of Court.** The court should have multiple divisions, to foster regional decision-making and accountability, although the court should have flexibility to shift workloads by assigning one division's case to a judge from another division.
9. **Regional Offices.** The water court should have offices in each division. Regional locations would allow judicial officers and staff to be in closer proximity to the litigants. Pleadings could be filed locally and hearings could be held locally.

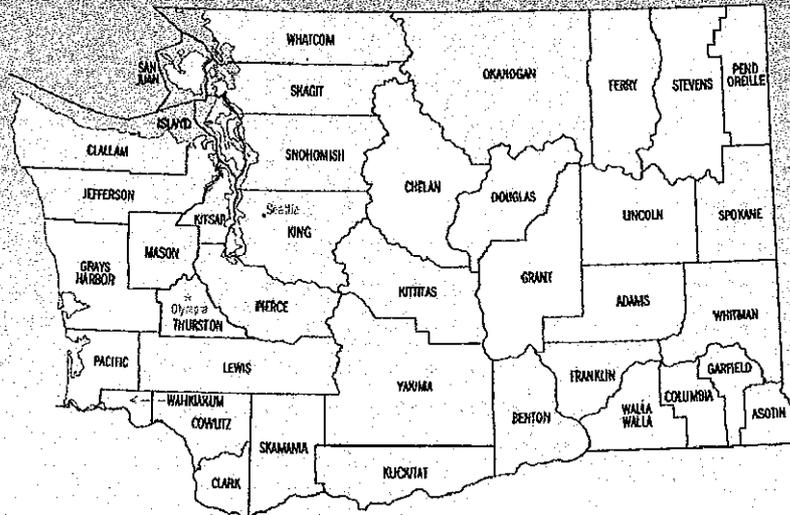
C. PROCEDURAL ISSUES

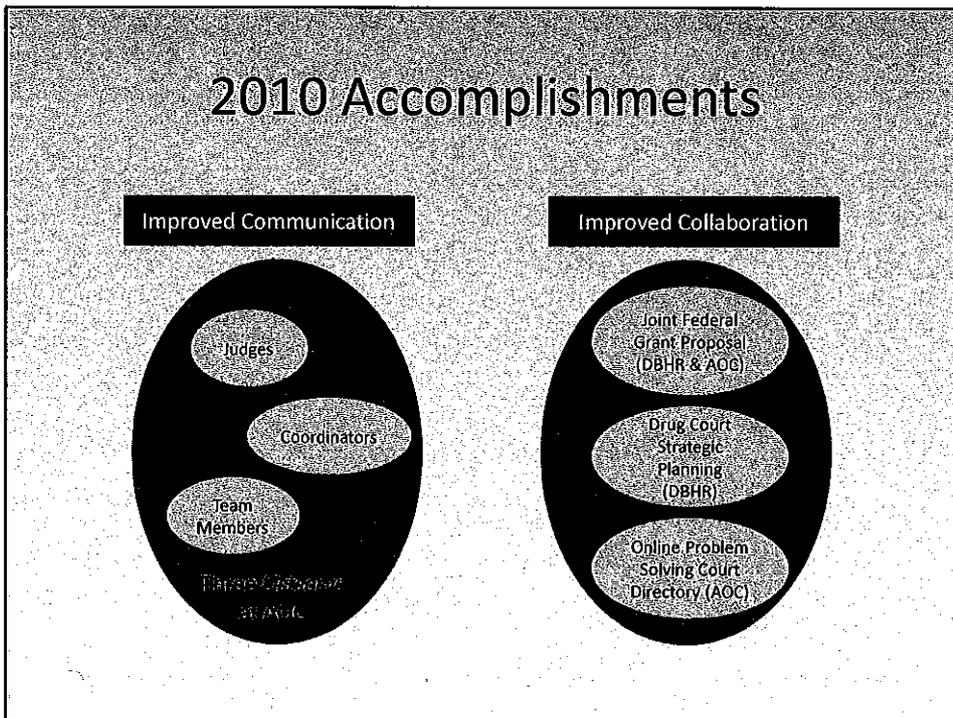
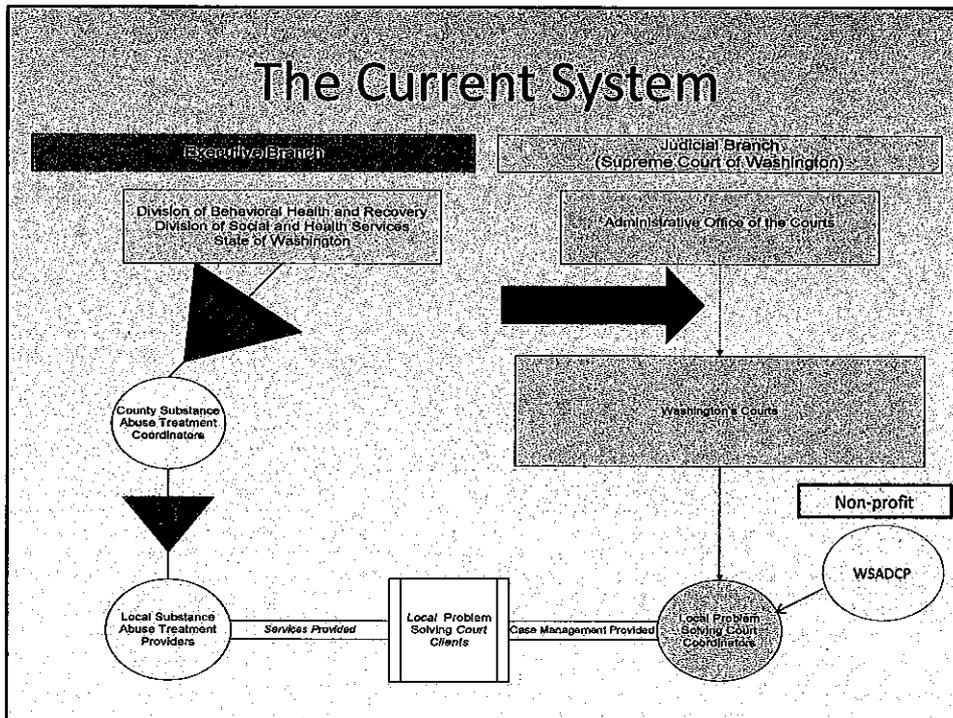
1. **Affidavits of Prejudice.** Affidavits of prejudice should not be available in general adjudications. Parties in general adjudications would still have the right to seek a judge's recusal based on a showing of actual prejudice, bias, or conflict of interest.
2. **Other Procedural Changes.** Regardless of which judicial entity hears general adjudications, careful consideration should be given to streamlining the procedures for these cases, in order to provide for more timely decisions while still maintaining fundamental fairness and due process in all regards. Four such steps include:
 - a) Having the Department of Ecology complete a comprehensive background report at the outset of the general adjudication, promoting earlier resolution of claims;
 - b) Providing for limited special adjudications (although for cases involving federal/tribal water right claims, the adjudication would need to be sufficiently comprehensive to satisfy the McCarran Amendment);
 - c) Expanding the use of mediation; and
 - d) Authorizing the pre-filing of written testimony.

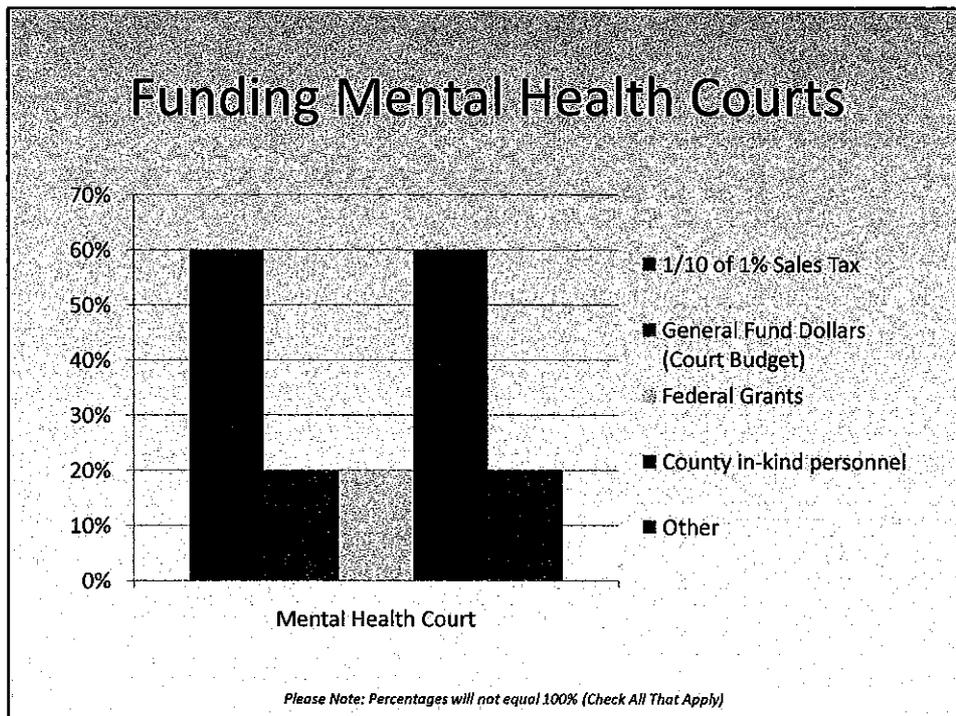
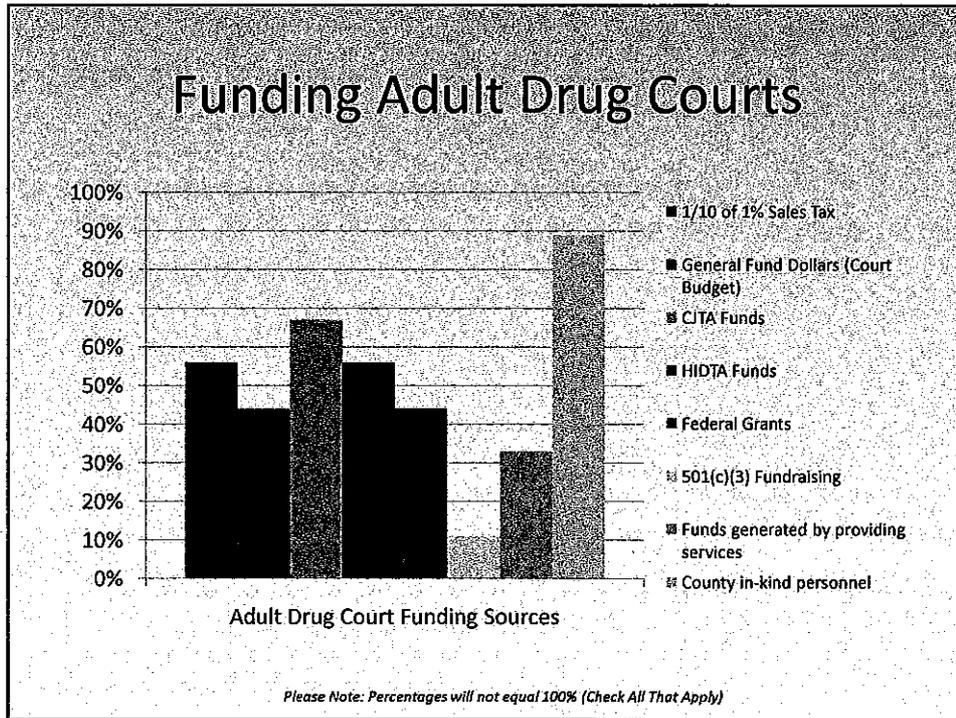
Problem Solving Courts in Washington State

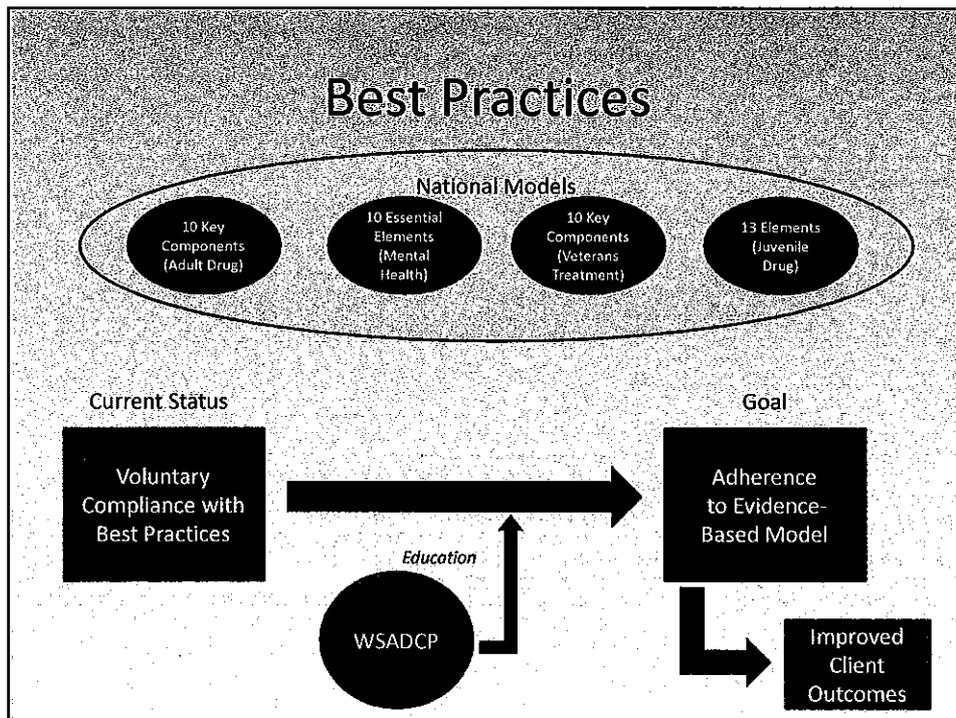
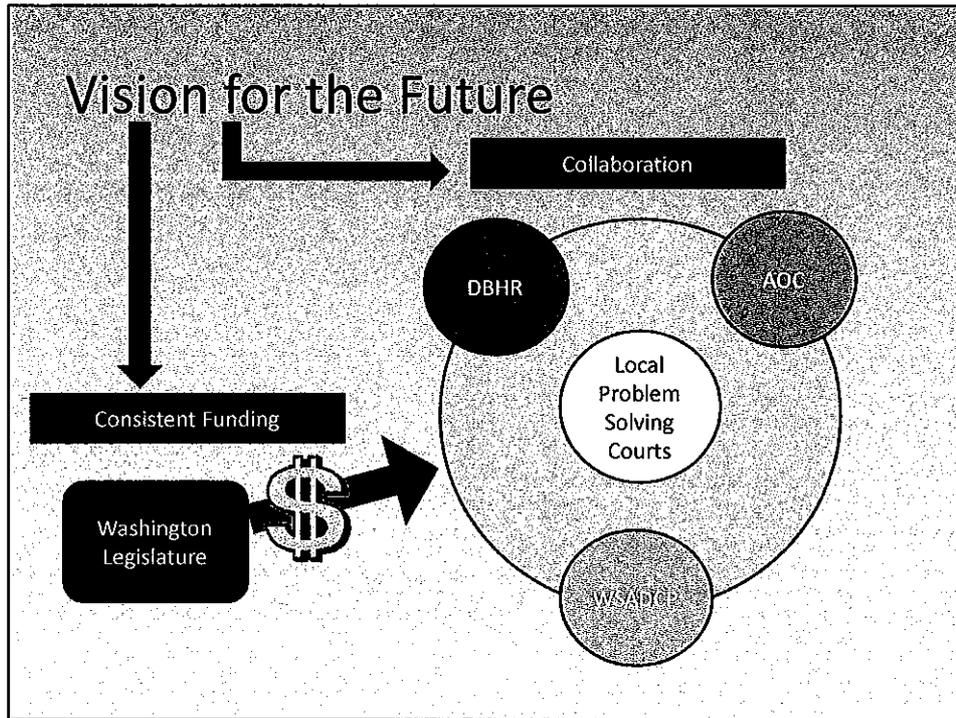
Judge Harold Clarke, Spokane Superior Court

Washington's Problem Solving Courts









Next Steps



*Resolution in
Support of
Problem Solving
Courts*

Appendix B Conference of Chief Justices / Conference of State Court Administrators Resolution in Support of Problem-Solving Courts

CCJ Resolution 22 COSCA Resolution 4

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators appointed a Joint Task Force to consider the policy and administrative implications of the courts and special calendars that utilize the principles of therapeutic jurisprudence and to advance strategies, policies and recommendations on the future of these courts; and

WHEREAS, these courts and special calendars have been referred to by various names, including problem-solving, accountability, behavior justice, therapeutic, problem-oriented, collaborative justice, outcome-oriented and constructive intervention courts; and

WHEREAS, the findings of the Joint Task Force include the following:

- The public and other branches of government are looking to courts to address certain complex social issues and problems, such as recidivism, that they feel are not most effectively addressed by the traditional legal process;
- A set of procedures and processes is required to address these issues and problems that are distinct from traditional civil and criminal adjudication;
- A focus on remedies is required to address these issues and problems in addition to the determination of fact and issues of law;

preserving the rule of law, enhancing judicial effectiveness, and meeting the needs and expectations of litigants, victims and the community.

5. Support national and local education and training on the principles and methods employed in problem-solving courts and on collaboration with other community and government agencies and organizations.
6. Advocate for the resources necessary to advance and apply the principles and methods of problem-solving courts in the general court systems of the various states.
7. Establish a National Agenda consistent with this resolution that includes the following actions:
 - a. Request that the CCJ/COSCA Government Affairs Committee work with the Department of Health and Human Services to direct treatment funds to the state courts.
 - b. Request that the National Center for State Courts initiate with other organizations and associations a collaborative process to develop principles and methods for other types of courts and calendars similar to the *10 Key Drug Court Components*, published by the Drug Courts Program Office, which defines effective drug courts.
 - c. Encourage the National Center for State Courts Best Practices Institute to examine the principles and methods of these problem-solving courts.
 - d. Convene a national conference or regional conferences to educate the Conference of Chief Justices and Conference of State Court Administrators and, if appropriate, other policy leaders on the issues raised by the growing problem-solving court movement.
 - e. Continue a Task Force to oversee and advise on the implementation of this resolution, suggest action steps, and model the collaborative process by including other associations and interested groups.



WSBA

BOARD OF GOVERNORS

Catherine L. Moore
Governor, Seventh East District

phone: 206.683.2137
e-mail: cmoore@drizzle.com

September 15, 2010

The Honorable Barbara Madsen
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504

The Honorable Michael Lambo
Kirkland Municipal Court
11515 NE 118th St
P.O. Box 678
Kirkland, WA 98083

Dear Chief Justice Madsen and Judge Lambo:

After the August 20th Board for Judicial Administration meeting, the WSBA Bylaws Review Committee met with the representatives from the Superior Court Judges Association and the District and Municipal Court Judges Association to discuss SCJA's outstanding concerns with the judicial membership bylaws proposal that was submitted to BJA for review and comment at its August meeting. The attached revised final judicial membership proposal emanated from those discussions with SCJA and DMCJA. In light of the SCJA and DMCJA Boards' vote over the weekend to support adoption of this final iteration of the judicial membership proposal, the Bylaws Review Committee is now recommending the WSBA Board of Governors adopt the attached proposal at its September 2010 meeting. Of course, the Board of Governors has the final authority to accept, reject, or modify the recommendations of the Bylaws Review Committee.

The significant change in the revised final proposal removes the provision for administrative suspension while a judicial member and replaces it with the requirement that judicial members wishing to retain eligibility to transfer to another membership class must annually provide a *business* address (all other members are required to provide a home address as well) and pay a licensing fee. A member who fails to comply will be required to pay the *Active* fee amount for each year of non-compliance as a precondition of transfer to another membership category.

This proposal also includes explicit language that the positions of the WSBA Board of Governors are not those of judicial members and are not binding on judicial members.

Working Together to Champion Justice

4742 42nd Avenue SW / Seattle, WA 98116

The Bylaws Review Committee is recommending the BOG adopt a \$50 annual licensing fee for judicial members to cover the direct costs of this membership category; WSBA programming and infrastructure costs are excluded from this figure

The proposed effective date for the judicial membership section is January 1, 2012, and will be prospective.

On behalf of the WSBA Bylaws Review Committee and the WSBA Board of Governors, we respectfully request the BJA review and provide comment on the current proposal for consideration by the BOG at its upcoming September 24, 2010 meeting.

Most sincerely,
Catherine Moore

Catherine Moore
Chair, Bylaws Review Committee
Governor, 7th District East

Working Together to Champion Justice

4742 42nd Avenue SW / Seattle, WA 98116

III. MEMBERSHIP

A. CLASSES OF MEMBERSHIP.

There shall be four classes of membership with the qualifications, privileges and restrictions specified.

1. Active.

Any lawyer who has been duly admitted to the practice of law in the State of Washington pursuant to APR 3, 5, ~~and~~ or 18, and who complies with these Bylaws and the Rules of the Supreme Court of the State of Washington, and who has not changed to another membership class or been suspended or disbarred shall be an Active member.

a. Active membership in the Bar grants the privilege to fully engage in the practice of law. Upon payment of the Active annual license fee and assessments, compliance with these Bylaws and Rules of the Supreme Court of Washington, and compliance with other licensing requirements, Active members are fully qualified to vote, hold office and otherwise participate in the affairs of the Bar.

b. Active members may:

1. Fully engage in the practice of law;
2. Be appointed to serve on any committee, board, panel, council, task force, or other entity of the Bar;
3. Vote in Bar matters and hold office therein; and
4. Join WSBA Sections as voting members.

c. All persons who become members of the Bar must first do so as an Active member.

2. Inactive.

There are three types of inactive membership: "Inactive-Lawyer," "Inactive-Disability," and "Inactive-Honorary."

a. Inactive members shall not practice law in Washington, nor engage in employment or duties in the State of Washington that constitute the practice of law. Inactive members are not eligible to vote in Bar matters or hold office therein, or serve on any committee, board, or panel.

b. Inactive members may:

1. Join WSBA Sections as non-voting members, if allowed under the Section's bylaws. This does not include eligibility to join as voting members;

2. Continue their affiliation with the Bar;
 3. Change their membership class to Active pursuant to these bylaws; and
 4. Request a free *Bar News* subscription.
- c. Types of Inactive membership:
1. *Inactive-Lawyer*: Inactive-Lawyer members must pay an annual license fee in an amount established by the BOG and as approved by the Supreme Court, ~~plus any required assessments~~. They are not required to earn or report MCLE credits while Inactive, but may choose to do so, and may be required to do so to return to Active membership.
 2. *Inactive-Disability*: Inactive-Disability members are not required to pay a license fee ~~or any assessments~~, or earn or report MCLE credits while Inactive-Disability, but they may choose to do so, and they may be required to earn and report MCLE credits to return to Active membership.
 3. *Inactive-Honorary*: All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may elect to become Inactive-Honorary members of the Bar. Inactive-Honorary members are not required to pay a license fee ~~or any assessments~~. A member who otherwise qualifies for Inactive-Honorary membership but wants to continue to practice law in any manner must be an Active member, or if applicable, an Emeritus/Pro Bono member.

3. Judicial Members. [*Effective through December 31, 2011*]

An Active member may become a Judicial member of the Bar by notifying the Executive Director when the member is one of the following:

- a. A judge or former judge of the courts of record in the State of Washington, or the courts of the United States.
- b. A full-time or former full-time judge in the district or municipal courts in the State of Washington.
- c. A full-time or former full-time commissioner or magistrate in the courts of record or in the district or municipal courts in the State of Washington, or in the courts of the United States.
- d. A full-time administrative law judge in the State of Washington.
- e. A full-time Tribal Court judge in the State of Washington.
- f. Judicial members are deemed inactive members and shall not engage in the practice of law. Judicial members are not required to pay the annual membership fee required of inactive members in Article II, Section E of these Bylaws.

3. Judicial. *[Effective January 1, 2012]*
- a. An Active member may qualify to become a Judicial member of the Bar if the member is one of the following:
1. A current judge, commissioner, or magistrate judge of the courts of record in the State of Washington, or the courts of the United States, including Bankruptcy courts;
 2. A current judge, commissioner, or magistrate in the district or municipal courts in the State of Washington, provided that such position requires the person to be a lawyer;
 3. A current senior status or recall judge in the Courts of the United States;
 4. An administrative law judge, which shall be defined as either:
 - (a) Current federal judges created under Article I of the United States Constitution, excluding Bankruptcy court judges, or created by the Code of Federal Regulations, who by virtue of their position are prohibited by the United States Code and/or the Code of Federal Regulations from practicing law; or
 - (b) Full-time Washington State administrative law judges in positions created by either the Revised Code of Washington or the Washington Administrative Code;

or
 - 4.5. A current Tribal Court judge in the State of Washington; and,
- b. Members not otherwise qualified for judicial membership under (1) through (5) above and who serve full-time, part-time or ad hoc as *pro tempore* judges, commissioners or magistrates are not eligible for judicial membership.
- 5.c. ~~Such member~~ Judicial members, whether serving as a judicial officer full-time or part-time, may not engage in the practice of law and may not engage in mediation or arbitration for remuneration outside of their judicial duties. annually attests to being in compliance with the then current Washington State Code of Judicial Conduct. Judicial officers who serve less than full-time in a judicial capacity must attest to being in compliance with the then current Washington State Code of Judicial Conduct provisions regarding arbitration, mediation, and the practice of law as applied to full-time judicial officers
- b. ~~Members not otherwise qualified for judicial membership under (1) through (4) above but and~~ who serve full-time, part-

time or ad hoc as *pro tempore* judges, commissioners or magistrates are not eligible for judicial membership.

e.d. Judicial members may:

1. May pPractice law only where permitted by the then current Washington State Code of Judicial Conduct as applied to full-time judicial officers;

2. May bBe appointed to serve on any task force, council or Institute of the Bar; and

3. May bBe non-voting members in WSBA Sections, if allowed under the Section's bylaws.

4. Judicial members are not eligible to vote in Bar matters or to hold office therein.

d.e. Nothing in these bylaws shall be deemed to prohibit a judicial member from carrying out their judicial duties.

e.f. ~~Judicial members who wish to preserve eligibility to transfer to Active another membership class upon leaving service as a judicial officer:~~

~~(1) are required to provide the member registry information required of other members each year unless otherwise specified herein, and are to provide the Bar with any changes to such within 10 days of any change; and~~

~~(2) must annually pay any required license fee that may be established by the Bar, subject to approval by the Supreme Court for this membership class. Notices, deadlines, and late fees shall be consistent with those established for Active members.~~

f.g. Judicial members are required to inform the Bar within 10 days when they retire or when their employment situation has otherwise changed so as to cause them to be ineligible for Judicial membership, and must apply to change to another membership class or to resign.

~~(1) Failure to apply to change membership class or to resign within ten days of becoming ineligible for judicial membership when a judicial member has annually properly maintained eligibility to transfer to another Active membership class, shall be cause for administrative suspension of the member.~~

~~(2) A Judicial member who has not complied annually with the requirements to maintain eligibility to returntransfer to Activeanother membership class and who is no longer eligible for Judicial membership who fails to change to another membership class will be deemed to have voluntarily resigned. Judicial members desiring to change membership class to Active or~~

~~Emeritus/Pro Bono are required to pass a character and fitness review essentially equivalent to that required of applicants for admission to the Bar. Judicial members seeking to transfer to Active must disclose, at the time of the requested transfer, any pending public charges and/or substantiated public judicial discipline or investigations of which the member is aware, whether previously concluded or ongoing at the time of the requested transfer.~~

~~g.h. Judicial members must pay any required license fee and/or assessments that may be established by the Bar, subject to review approval by the Supreme Court, for this membership class. Notices, deadlines, late fees, and other consequences of failing to pay any required fees and assessments shall be consistent with those established for Active members.~~

h.. Members who transfer to Judicial membership ~~Administrative law judges who are judicial members~~ shall be maintained in their assigned reporting group for mandatory continuing legal education purposes, and shall report earned credits to the Bar in accordance with the reporting requirements of that group. ~~A certificate of compliance with judicial education requirements submitted either by the member or the Administrative Office of the Courts shall be sufficient to establish compliance with those requirements. Either judicial continuing education credits or lawyer continuing legal education credits may be applied to the credit requirement for judicial members; if judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.~~

~~i. Legal, legislative, and policy positions and resolutions taken by the WSBA Board of Governors are not taken on behalf of judicial members, are not considered to be those of judicial members, and are not binding on judicial members.~~

~~j. WSBA's disciplinary authority over judicial members is governed exclusively by ELC 1.2 and RPC 8.5.~~

4. Emeritus/Pro Bono. A member may become an Emeritus/Pro Bono member by complying with the requirements of Rule 8(e) of the Admission to Practice Rules, including payment of any required license fee and assessment, and passing a character and fitness review.

Emeritus/Pro Bono members may not engage in the practice of law except as permitted under APR 8(e), but may:

a. Be appointed to serve on any task force, council, or Institute or

~~Foundation of the Bar, and.~~ **In addition, up to two Emeritus/Pro Bono members are permitted to serve on the Pro Bono Legal Aid Committee (PBLAC);**

- b. Join WSBA Sections, if permitted under the Section's bylaws;
- c. Request a free *Bar News* subscription.

B. REGISTER OF MEMBERS.

1. All WSBA members, regardless of membership class, ~~including judicial members who wish to preserve eligibility to transfer to Active~~ another membership class upon leaving service as a judicial officer, must furnish the information below to the Bar:

- a. physical residence address;
- b. principal office address and telephone;
- c. such other data as the Board of Governors or Washington Supreme Court may from time to time require of each member

and shall promptly advise the Executive Director in writing of any change in this information within 10 days of such change. ~~Judicial members are not required to provide a physical residence address.~~

2. The Executive Director shall keep records of all members of the Washington State Bar Association, including, but not limited to:

- a. physical residence address furnished by the member;
- b. principal office address and telephone number furnished by the member;
- c. date of admittance;
- d. class of membership;
- e. date of transfer(s) from one class to another, if any;
- f. date and period(s) of administrative suspensions, if any;
- g. date and period of disciplinary actions or sanctions, if any including suspension and disbarment;
- h. such other data as the Board of Governors or Washington Supreme Court may from time to time require of each member.

3. Any member, ~~other than Judicial~~ residing out-of-state must file with the Bar, on such form as the Bar may prescribe, the name and physical street address of a designated resident agent within the State of Washington for the purpose of receiving service of process ("resident agent"). Service to such agent shall be deemed service upon or delivery to the lawyer. The member must notify the Bar of any change in resident agent within 10 days of any such change. Any member required to designate a resident agent who fails to do

so, or who fails to notify the Bar of a change in resident agent, shall be subject to administrative suspension pursuant to these bylaws and/or the Admission to Practice Rules.

4. Any member who fails to provide the Bar with the information required to be provided pursuant to these bylaws, or to notify the Bar of any changes in such information within 10 days, shall be subject to administrative suspension pursuant to these bylaws and/or the Admission to Practice Rules. ~~Judicial members are exempt from suspension pursuant to this provision while eligible for Judicial membership and serving as a judicial officer.~~

C. CHANGE OF MEMBERSHIP CLASS TO ACTIVE.

1. Transfer from Inactive to Active.

a. An Inactive-Lawyer or Inactive-Honorary member may transfer to Active by:

1. paying an application and/or investigation fee and completing and submitting an application form, all required licensing forms, and any other required information;
2. reporting at least 45 approved MCLE credits earned within the six years preceding return to Active and paying any outstanding MCLE late fees that are owed. Members returning to Active from Inactive will be reinstated to the MCLE reporting group they were in at the time of transfer to Inactive. However, if the member has been Inactive or a combination of Suspended and Inactive for less than one year, and the member is in an MCLE reporting group that was required to report during the time the member was Inactive and/or Suspended, the member must establish that the member is compliant with the MCLE reporting requirements for that reporting period before the member can change to Active;
3. passing a character and fitness review essentially equivalent to that required of all applicants for admission to the Bar; and
4. paying the current Active license fee, including any mandatory assessments, less any license fee (not including late fees) and assessments paid as an Inactive member for the same year.

~~b.5.~~ For any In addition to the above requirements, any member seeking to change to Active who was Inactive or any combination of Suspended and Inactive for more than six consecutive years, ~~establishing~~ must establish that the member has earned a minimum of 45 approved credits of Continuing Legal Education in a manner consistent with the requirement

for one reporting period for an Active member. In addition to the 45 credits, such member must complete a reinstatement/admission course sponsored by the Bar and accredited for a minimum of 15 live CLE credits, which course shall comply with the following minimum requirements:

a₁) At least four to six credit hours regarding professional responsibility and Washington's Rules of Professional Conduct, to include proper handling of client funds and IOLTA and other trust accounts, communications with clients, etc.; and

b₂) At least three credit hours regarding legal research and writing.

e₃) The remaining credit hours shall cover areas of legal practice in which the law in Washington may be unique or may differ significantly from the law in other U.S. jurisdictions, or in which the law in Washington or elsewhere has changed significantly within the previous 10 years.

Any member completing such course shall be entitled to credit towards mandatory continuing legal education requirements for all CLE credits for which such reinstatement/admission course is accredited. It is the member's responsibility to pay the cost of attending the course. The member shall comply with all registration, payment, attendance, and other requirements for such course, and shall be responsible for obtaining proof of attendance at the entire course and submitting or having such proof submitted to the Bar.

6.—Periods of administrative and/or disciplinary suspension occurring immediately before or after a change to Inactive shall be included when determining whether a member must take the readmission course. For purposes of determining whether a member has been Inactive and/or Suspended for more than six consecutive years, the period continues to run until the change to Active membership is completed, regardless of when the application is submitted to the Bar.

b_c. An Inactive-Disability member may be reinstated to Active pursuant to Title 8 of the Rules for Enforcement of Lawyer Conduct. Before being transferred to Active, after establishing compliance with the ELC, the member also must comply with the requirements in these bylaws for Inactive-Lawyers to change to Active.

e_d. Any member who has transferred to Inactive during the pendency of grievance or disciplinary proceedings may not be

transferred to Active except as provided herein and may be subject to such discipline as may be imposed under the Rules for Enforcement of Lawyer Conduct by reason of any grievance or complaint.

2. Transfer from Judicial Membership to Active Membership.

(Applicable to Members on Judicial Status Prior to September 1, 2003, through December 31, 2011)

Any judicial member may transfer from judicial membership to active membership upon the member's resignation, retirement, or completion of such member's term of judicial office by paying the then current year's membership fee, and otherwise complying with subsection 1 above.

2. Transfer from ~~Inactive or~~ Judicial to Active Membership.

(Applicable to Members Transferring to ~~Inactive or~~ Judicial Status as of September 1, 2003, through December 31, 2011)

a. A member who has been on **inactive judicial** status for 5 years or less in the preceding 10 years may transfer to active status by:

- (1) filing an application in the form prescribed by the Board of Governors providing satisfactory proof that the member is of good moral character and that he or she has not been subject to discipline in Washington or elsewhere while on **inactive judicial** status; and, within 6 months of filing the application,
- (2) paying the current annual membership fee for active members including the assessment for the Lawyers' Fund for Client Protection, ~~less any membership fee paid by him or her as an inactive member for the same year;~~ and
- (3) ~~providing satisfactory evidence that he or she is current in the continuing legal education requirements of active members for the period that he or she was on inactive status.~~

~~b. A member who was suspended prior to changing to inactive status, and who has been suspended or inactive for a total of 5 years or less in the preceding 10 years, may transfer to active status by complying with part a. above.~~

c. A member transferring to active status within 6 months after service as a judge [as defined in ~~Art. II (A)(3) these bylaws~~] may do so by complying with parts (a) (1) and (2) above and providing

satisfactory evidence that he or she was current in judicial continuing legal education upon completion of such service, regardless of the number of years he or she served as a judge.

- d. ~~A member who is inactive for more than for 5 years in the preceding 10 years, or who does not meet the requirements of either part (a) (3) or (b) above, must take and pass the Washington Bar Examination to demonstrate continued professional competence.~~
- e. Notwithstanding the above, the Board of Governors may withhold a transfer to active status where for any reason there are serious and substantial questions regarding the present professional competence or moral character of the member, and may refer the matter to the Character and Fitness Committee for investigation and hearing, or may require the inactive member to take and pass the Washington Bar Examination to demonstrate continued professional competence. The member shall be responsible for the costs of any investigation, bar examination, or proceeding before the Character and Fitness Committee.

2. Transfer from Judicial to Active. *[Effective January 1, 2012]*

A Judicial member may request to transfer to Active. Upon a Judicial member's resignation, retirement, or completion of such member's term of judicial office, such member must notify the Bar within 10 days, and any Judicial member desiring to continue his/her affiliation with the WSBA must change to another membership class within the Bar.

~~a. A Judicial member who has complied with all requirements for maintaining eligibility to return to Active~~ another membership class may transfer to Active by:

- a.1) ~~paying an application and/or investigation fee and completing and submitting an application form, all required licensing forms, and any other required information;~~
- b.2) paying the then current Active license fee, including any mandatory assessments, less any license fee and assessments paid as a Judicial member for the same licensing year;
- e.3) passing a character and fitness review essentially equivalent to that required of applicants for admission to the Bar. Judicial members seeking to transfer to Active must disclose at the time of the requested transfer any pending public charges and/or substantiated public discipline any judicial discipline or investigations of which the member is aware, whether previously concluded or ongoing at the time of the requested transfer.; and

d.4) complying with the requirements for members returning from Inactive to Active, including completing the 15 credit full-day reinstatement/admission course tailored to judges, to include lawyer ethics and JOLTA requirements among other topics, if a Judicial member for six or more consecutive years. Administrative law judge Judicial members shall complete the 15 credit reinstatement/admission course required of Inactive lawyers if a Judicial member for six or more consecutive years. Either judicial continuing education credits or lawyer continuing education credits may be applied to the credit requirement for Judicial members transferring to Active. If judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.

g.b. A Judicial member wishing to transfer to Active upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information and/or pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership class shall, prior to transfer to Active, be required to pay the Active licensing fee for any years the registry information was not provided or the Judicial fee was not paid, in addition to complying with the requirements of (a) above. A Judicial member who fails to provide member registry information and/or pay the annual licensing fee for four consecutive years will not be required to pay outstanding fees but instead must take and pass the Washington Bar exam as a pre-condition of transfer to Active

3. Transfer from Emeritus/Pro Bono to Active.

An Emeritus/Pro Bono member may transfer to Active by complying with the requirements for members returning from Inactive to Active.

4. Referral to Character and Fitness Board.

All applications for readmission to Active membership shall be reviewed by WSBA staff for purposes of determining whether any of the factors set forth in APR 24.2(a) are present. All applications that reflect one or more of those factors shall be referred to Bar Counsel for review, who may conduct or direct such further investigation as is deemed necessary. Applying the factors and considerations set forth in APR 24.2, Bar Counsel shall refer to the Character and Fitness Board for hearing any applicant about whom there is a substantial question whether the applicant currently possesses the requisite good moral character and fitness to practice law. The Character and Fitness Board shall conduct a hearing and enter a decision as described in APR 20-24, except that all decisions and recommendations shall be transmitted to the applicant and Bar Counsel,

and that the applicant may request that the Board of Governors review a recommendation, with such review to be on the record only, without oral argument. If no review is requested, the decision and recommendation of the Character and Fitness Board shall become final. The Character and Fitness Board, and (on review) the Board of Governors, have broad authority to withhold a transfer to active or to impose conditions on readmission to Active membership, which may include retaking and passing the Washington State Bar examination, in cases where the applicant fails to meet the burden of proof required by APR 20-24. The member shall be responsible for the costs of any investigation, bar examination, or proceeding before the Character and Fitness Board and Board of Governors.

D. CHANGE OF MEMBERSHIP CLASS TO INACTIVE.

1. Any Active, Judicial, or Emeritus/Pro Bono member who is not Suspended or Disbarred shall become an Inactive-Lawyer member when the member files a written request for Inactive membership with the Executive Director and that request is approved.

~~Effective January 1, 2012, a Judicial member wishing to transfer to Inactive-Lawyer upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information and/or pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership class shall, prior to transfer to Inactive, be required to pay the Active licensing fee for any years the registry information was not provided or the Judicial fee was not paid.~~

2. Members are transferred to Inactive-Disability pursuant to Title 8 of the Rules for Enforcement of Lawyer Conduct. Any member seeking to transfer from Inactive-Disability to Inactive-Lawyer must first establish that the member has complied with the requirements of Title 8 of the ELC, and then must submit a written request to make the change and comply with all applicable licensing requirements for Inactive-Lawyer members.

3. All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may qualify for Inactive-Honorary membership. A qualified member may request to change to Inactive-Honorary membership by submitting a written request and any required application.

4. An Active member may apply to change from Active to Inactive-Lawyer while grievances or disciplinary proceedings are pending against such member. Such transfer, however, shall not terminate, stay or suspend any pending grievance or proceeding against the member.

E. CHANGE OF MEMBERSHIP CLASS TO JUDICIAL.

An Active member may request to become a Judicial member of the Bar by submitting a written request on judicial letterhead and any required application, and complying with the provisions of these Bylaws.

F. CHANGE OF MEMBERSHIP CLASS TO EMERITUS/PRO BONO.

A member may become an Emeritus/Pro Bono member by complying with the requirements of Rule 8(e) of the Admission to Practice Rules, including payment of any required license fee, and passing a character and fitness review.

Effective January 1, 2012, a Judicial member wishing to transfer to Emeritus/Pro Bono upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information and/or pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership class shall, prior to transfer to Emeritus/Pro Bono, be required to pay the Active licensing fee for any years the registry information was not provided or the Judicial fee was not paid.

F.G. VOLUNTARY RESIGNATION.

Voluntary resignation may apply in any situation in which a member does not want to continue practicing law in Washington for any reason (including retirement from practice) and for that reason does not want to continue membership in the Bar. A member may voluntarily resign from the Bar by submitting a written request for voluntary resignation to the Executive Director. If there is a disciplinary investigation or proceeding then pending against the member, or if the member had knowledge that the filing of a grievance of substance against such member was imminent, resignation is permitted only under the provisions of the Rules for Enforcement of Lawyer Conduct. A member who resigns from the WSBA cannot practice law in Washington in any manner. A member seeking reinstatement after resignation must comply with these bylaws.

G.H. ANNUAL LICENSE FEES AND ASSESSMENTS.

1. License Fees.

a. Active Members.

1. Effective 2010, and all subsequent years, the annual license fees for Active members shall be as established by resolution of the Board of Governors, subject to review by the state Supreme Court. First time admittees not admitted elsewhere who take and pass the Washington Bar exam and

are admitted in the first six months of the calendar year in which they took the exam will pay 50% of the full active fee for that year. First time admittees not admitted elsewhere who take and pass the Washington Bar exam and are admitted in the last six months of the calendar year in which they took the exam will pay 25% of the full active fee for that year. Persons not admitted elsewhere who take and pass the Washington Bar exam in one year but are not admitted until a subsequent year shall pay 50% of the full active fee for their first two license years after admission. Persons admitted in one calendar year in another state or territory of the United States or in the District of Columbia by taking and passing a bar examination in that state, territory, or district, who become admitted in Washington in the same calendar year in which they took and passed the exam, shall pay 50% of the full active fee if admitted in Washington in the first six months of that calendar year and 25% of the full active fee if admitted in Washington in the last six months of that calendar year. All persons in their first two full licensing years after admission in any jurisdiction shall pay 50% of the full active fee.

2. An Active member of the Association who is activated from reserve duty status to full-time active duty in the Armed Forces of the United States for more than 60 days in any calendar year, or who is deployed or stationed outside the United States for any period of time for full-time active military duty in the Armed Forces of the United States shall be exempt from the payment of license fees and assessments for the Lawyers' Fund for Client Protection upon submitting to the Executive Director satisfactory proof that he or she is so activated, deployed or stationed. All requests for exemption must be postmarked or delivered to the Association offices on or before February 1st of the year for which the exemption is requested. Eligible members must apply every year they wish to claim the exemption. Each exemption applies for only the calendar year in which it is granted, and exemptions may be granted for a maximum total of five years for any member. Granting or denying an exemption under this provision is within the sole discretion of the Executive Director and is not appealable.

b. Inactive Members.

1. Effective 2010 and subsequent years, the annual license fee for Inactive members shall be as established by

resolution of the Board of Governors and as approved by the state Supreme Court. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members shall apply to Inactive-Lawyer members.

2. Inactive-Honorary and Inactive-Disability members shall be exempt from license fees ~~and any mandatory assessments.~~

c. Judicial Members. *[Effective January 1, 2012]*

Judicial members ~~who wish to preserve eligibility to transfer to Active another membership class upon leaving service as a judicial officer shall pay any required the annual license fee established by the Bar as approved by the Supreme Court and/or assessment in an amount(s) established by the BOG, subject to review by the state Supreme Court, in such manner or on such form as is required by the WSBA. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members shall apply to Judicial members, however, Judicial members are not subject to administrative suspension for nonpayment of license or late payment fees.~~

d. Emeritus/Pro Bono Members

~~Emeritus/Pro Bono members shall pay the annual license fee and assessments required of Inactive-Lawyer members in such manner or on such form as is required by the WSBA. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members shall apply to Emeritus/Pro Bono members.~~

2. Assessments.

Members shall pay the Lawyers' Fund for Client Protection assessment, and any other assessments, as ordered by the Supreme Court.

2.3. Deadline and Late Payment Fee.

a. License fees and mandatory assessments shall be payable on or before February 1st of each year, in such manner or on such form as is required by the WSBA. Members who pay their license fees on or after February 2nd shall be assessed a late payment fee of 30% of the total amount of the license fees required for that

membership class. License fees for newly admitted members shall be due and payable at the time of admission and registration, and are not subject to the late payment fee.

b. Notices required for the collection of license fees, late payment fees, and/or assessments shall be mailed one time by the Executive Director to the member's address of record with the Bar by registered or certified mail. In addition to the written notices, the Bar shall make one attempt to contact the member at the telephone number(s) the member has made of record with the Bar and shall speak to the member or leave a message, if possible. The Bar shall also make one attempt to contact the member at the member's e-mail address of record with the Bar.

3.4. Rebates /Apportionments.

No part of the license fees shall be apportioned to fractional parts of the year, except as provided for new admittees by the Board of Governors. After February 1st of any year, no part of the license fees shall be rebated by reason of death, resignation, suspension, disbarment or change of membership class.

4.5. License Fee Exemptions Due to Hardship.

In case of proven extreme financial hardship, which must entail a current household income equal to or less than 200% of the federal poverty level **as determined at the time of the application for hardship exemption**, the Executive Director may grant a one-time exemption from payment of annual license fees and ~~assessments~~ by any Active member. Hardship exemptions are for one licensing period only, and a request must be submitted on or before February 1st of the year for which the exemption is requested. Denial of an exemption request is not appealable.

5.6. License fee referendum.

Once approved by the Board of Governors, license fees shall be subject to the same referendum process as other BOG actions, but may not be modified or reduced as part of a referendum on the WSBA budget. The membership shall be timely notified of the BOG resolutions setting license fees both prior to and after the decision, by posting on the WSBA website, e-mail, and publication in the *Bar News*.

H.I. SUSPENSION.

1. Interim Suspension.

Interim suspensions may be ordered during the course of a disciplinary investigation or proceeding, as provided in the Rules for Enforcement of Lawyer Conduct, and are not considered disciplinary sanctions.

2. Disciplinary Suspension.

Suspensions ordered as a disciplinary sanction pursuant to the Rules for Enforcement of Lawyer Conduct are considered disciplinary suspensions.

3. Administrative Suspension.

a. Administrative suspensions are neither interim nor disciplinary suspensions, nor are they disciplinary sanctions. ~~Except as otherwise provided in these Bylaws, a~~ member may be administratively suspended for the following reasons:

1. Nonpayment of license fees or late-payment fees;
2. Nonpayment of any mandatory assessment (including without limitation the assessment for the Lawyers' Fund for Client Protection) (APR 15(d));
3. Failure to file a trust account declaration (ELC 15.5(b));
4. Failure to file an insurance disclosure form (APR 26(c));
5. Failure to comply with mandatory continuing legal education requirements (APR 11);
6. Nonpayment of child support (APR 17);
7. Failure to designate a resident agent (APR 5(f));
8. Failure to provide a current address or to notify the Bar of a change of address or other information required by APR 13(b) within 10 days after the change (APR 13(b)); and
9. For such other reasons as may be approved by the Board of Governors and the Washington Supreme Court.

b. Unless requirement for hearing and/or notice of suspension are otherwise stated in these bylaws or the APR, ELC, or other applicable rules, a member shall be provided notice of the member's failure to comply with requirements and of the pendency of administrative suspension if the member does not cure the failure within 60 days of the date of the written notice, as follows:

1. Written notice of non-compliance shall be sent one time by the Executive Director to a member at the member's address of record with the Bar by registered or certified mail. Such written notice shall inform the member that the Bar will recommend to the Washington Supreme Court that the member be suspended from membership and the practice of law if the member has not corrected the deficiency within 60 days of the date of the notice.

2. In addition to the written notice described above, the Bar shall make one attempt to contact the member at the telephone number(s) the member has made of record with the Bar and shall speak to the member or leave a message, if possible. The Bar shall also make one attempt to contact the member at the member's e-mail address of record with the Bar.

c. Although not required to provide any additional notice beyond what is described above, the Bar may, in its sole discretion, make such other attempt(s) to contact delinquent members as it deems appropriate for that member's situation.

d. As directed by the Supreme Court, any member failing to correct any deficiency after two months' written notice as provided above must be suspended from membership. The Executive Director must certify to the Clerk of the Supreme Court the name of any member who has failed to correct any deficiency, and when so ordered by the Supreme Court, the member shall be suspended from membership in the Bar and from the practice of law in Washington. The list of suspended members may be provided to the relevant courts or otherwise published at the discretion of the Board of Governors.

4. A member may be suspended from membership and from the practice of law for more than one reason at any given time.

H.J. CHANGING STATUS AFTER SUSPENSION.

1. Upon the completion of an ordered disciplinary or interim suspension, or at any time after entry of an order for an administrative suspension, a suspended member may seek to change status from suspended to any other membership class for which the member qualifies at the time the change in status would occur.

2. Before changing from suspended status, a member who is suspended pursuant to an interim or disciplinary suspension must comply with all requirements imposed by the Court and/or the ELC in connection with the disciplinary or interim suspension. Additionally, such member must comply with all other requirements as stated in these bylaws.

3. If a member was suspended from practice for more than one reason, all requirements associated with each type of suspension must be met before the change from suspended status can occur.

4. A suspended member may seek to change status by:

a. paying the required license fee and any assessments for the licensing year in which the status change is sought, for the

membership class to which the member is seeking to change. For members seeking to change to Active or any other status or membership class from suspension for nonpayment of license fees, the required license fee shall be the current year's license fee and assessments, the assessments for the year of suspension, and double the amount of the delinquent license fee and late fees for the licensing year that resulted in the member's suspension;

b. completing and submitting to the Bar an application for change of status, any required or requested additional documentation, and any required application or investigation fee, and cooperating with any additional character and fitness investigation or hearing that may be required; and

c. completing and submitting all licensing forms required for the licensing year for the membership class to which the member is seeking to change;

d. ~~For any~~ In addition to the above requirements:

1) Any member seeking to change to Active who was Suspended, or any combination of Suspended and Inactive, for less than six consecutive years, ~~establishing~~ must establish that within the six years prior to the requested change in status, the member has earned a minimum of 45 credits of continuing legal education in a manner consistent with the requirements for one reporting period for an Active member. However, if the member has been Suspended and/or Inactive for less than one year and the member is in the MCLE reporting group that was required to report during the time the member was Suspended and/or Inactive, the member must establish that the member is compliant with the MCLE credits the member would have been required to report that period.

~~e. For any~~ 2) Any member seeking to change to Active who was Suspended, or any combination of Suspended and Inactive, for more than six consecutive years, ~~establishing~~ must establish that the member has earned a minimum of 45 credits of continuing legal education in a manner consistent with the requirement for one reporting period for an Active member and completing a reinstatement/admission course sponsored by the Bar and accredited for a minimum of 15 live CLE credits, which course shall comply with the following requirements:

1a) At least four to six credit hours regarding law office management and professional responsibility and Washington's Rules of Professional Conduct, to include proper handling of client funds and IOLTA and other trust

accounts, communications with clients, law practice issues, etc., and

2b) At least three credit hours regarding legal research and writing.

3c) The remaining credit hours shall cover areas of legal practice in which the law in Washington may be unique or may differ significantly from the law in other U.S. jurisdictions, or in which the law in Washington or elsewhere has changed significantly within the previous 10 years.

Any member completing such course shall be entitled to credit towards mandatory continuing legal education requirement for all CLE credits for which such reinstatement/admission course is accredited. It is the member's responsibility to pay the cost of attending the course. The member shall comply with all registration, payment, attendance, and other requirements for such course, and shall be responsible for obtaining proof of attendance at the entire course and submitting or having such proof submitted to the Bar.

J.K. REINSTATEMENT AFTER DISBARMENT.

Applicants seeking reinstatement after disbarment must file a petition for reinstatement and otherwise comply with the requirements of the APRs relating to reinstatement after disbarment. If the petition is granted and reinstatement is recommended, the petitioner must take and pass the Washington Bar examination and comply with all other admission and licensing requirements for the year in which the petitioner is reinstated.

K.L. REINSTATEMENT AFTER RESIGNATION IN LIEU OF DISBARMENT OR DISCIPLINE.

No former member shall be allowed to be readmitted to membership after entering into a resignation in lieu of discipline or disbarment pursuant to the ELC. Persons who were allowed to resign with discipline pending under former provisions of these bylaws prior to October 1, 2002, may be readmitted on such terms and conditions as the Board determines, provided that if the person resigned with discipline pending and a prior petition for reinstatement or readmission has been denied, no petition may be filed or accepted for a period of two years after an adverse decision on the prior petition for reinstatement or readmission.

L.M. READMISSION AFTER VOLUNTARY RESIGNATION.

Any former member who has resigned and who seeks readmission to membership must do so in one of two ways: by filing an application for readmission in the

form prescribed by the Board of Governors, including a statement detailing the reasons the member resigned and the reasons the member is seeking readmission, or by seeking reciprocal admission pursuant to APR 18 (if the former member is licensed in another jurisdiction that would qualify for reciprocal admission under that rule).

1. A former member filing an application for readmission after voluntary resignation must:
 - a. pay the application fee, together with such amount as the Board of Governors may establish to defray the cost of processing the application and the cost of investigation; and
 - b. establish that such person is morally, ethically and professionally qualified and is of good moral character and has the requisite fitness to practice consistent with the requirements for other applicants for admission to practice. An application for readmission shall be subject to character and fitness investigation and review as described in APR 20-24, consistent with other applications for admission.
 - c. In addition to the above requirements, if an application for readmission is granted and:
 - i) it has been less than six-four consecutive years since the voluntary resignation, the applicant must establish:
 - (1) that the former member has earned 45 approved MCLE credits in the three years preceding the application in a manner consistent with the requirement for one reporting period for an Active member, without including the credits that might otherwise be available for the reinstatement/admission course; and
 - (2) attend and complete the BOG-approved reinstatement/admission course.
 - ii) If it has been more than sixfour or more consecutive years since the voluntary resignation, the petitioner must take and pass the Washington Bar examination; and
 - d. Upon completing the reinstatement/admission course or passing the Washington Bar examination, successful completion of the above requirements, the member must pay the license fees and assessments and complete and submit all required licensing forms for the year in which the member will be readmitted.
2. A voluntarily resigned former member seeking readmission through reciprocal admission pursuant to APR 18 must comply

with all requirements for filing such application and for admission upon approval of such application.

M-N. BAR EXAM MAY BE REQUIRED.

All applications for reinstatement after disbarment shall be subject to character and fitness review, and taking and passing the Washington Bar examination, pursuant to the provisions of APR 25. All applications for readmission after voluntary resignation shall be subject to character and fitness review pursuant to the provisions of APR 20-24. All applications for readmission to Active membership from Suspended status shall be handled in a similar fashion to applications for readmission from Inactive status. The Character and Fitness Board, and (on review) the Board of Governors, have broad authority to withhold a transfer to Active or to impose conditions on readmission to Active membership, which may include taking and passing the Washington State Bar examination, in cases where the applicant fails to meet the burden of proof required by APR 20-24. The member/former member shall be responsible for the costs of any investigation, bar examination, or proceeding before the Character and Fitness Board and Board of Governors.

**BOARD FOR JUDICIAL ADMINISTRATION (BJA)
PUBLIC RECORDS WORK GROUP
FINAL REPORT
SEPTEMBER 17, 2010**

Public Records Final Report

A. Work Group Report

1. Executive Summary
2. Text of Proposed Revision of GR31: Access to Judicial Records
3. Proposed Rule Adoption / Implementation Timeline
4. Best Practices / Readiness Recommendations
5. Roster of Work Group Members and Attendees
6. Minority Reports
 - a. WSBA inclusion under the rule, submitted by Robert Welden, WSBA
Joined in by: Krista Wiitala, WSBA; Judge Marlin Appelwick, Court of Appeals;
Jeff Hall, State Court Administrator
 - b. Protection of record subject interests in records requests, submitted by Doug Klunder, ACLU
Joined in by: Kristal Wiitala, WSBA
 - c. Protection of privacy in records requests, submitted by Doug Klunder, ACLU
Joined in by: Kristal Wiitala, WSBA
 - d. Concerns regarding implementation and administration impacts on small courts, submitted by Marti Maxwell, AWSCA
Joined in by: Aimee Vance, DMCMA
 - e. Objections & Dissent to Proposed Revisions, submitted by Rowland Thompson, ADNW

B. Appendices – Available upon request

1. Work Group Charge
2. Minutes from the meetings [as approved]
3. Time Line / Activity Plans [for combined work group and proposed rule adoption / implementation timelines]
4. Basic Group Meetings Framework [utilized to organize work; never updated beyond first draft]
5. Basic Work Group Presumptions [utilized to organize work; never updated beyond first draft]
6. City of Federal Way v. Koenig
7. Public Access to Judicial Records: Response to Koenig Decision
8. Telford and Clarke – Functional Equivalent to State Agency Test
9. Staff Presentation/Overview of Public Records Act (PRA) (General history, outline, categories of exemptions)

10. "Access to Judicial Information" COSCA Survey Table, January 2007
11. AOC Administrative Public Records Policy
12. Existing Laws Addressing Access to Court Case Files
13. Overview of How Three States and COSCA Approach Public Access to Administrative Records of the Judiciary
14. Texts of Florida, Minnesota, and Michigan court rules
15. Draft Court Records Diagram (5/21/10; Mr. Crittenden)
16. Framework Options for Rule/Statute on Public Access to Judicial Records [utilized to assist in drafting modifications to the rule]
17. Draft Recommended Applicability of Proposed Rules/Approach to Judicial Entities [note: never updated, as simply used to assist in drafting modifications to the rule]
18. Legal analysis: Overview of test for applying the PRA to "functional equivalents" of public agencies
19. Beginning list of topics to consider for possible new exemptions [note: never updated, as simply used to assist in drafting modifications to the rule]
20. Master List of Judicial Entities [ultimately incorporated, as appropriate, into the draft modifications of the rule]
21. Master List of Judicial Records (short version)
22. Master List of Judicial Records (long version, with initial categorization)
23. Survey e-mails to judicial entities and Survey Summary Chart of answers to the specific questions and significant general comments from entities
24. Survey individual judicial entity responses (full written comments)
25. List of PRA Potentially Relevant Exemptions [not necessarily all inclusive; living document]
26. List of Other Statutes Potentially Relevant Exemptions [not necessarily all inclusive; living document]

Reference materials that were utilized by the work group but which are readily available to any party are not included in this packet in the interest of brevity and cost savings. Those materials include but are not necessary limited to: Public Records Act (PRA); PRA Deskbook, Chapters 2 & 3 ("The Public Records Act: Legislative History and Public Policy" & "Who and What the Public Records Act Covers"); AGO Open Government Manual, Chapters 1 & 2 ("PRA – General and Procedural Provisions" & "PRA – Exemptions from Disclosure"); AGO "Top 15 Tips for Public Records Compliance"; GR22: Access to Guardianship and Family Law Records; RCW 42.40.910 – Whistleblower Act application language; Rule ARLJ 9: Disclosure of Records; Text of Current GR31: Access to Court Records; *Nast v. Michaels*.

A. WORK GROUP REPORT

A. WORK GROUP REPORT
1. EXECUTIVE SUMMARY

September 15, 2010

TO: Board for Judicial Administration (BJA)

FROM: Judge Marlin J. Appelwick, Chair
BJA Public Records Work Group

RE: BJA Public Records Work Group Final Report – Executive Summary

I. Recommendation

The Public Records Work Group recommends that the Board for Judicial Administration (BJA) approve the submission of the proposed court rule regulating disclosure of judicial records, and if adopted by the Supreme Court, appoint a committee to develop best practices to facilitate implementation of that rule.

II. Introduction

The BJA appointed the Public Records Work Group in December 2009. At the time it appeared the Legislature might take up the question of whether the judicial branch should be subject to the state Public Records Act (PRA) as a response to the Supreme Court decision in City of Federal Way v. David Koenig [Appendix, tab 6]. This case strongly reinforced previous case law that records of the judicial branch of state government are not subject to disclosure under the PRA.

The charge to the Work Group was to:

1. Make recommendations regarding how the Public Records Act (PRA) should apply to the administrative records of the judicial branch as defined in GR 31 (c)(2), with consideration given to:
 - Whether such application should be made via statutory amendments or court rule;
 - What exemptions to the PRA are necessary for the judicial branch;

- Application of existing court rules, statutes and common law.
- 2. Develop a substantive implementation proposal consistent with the recommendations.
- 3. Involve such other stakeholders as the work group determines necessary to develop a realistic and acceptable proposal.

The work group consisted of representatives from the appellate courts, Judge Marlin Appelwick; Superior Court Judges' Association (SCJA), Judge Ronald Culpepper; District and Municipal Court Judges' Association (DMCJA), Judge Susan Dubuisson; Administrative Office of the Courts (AOC), Mr. Jeffrey Hall; Association of Washington Superior Court Administrators (AWSCA), Ms. Marti Maxwell; District and Municipal Court Management Association (DMCMA), Ms. Aimee Vance; Washington Coalition for Open Government (WCOG), Mr. Toby Nixon and Mr. William Crittenden; Washington State Bar Association (WSBA), Mr. Robert Welden and Ms. Kristal Wiitala; Allied Daily Newspapers of Washington (ADNW), Mr. Rowland Thompson; and the Office of Public Defense (OPD), Ms. Sophia Byrd McSherry. Guests who attended one or more meetings included Senator Adam Kline, Mr. James Bamberger (OCLA), Ms. Mellani McAleenan (AOC), Ms. Kathy Kuriyama (OPD), and Mr. Doug Klunder (ACLU). The work group was staffed by three employees of the AOC. See Report, tab 5 and Appendix, tab 2.

III. Process

The work group met in eight half-day working sessions. The ambitious schedule [Appendix, tab 3] was intended to allow the submittal of a proposal before the next Court Rule deadline or legislative session. The recommendation contemplates the new rules be effective in 2012.

The work group reviewed and discussed its charge [Appendix, tab 1], reviewed state case law and court rules related to judicial records disclosure [Appendix, tabs 6, 7 and 12], heard a general overview of the PRA [Appendix 9], heard a general overview of current statutes and case law regarding access to court records and a brief history to our current status [Appendix, tabs 7 and 12], reviewed research materials compiled and analyzed by staff [Appendix, tabs 6, 7, 8, 10, 12, 13, 14, 18, 25 and 26, plus see information on reference materials at end of Report outline], agreed on basic presumptions for their work [Appendix, tabs 4 and 5], created a master list of judicial entities

[Appendix, tabs 20], created a master list of judicial records classifications currently utilized (including initial categorization of exemption status) [Appendix, tab 21 and 22], and reviewed approaches to judicial records disclosure utilized in other states including the review of texts of several states [Appendix, tabs 13 and 14].

The work group also reviewed COSCA surveys and model approaches [Appendix, tab 10], compiled and reviewed potentially applicable exemptions under the PRA [Appendix, tab 25], compiled and reviewed potentially applicable exemptions under "other statutes" [Appendix, tab 26], solicited and compiled input from judicial entities [Appendix, tab 23], reviewed summary responses from judicial entities as well as full texts of responses [Appendix, tabs 23 and 24], and wrote and reviewed analysis on questions that arose during our work (e.g. test for applying the PRA to functional equivalents of public agencies) [Appendix, tabs 7, 12, 13 and 18].

The work group drafted and utilized a "Framework Options for Rule/Statute on Public Access to Judicial Records" [Appendix, tab 16] to assist it in developing its approach to addressing its charge. Once the work group made the determination to address its charge through a proposed rule, rather than through use of the PRA or other statutory changes, the same framework assisted the group in determining components that should be in the rule and approaches to scope, process, exemptions to disclosure, non-compliance, accountability, and procedures.

The minutes of the meetings and the pertinent research materials, surveys and responses are included in the appendix.

The work group attempted, at all times, to utilize consensus for its decision-making. Members were repeatedly encouraged to submit a minority report on any issue or approach with which they disagreed. The significant areas of disagreement focused on four areas: application of PRA vs. court rule; whether the rule was too protective or too broadly provided for disclosure; protection of privacy interests of persons whose personal information may be contained in records disclosed; and impacts on small courts. The report includes those dissenting statements [Report, tab 6].

The work group believes it is very important to develop best practice and a training/implementation plan for the rule and has recommended areas to be developed [Report, tab 4]. However, the work group believed it was not the proper mix of persons to develop those practices. If the Supreme Court of Washington takes favorable action on the proposed rule, then the BJA should sponsor a work group to develop best practices/readiness recommendations, and otherwise oversee and monitor the implementation process for the new revised rule. Some members of the work group volunteered to be members of the new work group, and some members of the work group volunteered to have their represented organization furnish a member for the new work group. These include Toby Nixon of Washington Citizens for Open Government (WCOG), Rowland Thompson of the Allied Daily Newspapers of Washington (ADNW), the Washington State Bar Association (WSBA), the Office of Public Defense (OPD), the Board for Court Education (BCE), the Association of Washington Superior Court Administrators (AWSCA), and the District and Municipal Court Management Association (DMCMA).

IV. Chief Elements of Proposed Amendments to GR 31

The work group selected a court rule rather than inclusion within the PRA as the appropriate course. Some members outside the judicial branch favored placing the branch under the PRA with exemptions peculiar to the courts being added into that statute. The adoption of a court rule does not guarantee the Legislature will not attempt to cover the judicial branch in the PRA, but it does remove the need for it to do so, and avoids disagreement over separation of powers issues which might lead to awkward litigation.

The decision to present the recommendation in the form of amendments to GR 31 as opposed to a new free standing rule was a decision of the Chair. Even with a free standing rule on administrative records, some amendments to GR 31 would be required. For purposes of understanding how the rules for various types of records interacted, the Chair believed it clearer to integrate. The Supreme Court may take a different approach without doing violence to the substance of the recommendation. The provisions of GR 31 regarding case records have not been changed.

The proposed rule would apply to all judicial agencies, not just courts. The rule lists those agencies. The listing was done for purposes of clarity during

review. It may not be desirable in the final rule to have such a list. The only controversy with respect to inclusion relates to the Washington State Bar Association as to its trade association functions. The WSBA has filed a minority report [Report, tab 6] explaining why it believes it should be excluded from the rule. A judicial officer is not an agency under the rule and is not separately subject to any disclosure request.

Judicial branch records are divided into three general categories: case records, chambers records, and administrative records. Case records continue to fall under existing rules (including appropriate sections of GR 31) and common law.

New rules are proposed for administrative records which have parallels in the PRA. They include the requirement to appoint a public records officer, procedures for making and responding to requests for records, public notice of that contact and procedure, disclosure/nondisclosure provisions, a listing of exemptions in addition to those falling under federal law, state law, and court rule, and the requirement for judicial entities to develop a public records policy. The rule includes an expedited appeals process and limited sanctions. The rule does not allow per diem fines available under the PRA.

Chambers records are a new category of records excluded from disclosure. This is an area of some controversy. Chambers records are neither case records nor administrative records. They are records of the judicial officer and staff, kept under chambers control. They are excluded from the rule to avoid intrusion into the judicial decision making function by virtue of review of those records. The intrusion would occur whether or not a record was ultimately subject to disclosure or not if the rule did not exclude them.

A. WORK GROUP REPORT
2. TEXT OF PROPOSED REVISION
OF GR31: ACCESS TO JUDICIAL
RECORDS

PROPOSED AMENDMENTS TO GR 31 FROM PUBLIC RECORDS WORK GROUP

SEPTEMBER 15, 2010

GR 31 ACCESS TO ~~COURT~~ JUDICIAL RECORDS

(a) Policy and Purpose. It is the policy of the ~~courts~~ judiciary to facilitate access to ~~court~~ judicial records as provided by article I, section 10 of the Washington State Constitution. Access to ~~court~~ judicial records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article 1, section 7 of the Washington State Constitution, restrictions in statutes, restrictions in court rules, and as required for the integrity of judicial decision-making. ~~and~~ Access shall not unduly burden the business of the ~~courts~~ judiciary.

[COMMENT: The work group expanded this provision so that it applies to all judicial records (not only case records) and all judicial agencies (not just courts).]

(b) Scope. This rule governs the right of public access to judicial records. This rule applies to all ~~court~~ judicial 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. ~~Administrative records are not within the scope of this rule. Court Case records are further governed by GR 22.~~

[COMMENT: The work group expanded this provision so that it applies to all judicial records, not just case records.]

(c) Application of Rule.

- (1) This rule applies to the following judicial agencies:
 - A. The Supreme Court and the Court of Appeals;
 - B. The superior, district, and municipal courts;
 - C. Board for Judicial Administration;
 - D. Administrative Office of the Courts;
 - E. Judicial Information System Committee;
 - F. Minority and Justice Commission;
 - G. Gender and Justice Commission;
 - H. Board for Court Education;

- I. Interpreter Commission;
- J. Certified Professional Guardian Board;
- K. Commission on Children in Foster Care;
- L. Washington State Pattern Jury Instruction Committee;
- M. Pattern Forms Committee;
- N. Court Management Council;
- O. Bench Bar Press Committee;
- P. Judicial Ethics Advisory Committee;
- Q. Office of Public Guardianship;
- R. Washington Center for Court Research;
- S. Office of Civil Legal Aid;
- T. Office of Public Defense;
- U. State Law Library;
- V. Washington State Bar Association;

[COMMENT: The work group debated the rule's application to the WSBA. The work group applied the Telford factors for determining which entities are the "functional equivalents" for public agencies under the Public Records Act. The Telford factors are (1) governmental function; (2) level of governmental funding; (3) extent of governmental involvement or regulation; and (4) creation by government. The work group concluded that the WSBA was the functional equivalent of a judicial agency for purposes of the proposed rule. The work group considered excluding from the scope of this rule the WSBA's functions as a trade organization (as opposed to its regulatory functions) but rejected this approach because the WSBA's dues are mandatory, making them similar to a government-imposed fee. Existing court rules on public access already address much of the Bar's regulatory activities; it is expected that the existing rules would cover much of the documents for WSBA's regulatory function.]

[A minority report has been filed by Bob Welden on behalf of the WSBA on this item. Minority reports are included earlier in the work group's report.]

- W. County clerk's offices with regard to their duties to the superior court and their custody of superior court records;

[COMMENT: In most counties, the county clerk is an independently elected position. The county clerk's office acts as the legal custodian of superior court records, and members of the office act under the supervision of judges in the courtroom, but the office also has duties that are outside the judicial arena. This rule would apply only with regard to the office's duties to the court and its records.]

- X. Superior Court Judges Association, District and Municipal Court Judges Association, and similar associations of judicial officers and employees.

[COMMENT: The work group debated whether these associations should be governed by this rule. Just as with the WSBA, the work group looked to the Telford factors and determined that these associations are the

"functional equivalent" of judicial agencies and thus should be covered by the rule.]

- Y. All other judicial entities that are overseen by a court, whether or not specifically identified in this section (c)(1); and
- Z. All subgroups of the entities listed above, including committees, task forces, commissions, boards, offices, and departments.

[COMMENT: The proposal includes a list of specific judicial agencies, along with catch-all provisions in subparagraphs (Y) and (Z). The work group took this approach to make sure there was no mistake as to the original intentions for the rule's scope. BJA and/or the Supreme Court will have the opportunity to replace the list with a more general definition of "judicial agency."]

- (2) This rule does not apply to the Commission on Judicial Conduct. The Commission is encouraged to incorporate any of the provisions in this rule as it deems appropriate.

[COMMENT: The Commission on Judicial Conduct is not governed by a court. The commission has a heightened need for maintaining independence from courts. It would be inappropriate to dictate to the commission its policies on public records.]

- (3) A judicial officer is not an agency.

[COMMENT: This provision protects judges and court commissioners from having to respond personally to public records requests. Records requests would instead go to the court's public records officer.]

- (4) A person or entity entrusted by a judicial agency with the storage and maintenance of its public records, whether part of a judicial agency or a third party, is not a judicial agency. Such person or entity may not respond to a request for access to judicial records, absent express written authority from the judicial agency or separate authority in rule or statute to grant access to the documents.

[COMMENT: Judicial e-mails and other documents sometimes reside on IT servers, some are in off-site physical storage facilities. This provision prohibits an entity that operates the IT server from disclosing judicial records. The entity is merely a bailee, holding the records on behalf of the judicial agency, rather than an owner of the records having independent authority to release them. Similarly, if a court puts its paper records in storage with another entity, the other entity cannot disclose the records. In either instance, it is the judicial agency that needs to make the decision as to releasing the records. The records request needs to be addressed by the judicial agency's public records officer, not by the person or entity having control over the IT server or the storage area. On the other hand, if the judicial agency archives its records with the state archivist, relinquishing its own authority as to disposition of the records, the archivist would have separate statutory authority to disclose the records.

(e) (d) Definitions.

(1) "Access" means the ability to view or obtain a copy of a court judicial record.

(2) "Administrative record" means ~~any record pertaining to the management, supervision or administration of the judicial branch, including any court, board, or committee appointed by or under the direction of any court or other entity within the judicial branch, or the office of any county clerk.~~ any public record created by or maintained by a judicial agency and related to the management, supervision, or administration of the agency.

[COMMENT: The Public Records Work Group has developed a list of categories of records maintained by judicial agencies. The list is annotated with the Work Group's expectation of whether such records are subject to disclosure. The list is found as an appendix to the work group's report. It is intended for illustrative purposes only.]

(3) "Bulk distribution" means distribution of all, or a significant subset, of the information in court case records, as is and without modification.

(4) "Court Case record" includes, but is not limited to: (i) Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding, and (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by the court that is related to a judicial proceeding. ~~Court Case record does not include data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers; administrative records; chambers records; or information gathered, maintained, or stored by a government agency or other entity to which the court has access but which is not entered into the record.~~

(5) (a) "Chambers record" means any writing that is created by or maintained by any judicial officer or chambers staff, and is maintained under chambers control, whether directly related to an official judicial proceeding or other chambers activities. "Chambers staff" means a judicial officer's law clerk and any other staff when providing support directly to the judicial officer at chambers.

(b) Chambers records are not public records. Case records and administrative records do not become chambers records merely because they are in the possession or custody of a judicial officer.

[COMMENT: Access to chambers records could necessitate a judicial officer having to review all records to protect against disclosing case sensitive information or other information that would intrude on the independence of judicial decision making. This would effectively make the judicial officer a de facto public records officer and could greatly interfere with judicial functions. Records may remain under chambers control even though they are physically stored elsewhere. However, records that are otherwise subject to disclosure should not be allowed to be moved into chambers control as a means of avoiding disclosure.]

(5) (6) "Criminal justice agencies" are government agencies that perform criminal justice functions pursuant to statute or executive order and that allocate a substantial part of their annual budget to those functions.

(6) (7) "Dissemination contract" means an agreement between a ~~court~~ case record provider and any person or entity, except a Washington State court (Supreme Court, court of appeals, superior court, district court or municipal court), that is provided ~~court~~ case records. The essential elements of a dissemination contract shall be promulgated by the JIS Committee.

(7) (8) "Judicial Information System (JIS) Committee" is the committee with oversight of the statewide judicial information system. The judicial information system is the automated, centralized, statewide information system that serves the state courts.

(8) (9) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(9) (10) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

(10) (11) "Public purpose agency" means governmental agencies included in the definition of "agency" in RCW 42.17.020 and other non-profit organizations whose principal function is to provide services to the public.

(12) "Public record" includes any writing, except chambers records, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any judicial agency regardless of physical form or characteristics.

COMMENT: The definition is adapted from the Public Records Act. The work group added the exception for chambers records, for consistency with other parts of the proposed rule.]

(13) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

[COMMENT: The definition is taken from the Public Records Act.]

~~(d)~~ (e) Access- Case Records.

(1) **Right of Access to Case Records.** The public shall have access to all ~~each~~ case records except as restricted by federal law, state law, court rule, court order, or case law.

~~(e)~~ (2) Personal Identifiers Omitted or Redacted from ~~Court~~ Case Records

~~(1)~~ (A) Except as otherwise provided in GR 22, parties shall not include, and if present shall redact, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the Court.

~~(A)~~ (1) Social Security Numbers. If the social security number of an individual must be included in a document, only the last four digits of that number shall be used.

~~(B)~~ (2) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document.

~~(C)~~ (3) Driver's License Numbers.

~~(2)~~ (B) 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.

COMMENT

This rule does not require any party, attorney, clerk, or judicial officer to redact information from a court case record that was filed prior to the adoption of this rule.

~~(f)~~ (3) Distribution of Court Case Records Not Publicly Accessible

~~(1)~~ (A) A public purpose agency may request court case records not publicly accessible for scholarly, governmental, or research purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. In order to grant such requests, the court or the Administrator for the Courts must:

~~(A)~~ (1) Consider: (i) the extent to which access will result in efficiencies in the operation of the judiciary; (ii) the extent to which access will fulfill a legislative mandate; (iii) the extent to which access will result in efficiencies in other parts of the justice system; and (iv) the risks created by permitting the access.

~~(B)~~ (2) Determine, in its discretion, that filling the request will not violate this rule.

~~(C)~~ (3) Determine the minimum access to restricted court case records necessary for the purpose is provided to the requestor.

~~(D)~~ (4) Assure that prior to the release of court case records under section ~~(f)~~ (1) ~~(e)~~(3)(A), the requestor has executed a dissemination contract that includes terms and conditions which: (i) require the requester to specify provisions for the secure protection of any data that is confidential; (ii) prohibit the disclosure of data in any form which identifies an individual; (iii) prohibit the copying, duplication, or dissemination of information or data provided other than for the stated purpose; and (iv) maintain a log of any distribution of court case records which will be open and available for audit by the court or the Administrator of the Courts. Any audit should verify that the court case records are being appropriately used and in a manner consistent with this rule.

~~(2)~~ (B) Courts, court employees, clerks and clerk employees, and the Commission on Judicial Conduct may access and use court case records only for the purpose of conducting official court business.

[COMMENT: The work group received a request from the Office of Public Defense to expand the provision above to address access by OPD and OCLA to case

records. The work group declined to incorporate this request, as it is beyond the scope of the work group's charge to address the public's access to judicial records.]

~~(3)~~ (C) Criminal justice agencies may request ~~court~~ case records not publicly accessible.

~~(A)~~ (1) The provider of ~~court~~ case records shall approve the access level and permitted use for classes of criminal justice agencies including, but not limited to, law enforcement, prosecutors, and corrections. An agency that is not included in a class may request access.

~~(B)~~ (2) Agencies requesting access under this section of the rule shall identify the ~~court~~ case records requested and the proposed use for the ~~court~~ records.

~~(C)~~ (3) Access by criminal justice agencies shall be governed by a dissemination contract. The contract shall: (i) specify the data to which access is granted; (ii) specify the uses which the agency will make of the data; and (iii) include the agency's agreement that its employees will access the data only for the uses specified.

~~(g)~~ (4) Bulk Distribution of ~~Court~~ Case Records

~~(1)~~(A) A dissemination contract and disclaimer approved by the JIS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of ~~court~~ case records.

~~(2)~~ (B) A request for bulk distribution of ~~court~~ case records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request.

~~(3)~~ (C) The use of ~~court~~ case records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the ~~court~~ case records is prohibited.

~~(h)~~ (5) Appeals Relating to JIS Records. Appeals of denials of access to JIS records maintained at state level shall be governed by the rules and policies established by the JIS Committee.

(f) (6) Notice. The Administrator for the Courts shall develop a method to notify the public of access to ~~court~~ case records and the restrictions on access.

(f) Administrative Records.

(1) Administrative Records—Right of Access.

A. The public has a right of access to all administrative records except as exempted by federal laws, state laws, this rule and other court rules, court orders, or case law.

The public has a right of access to judicial agency administrative records unless access is exempted or prohibited under this rule, other court rules, federal statutes, state statutes, court orders, or case law. To the extent that records access would be exempt or prohibited under the Public Records Act, Chapter 42.56 RCW, access is also exempt or prohibited under this rule. In addition, to the extent required to prevent a significant risk to individual privacy or safety, an agency shall delete identifying details in a manner consistent with this rule when it makes available or publishes any public record; however, in each instance, the justification for the deletion shall be provided fully in writing.

[COMMENT: The paragraph states that administrative records are open to public access unless an exemption or prohibition applies. The paragraph's final sentence allows agencies to redact information from documents based on significant risks to privacy or safety.]

B. In addition to exemptions referred to in paragraph (A) above, the following categories of administrative records are exempt from public access:

(1) Requests for judicial ethics opinions;

[COMMENT: This exemption was requested by the Judicial Ethics Advisory Committee.]

(2) Identity of writing assignment judges in the appellate courts prior to issuance of the opinion;

[COMMENT: This exemption was suggested by Judge Quinn Brintnall at a BJA meeting.]

(3) Minutes of meetings held by judges within a court;

[COMMENT: The work group discussed whether meeting minutes should be broadly exempted from public access, or whether some smaller subset of such minutes should be exempted. The work group voted in favor of the broad exemption; a minority report may be written on this point.]

(4) Evaluations and recommendations for candidates seeking appointment or employment within a judicial agency;

[COMMENT: Requested by the WSBA, with regard to evaluations and recommendations for judicial appointments. The provision has been broadened to cover similar documents maintained by other judicial agencies.]

- (5) Personal identifying information, including individuals' home contact information, Social Security numbers, driver's license numbers, and identification/security photographs;

[COMMENT: The exemption was requested by staff for the Office of Public Defense. The work group considered including private financial information in this provision, but ultimately concluded that financial information is already addressed in the Public Records Act's exemptions. The work group discussed whether dates of birth should be included here, but did not reach consensus.]

- (6) An attorney's request to a judicial agency for a trial or appellate court defense expert, investigator, or social worker, any report or findings submitted to the attorney or judicial agency by the expert, investigator, or social worker, and the invoicing and payment of the expert, investigator or social worker, but only during the pendency of the case;

[COMMENT: The exemption was requested by the Office of Public Defense.]

- (7) Documents, records, files, investigative notes and reports, including the complaint and the identity of the complainant, associated with a judicial agency's internal investigation of a complaint against the agency or its contractors during the course of the investigation. The outcome of the agency's investigation is not exempt.

[COMMENT: The exemption was requested by the Office of Public Defense.]

- (8) Manuals, policies, and procedures, developed by Bar staff, that are directly related to the performance of investigatory, disciplinary, or regulatory functions, except as may be specifically made public by court rule.

[COMMENT: The exemption was requested by the Washington State Bar Association.]

[COMMENT: The work group also received proposals for several additional exemptions, but decided against including them here. The proposals were to exempt:

- *Investigative records of regulatory or disciplinary agencies. (The work group lacked sufficient information about the variety of*

practices that the judicial agencies use in order to draft appropriate language.)

- Private financial information, including financial account numbers. (The work group determined that this information is already protected under the Public Records Act.)
- Dockets/index information for protected case types. (The work group determined that this information is already protected.)
- Copyrighted information. (The work group lacked sufficient information to draft appropriate language.)
- Testing/screening materials/results. (The work group determined that this information is already protected under the Public Records Act.)
- Performance measures for evaluating court processes. (The work group decided that this information should generally be open to public access, even if the information is subject to public misinterpretation.)

C. **Access to Juror Information.** Individual juror information, other than name, is presumed to be private. After the conclusion of a jury trial, the attorney for a party, or party pro se, or member of the public, may petition the trial court for access to individual juror information under the control of court. Upon a showing of good cause, the court may permit the petitioner to have access to relevant information. The court may require that juror information not be disclosed to other persons.

[COMMENT: This provision was moved here from later in the rule.]

D. **Access to Master Jury Source List.** Master jury source list information, other than name and address, is presumed to be private. Upon a showing of good cause, the court may permit a petitioner to have access to relevant information from the list. The court may require that the information not be disclosed to other persons.

[COMMENT: This provision was moved here from later in the rule.]

(2) Administrative Records—Process for Access.

A. Administrative Records—Procedures for Records Requests.

- (1) AGENCIES TO ADOPT PROCEDURES. Each judicial agency must adopt a policy implementing this rule and setting forth its procedures for accepting and responding to public records requests. The agency's policy must include the designation of a public records officer and must require that requests for access be submitted in writing to the agency's designated public records officer. Best

practices for handling public records requests shall be developed under the authority of the Board for Judicial Administration.

- (2) PUBLICATION OF PROCEDURES FOR REQUESTING PUBLIC RECORDS. Each judicial agency must prominently publish the procedures for requesting access to its records. If the agency has a website, the procedures must be included there. The publication shall include the public records officer's work mailing address, telephone number, fax number, and e-mail address.
- (3) INITIAL RESPONSE. Each judicial agency must initially respond to a written request for access to a public record within five working days of its receipt. The response shall acknowledge receipt of the request and include a good-faith estimate of the time needed to respond to the request. The estimate may be later revised, if necessary. For purposes of this rule, "working days" mean days that the judicial agency, including a part-time municipal court, is open.
- (4) COMMUNICATION WITH REQUESTER. Each judicial agency must communicate with the requester as necessary to clarify the records being requested. The agency may also communicate with the requester in an effort to determine if the requester's need would be better served with a response other than the one actually requested.
- (5) SUBSTANTIVE RESPONSE. Each judicial agency must respond to the substance of the records request within the timeframe specified in the agency's initial response to the request. If the agency is unable to fully comply in this timeframe, then the agency should comply to the extent practicable and provide a new good faith estimate for responding to the remainder of the request. If the agency does not fully satisfy the records request in the manner requested, the agency must justify in writing any deviation from the terms of the request.
- (6) EXTRAORDINARY REQUESTS LIMITED BY RESOURCE CONSTRAINTS. If a particular request is of a magnitude that the judicial agency cannot fully comply within a reasonable time due to constraints on the agency's time, resources, and personnel, the agency shall communicate this information to the requester. The agency must attempt to reach agreement with the requester as to narrowing the request to a more manageable scope and as to a timeframe for the agency's response, which may include a schedule of installment responses. If the agency and requester are unable to reach agreement, then the agency shall respond to

the extent practicable and inform the requester that the agency has completed its response.

B. Administrative Records--Review of Public Records Officer's Response.

- (1) NOTICE OF REVIEW PROCEDURES. The public officer's response to a public records request shall include a written summary of the procedures under which the requesting party may seek further review.
- (2) TIMELINE FOR SEEKING REVIEW. The timelines set forth in section (f)(2)(A) shall apply likewise to requests for review of the public records officer's response.
- (3) FURTHER REVIEW WITHIN AGENCY. Each agency shall provide a method for review by the agency's director or presiding judge. For an agency that is not a court, the presiding judge shall be the presiding judge of the court that oversees the agency. The agency may also establish intermediate levels of review. The agency shall make publicly available the applicable forms. The review proceeding is informal and summary. The review proceeding shall be held within five working days. If that is not reasonably possible, then within five working days the review shall be scheduled for the earliest practical date.

[COMMENT: The work group discussed whether the rule should authorize the director or the presiding chief judge to designate another person to handle these reviews. The work group did not reach agreement on this question.]

- (4) ALTERNATIVE REVIEW. As an alternative to review under section (f)(2)(B)(3), a requesting person may seek review by a person outside the judicial agency. If the judicial agency is a court or directly reportable to a court, the outside review shall be by a visiting judicial officer. If the judicial agency is not a court or directly reportable to a court, the outside review shall be by a person agreed upon by the requesting person and the judicial agency. In the event the requesting person and the judicial agency cannot agree upon a person, the presiding superior court judge in the county in which the judicial agency is located shall either conduct the review or appoint a person to conduct the review. The review proceeding shall be informal and summary. In order to choose this option, the requesting person must sign a written waiver of any further review of the decision by the person outside the judicial agency. The decision by the person outside the judicial agency is final and not appealable. Attorney fees and costs are not available under this option.

[COMMENT: The bifurcated procedures for review are intended to provide flexible, prompt, informal, and final procedures for review of public records decisions. The option for a visiting judge allows a requester to have the review heard by an outside decision-maker; in the interest of obtaining prompt, final decisions, a requester selecting this option would be required to waive further review. If the Legislature creates a new entity to review public records decisions made by agencies of the executive branch, then the work group recommends that the BJA consider using this entity for review of judicial records decisions as well.]

(5) REVIEW IN SUPERIOR COURT.

- i. A requester may seek superior court review of a decision made under section (f)(2)(B)(3). The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with section (f)(1) which exempts or prohibits disclosure in whole or in part of specific information or records. Judicial review of all agency actions shall be de novo. The superior court shall apply section (f)(1) of this rule in determining the accessibility of the requested documents. Any ambiguity in the application of section (f)(1) to the requested documents shall be resolved by analyzing access under the common law's public-access balancing test.

[COMMENT: The common law's balancing test is addressed in detail in Cowles Publishing v. Murphy, 96 Wn.2d 584 (1981), and Beuhler v. Small, 115 Wn.App. 914 (2003). Disclosure is balanced against whether it poses a significant risk to individual privacy or safety.]

- ii. The right of de novo review is not available to a requester who sought review under the alternative process set forth in section (f)(2)(b)(4).

(6) MONETARY SANCTIONS.

- i. In the de novo review proceeding under section (f)(2)(B)(5), the superior court may in its discretion award reasonable attorney fees and costs to a requesting party if the court finds that (1) the agency's response was deficient, (2) the requester specified the particular deficiency to the agency, and (3) the agency did not cure the deficiency.
- ii. Sanctions may be imposed against either party under CR 11, if warranted.
- iii. Except as provided in sections (6)(i) and (ii), a judicial agency may not be required to pay attorney fees, costs, civil penalties, or fines.

[COMMENT: The work group's recommendation is to initially limit the availability of monetary sanctions against judicial agencies. If the experience with this approach were to show that more significant sanctions are merited, then those could be added at an appropriate time. This approach was also used when the Public Records Act was also originally enacted; it makes sense to take the same approach with this rule. It may well be that the limited sanctions that would be available under this rule, coupled with the rule's creation of speedy review procedures, will be sufficient to ensure compliance without the imposition of additional sanctions.]

~~(2)~~ **(g) Judicial Records—Judicial Agency Rules.** Each court by action of a majority of the judges may from time to time make and amend local rules governing access to ~~court~~ judicial records not inconsistent with this rule. Each judicial agency may from time to time make and amend agency rules governing access to its judicial records not inconsistent with this rule.

~~(3)~~ **(h) Judicial Records—Charging of Fees.**

~~(1)~~ A fee may not be charged to view ~~court~~ judicial records at the courthouse.

~~(2)~~ A fee may be charged for the photocopying or scanning of judicial records. If another court rule or statute specifies the amount of the fee for a particular type of record, that rule or statute shall control. Otherwise, the amount of the fee may not exceed the amount that is authorized in the Public Records Act, Chapter 42.56 RCW.

~~(3)~~ The agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed within 30 days, the agency is not obligated to fulfill the balance of the request.

[COMMENT: Paragraph (3) above incorporates a modified version of the Public Records Act's "deposit and installments" language.]

(i) Effective Date of Amendment.

(a) The amendment expanding this rule beyond case records goes into effect on January 1, 2012, and applies to all public records requests submitted on or after that date.

[COMMENT: A rule adopted in early 2011 would usually have an effective date of September 1, 2011. The delayed effective date is intended to allow time for development of best practices and for training.]

(b) Until January 1, 2012, public access to judicial documents shall continue to be analyzed using the existing court rules and statutes, as applicable, and the common law balancing test. The Public Records Act, Chapter 42.56 RCW, may be used as non-binding guidelines.

[Adopted effective October 26, 2004; amended effective January 3, 2006.]

A. WORK GROUP REPORT
3. PROPOSED RULE ADOPTION /
IMPLEMENTATION TIMETABLE

**BOARD FOR JUDICIAL ADMINISTRATION (BJA)
PUBLIC RECORDS WORK GROUP**

TIME LINE / ACTIVITY PLAN

- *Supreme Court rules amendments adoption schedule in italics*

MONTH/YEAR	PAST ACTIVITY REPORT / FUTURE ACTIVITY TENTATIVE PLANS
2010 – October	<u>October 15th</u> <ul style="list-style-type: none"> • <i>Deadline for submitting proposed rule amendments to Supreme Court</i>
2010 – November	<u>Early November [or early December]</u> <ul style="list-style-type: none"> • <i>The Supreme Court Rules Committee reviews the proposal and recommends further action by the full Court. A week later, the Court meets en banc and reviews Rules Committee's recommendations. If the Court considers proposal ready for further consideration, then the Court orders the proposal be published for public comment in January</i>
2010 – December	<u>Early December [if not done early November]</u> <ul style="list-style-type: none"> • <i>The Supreme Court Rules Committee reviews the proposal and recommends further action by the full Court. A week later, the Court meets en banc and reviews Rules Committee's recommendations. If the Court considers proposal ready for further consideration, then the Court orders the proposal be published for public comment in January</i>
2011 – January	<u>January 3rd</u> <ul style="list-style-type: none"> • <i>Supreme Court publishes proposed Court Rule(s) for comment</i>
2011 – February	<u>February, Entire Month</u> <ul style="list-style-type: none"> • <i>Supreme Court holds public comment period for proposed Court Rule(s)</i>
2011 – April	<u>April 30th</u> <ul style="list-style-type: none"> • <i>Public comment period on proposed rules amendments closes</i>
2011 – May	<u>May TBD</u> <ul style="list-style-type: none"> • <i>The Supreme Court decides whether to adopt the proposed rule. If adopted, the rule is published a few weeks later</i>
2011 – June	<u>June TBD [If not done in May]</u> <ul style="list-style-type: none"> • <i>The Supreme Court decides whether to adopt the proposed rule. If adopted, the rule is published a few weeks later</i>
2012 - January	<u>January 1st</u> <ul style="list-style-type: none"> • <i>Adopted rule goes into effect</i>

Some steps in this Supreme Court Rules process can be short-cut, if the Court decides that it is appropriate. For example, the public comment period might be shortened to 30 days, especially if the proposal has already been well-circulated and input has already been received [however, the Court would be unlikely to eliminate the opportunity for a public comment period altogether for a proposal of this nature]. Or, the Court could choose to publish the proposal in December rather than January.

A. WORK GROUP REPORT
4. BEST PRACTICES / READINESS
RECOMMENDATIONS

**BOARD FOR JUDICIAL ADMINISTRATION (BJA)
PUBLIC RECORDS WORK GROUP
BEST PRACTICES / READINESS RECOMMENDATIONS**

Judicial agencies have a variety of individual practices for responding to requests for access to non-case records. The proposed rule would provide a standard for all agencies to operate under. Once the court rule is adopted the judiciary leadership will probably consider it important to facilitate an effort to educate and provide resources to the appropriate employees of our branch of the government, in order to:

- (1) Encourage a unified approach,
- (2) Demonstrate our branch's preparedness and commitment to transparency and openness in government,
- (3) Ease the process of implementation of the rule,
- (4) Decrease the likelihood of mistakes occurring, and
- (5) Ease the burden of living under the rule.

To assist them in beginning that process, we believe the following topics/issues may be appropriate ones for them to consider addressing:

Topic/Issue	Needs to be Addressed	Possible Suggestions, and Notes
Overall	<ul style="list-style-type: none"> • Need to ensure as seamless of an implementation as possible • Need to ensure oversight and sustainability on a long-term basis • Need to ensure PRO's gain general familiarization and knowledge of the concept, purpose and need for a process and procedure for public records disclosure (not necessarily judiciary related per se). Many PRO's may be very familiar with this general topic; others may be somewhat unfamiliar. 	<ul style="list-style-type: none"> • Prior to the effective date of the rule, a work group / task force should be appointed by the BJA and presented with a charge to develop practical best practice / readiness recommendations, produce and / or identify useful tools and resources. Act as a standby committee for oversight and monitor the implementation of the rule for the judicial branch for the first year of implementation. Recommend necessary amendments to the rule based on the oversight experience. • On a longer-term basis, the BJA, or a committee of the BJA, or some other central focal point, should be charged with overseeing the topic of judicial records requests and disclosure on a continuing (permanent) basis for the judicial branch. • In some manner, ensure employees of the judicial branch are familiar with resources available on the general topic of public records and how to access those resources [these could include but not be limited to: AG's quarterly PRO meetings and web site / materials; WAPRO membership, training / meetings, and web site / materials; state listserv; appropriate CLE seminars/workshops; WSBA Public Records Act Desk Book; and SofS Records/Archives Office training and web site/materials].

Topic/Issue	Needs to be Addressed	Possible Suggestions, and Notes
Training / Guidance - General	Need to ensure employees have general familiarization, orientation, and training regarding new rule.	<ul style="list-style-type: none"> • Suggest some sort of "rollout" - perhaps AOC Court Education section working with assigned professionals who work in public records to develop a training / educational program or programs to offer to various levels at various venues, for a period of time. This could potentially be online, DVD, video streaming, or some similar method or combination, as opposed to "live". Goal should be to keep simple and straightforward. • Needs to include historical (even political?) perspective of why/how this came about (How did the state judiciary get where we are now on this topic?) • Mentorship program?
Training / Guidance – Specific Technical Areas	<p>Need to ensure an understanding of technical aspects of rule, particularly those details that differ from the PRA or traditional approaches to records requests and fulfillment:</p> <ul style="list-style-type: none"> • Definitions of judicial categories of records (chambers records; court case files/court records; judicial administrative records), and exclusion of chambers records; • Public Records Officer (PRO) appointment guidance; • Public notifications (of PRO identification, procedures and court rule, when and how to perform, etc.); • Requests protocols and forms; • Response time; • Procedure for responding to public records requests (e.g. timeliness, clarifications, installments, denial, effective communications); • Appeals procedures - process and options for review and compliance (e.g. two-track approach; notice, how, when, to whom, presentation, result); and • Exemptions and redactions by federal law, state law (PRA, other statutes), and court rules, and use of common law right to privacy balancing test, as needed, to supplement. 	<ul style="list-style-type: none"> • In addition to general resources available to all PRO's / government entities (see first listed topic, above, third bullet) we likely need to develop materials, and potentially technical training, that goes beyond those resources in order to address the aspects of public records that are unique to the judicial branch. There are already a number of resources which have extensive research and draft work complete, including: <ul style="list-style-type: none"> ○ "List of PRA Potentially Relevant Exemptions" ○ "List of Other Statutes Potentially Relevant Exemptions" ○ "Master List of Judicial Records (with classifications)" ○ "Existing Laws Governing Public Access to Categories of Court Case Files" <p>A mechanism/process should be developed and implemented which will continue the research, modifications, and overall maintenance of these documents, as appropriate.</p> <ul style="list-style-type: none"> • As part of this technical training, break out each specific area of the rule that covers each specific area identified in bullets in second column; include the rule comments; and then add additional guidelines, as appropriate.

Topic/Issue	Needs to be Addressed	Possible Suggestions, and Notes
Resources Development	<p>Ensure judicial entities / public records officers have adequate materials resources to assist them in implementing their public records requests programs. Areas for which obtaining or developing guidelines, templates, and / or forms (beyond general training materials in above category) might include:</p> <ul style="list-style-type: none"> • Implementation guidance • Policies and procedures • Public Records requests forms • Public Records responses wording • Exemptions materials • Redactions materials 	<p>Resources development and/or dissemination could include:</p> <ul style="list-style-type: none"> • Guidelines on implementing a public records program • Sample policy/procedures template/model <p>Rule requires each judicial entity have a policy and procedures. Some currently may have such; some may not</p> <ul style="list-style-type: none"> • Sampling of policy/procedures from judicial entities and other government entities • Sample public records requests form templates <p>The rule requires requests be made in writing</p> <ul style="list-style-type: none"> • Sampling of public records requests forms from judicial entities and other government entities • Written guideline for individual judicial entities for selection of PRO <p>Rule requires each judicial entity have an appointed PRO. Some currently have such; some may not</p>
Exemptions & Redactions	<p>If utilizing BJA Public Records Work Group "Judicial Records Listing (Records Categories) with Disclosure Classifications" as guideline/assistance for judiciary, that document needs to be reviewed and periodically updated</p>	<ul style="list-style-type: none"> • Suggest BJA committee assigned oversight to do so OR suggest AOC assign someone to "own" the document and make periodic revisions. Either way, with an established method / authority to approve revisions • Same approach can be used for any other developed document we believe will be used on a routine basis by the judicial PRO's [see list of documents in #3, above]
Records management / retention / destruction	<p>Good records management / retention / destruction practices are essential for the development; implementation, and administration of a good public records requests / fulfillment program</p>	<p>Ensure judicial branch of the government is familiar with resources available on the general topic of records management, retention, and destruction, and how to access those resources (e.g. state listserv, CLE and other seminars / workshops, SofS Records / Archives Office training)</p> <ul style="list-style-type: none"> • Note: It is a matter of uncertainty as to whether the judicial branch is legally subject to 40.14 RCW – "Preservation and Destruction of Public Records Act", as there has not been, and there is unlikely to be, any significant case law developed in this area • Note: Many courts / counties are in very good shape from a technical and knowledge standpoint in this area
Individuals/organizations who have indicated a willingness to be members of a "BJA Best Practices Work Group"	WCOG (Toby Nixon), ADN (Rowland Thompson), WSBA (TBD), OPD (TBD), BCE (TBD), AWSCA (TBD), DMCMA (TBD)	

A. WORK GROUP REPORT
5. ROSTER OF WORK GROUP
MEMBERS AND ATTENDEES

BOARD FOR JUDICIAL ADMINISTRATION PUBLIC RECORDS ACT WORK GROUP

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Other Meeting Attendees/Participants	Affiliation
Mr. Jim Bamberger	Office of Civil Legal Aid
Ms. Jeri Cusimano	District and Municipal Court Management Association (replaced by Aimee Vance)
Mr. Doug Ende	Washington State Bar Association (replaced by Bob Welden)
Senator Adam Kline	Washington State Senate
Mr. Doug Klunder	American Civil Liberties Union
Ms. Kathy Kuriyama	Office of Public Defense

A. WORK GROUP REPORT

6. MINORITY REPORTS

**a. WSBA inclusion under the rule,
submitted by Robert Welden, WSBA**



WSBA

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Board of Judicial Administration Public Records Act Work Group

Minority Report of the Washington State Bar Association

September 14, 2010

ISSUE: The proposed amendments to General Rule 31 should not be made applicable to the Washington State Bar Association (WSBA). Records disclosure of WSBA activities and functions is already regulated by court rules and by the WSBA Bylaws.

At the Work Group meeting held on August 20, 2010, a motion was made to remove the WSBA from the applicable entities in the draft GR 31. The motion failed to get a majority vote. Voting in favor of the motion were the Honorable Marlin Applewick, Jeff Hall, Kristal Wiitala, and Bob Welden.

DISCUSSION:

1. The proposed amendments to GR 31 should not be made applicable to the Washington State Bar Association.

The mandatory Washington State Bar Association was established in June 1933 by enactment of the State Bar Act, RCW 2.48.¹ As early as December of that year, the Washington Supreme Court held that it alone had the inherent power to disbar lawyers. The Court has consistently held that, in the regulation of the practice of law, it has the sole and inherent authority to act. See, *The Washington State Bar Association v. The State of Washington*, where the Court held "The ultimate power to regulate court-related functions, including the administration of the Bar Association, belongs exclusively to this court."² Applying the factors set forth in *Telford v. Board of Comm'rs*, 95 Wn.2d 149 (1999), ((1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by government) leads to the conclusion that the WSBA

¹ The Washington State Bar Association was first established as the Washington Bar Association in 1888 as a voluntary organization.

² 125 Wn.2d 901, 909, 890 P.2d 1047 (1995).

and the boards and committees it administers should be excluded from application of General Rule (GR) 31.

(1) Functions of the WSBA: The purposes and activities of the WSBA are set forth in GR 12.1. They include a broad range of regulatory and professional activities.

Regulatory Functions: The WSBA acts as an arm of the Supreme Court in administering the admission process, the annual licensing of lawyers, and conducting investigations and hearings into disciplinary grievances. "Respondent [WSBA] further expressly recognizes in its brief that 'it is, at least in part, an arm of this court . . .'"³

However, the WSBA can only *recommend* to the Supreme Court those bar applicants who seek admission; can only *recommend* to the Supreme Court the suspension of lawyers' licenses for failure to pay their annual fees or otherwise comply with the annual registration; and can only *recommend* to the Supreme Court the disciplinary sanctions of suspension or disbarment. All of these regulatory functions are established by court rules, most of which include a records disclosure/confidentiality provision:

- Bar admission – Admission to Practice Rules (APR) 1-5, 7
 - Law Clerk Program – APR 6
 - Special admissions – APR 8
 - Legal Interns – APR 9
 - Mandatory continuing legal education – APR 11
 - Limited Practice Officers – APR 12
 - Limited Practice Officers Enforcement – Rules for Enforcement of Limited Practice Officer Conduct (ELPOC)
 - Foreign Law Consultants – APR 14
 - Lawyers' Fund for Client Protection – APR 15
 - Reciprocal admission – APR 18
 - Lawyers' Assistance Program – APR 19(b)
 - Law Office Management Assistance Program – APR 19(d)
 - Professional Responsibility Program – APR 19(e)
 - Character and Fitness Board – APR 20-25
 - Disciplinary Board, disciplinary investigation, disciplinary proceedings – Rules for Enforcement of Lawyer Conduct (ELC)
 - Practice of Law Board – General Rule (GR) 25
- **Non-Regulatory Functions:** In addition to these regulatory functions, the WSBA serves as a trade association. It produces continuing legal education programs and publishes desk books and other materials related to the practice of law. It publishes the monthly *Bar News*. WSBA offers services to

³ *Graham v. Bar Association*, 86 Wn.2d 624, 631, 548 P.2d 310 (1976). See also, *In re Levy*, 23 Wn.2d 607, 619 (1945); *in re Schatz*, 80 Wn.2d 604, 607 (1972); *Wilson v. Board of Bar Examiners*, 90 Wn.2d 649, 657 (1978).

lawyers through the Law Office Management Assistance Program and the Lawyer's Assistance Program. It supports 27 Sections which provide forums for members to pursue their interests in various areas of the law. It supports the Young Lawyers Division, the Council on Public Legal Education, the Council on Public Defense, the Access to Justice Board and several standing committees of the bar. It employs a lobbyist to advocate on behalf of legal issues of interest to the Bar and judiciary and on behalf of Sections.

(2) Funding of the WSBA: The WSBA receives no public funding. As the Supreme Court has noted:

It is important to keep in mind . . . that the Bar Association does not receive any appropriation from the Legislature or any other public body. It is funded entirely by mandatory membership licensing fees and various user fees, including continuing legal education (CLE) revenues, bar examination fees, practice section dues and *Washington State Bar News* advertising revenues.⁴

The draft budget for FY 2011 shows projected revenue for the WSBA General Fund of about \$17,000,000 in addition to CLE revenue of nearly \$3,000,000. The bulk of General Fund revenue is from admission and licensing fees. These are not taxes but licensing fees that are charged for the protection of the public. Most of the fees related to regulatory functions are approved by the Supreme Court. The WSBA's operating budget is approved by the Board of Governors pursuant to GR 12.1(b)(22).

Employee Benefits: The WSBA offers a wide range of employee benefits, including group insurance programs, which includes life insurance, long-term care insurance, long-term disability insurance, industrial insurance (workers' compensation), social security and Medicare insurance, and unemployment insurance all paid for by the WSBA and, in some instances, with contributions from employees. The WSBA provides employees with paid sick leave, holidays, vacations, etc.

Although WSBA employees are not state employees, the WSBA pays the employer's contribution into the State of Washington medical and dental plans. WSBA employees are also required to participate in the Washington State Public Employees' Retirement System into which the WSBA pays the employer's contribution. And WSBA employees may participate in the state deferred compensation program. A 1994 memorandum from the Office of the Attorney General noted that the WSBA participates in the retirement and health care programs as a "political subdivision" and, as to participation in the deferred compensation program, "the most likely interpretation of the pertinent statutes is that the WSBA employees are not state employees within the meaning of RCW 41.04.250 and .260. Their eligibility, consistent with their eligibility for other employee benefits, is that of an employee of a political subdivision."

⁴ *State Bar Association v. State of Washington*, 125 Wn.2d 901, 907; 890 P.2d 1047 (1995)..

(3) The Extent of Government Involvement or Regulation: As noted above, the WSBA as a mandatory bar was originally established by legislation, but the Supreme Court has made clear that it has the sole and inherent authority to regulate the bar, which is done by court rules. See, e.g., GR 12.1, Washington State Bar Association: Purposes.

(4) Whether the Entity was Created by Government: See above.

Records Disclosure: The WSBA bylaws include a lengthy article on records disclosure and preservation. Attached is that portion of the bylaws with some proposed amendments currently under consideration by the Board of Governors.

Conclusion: The fact that the WSBA performs some regulatory functions as an arm of the Supreme Court, but in most instances only with the direct approval of the Court by entry of court orders, receives no public funds, is governed by volunteers elected to the Board of Governors, and also functions as a professional trade association, makes the WSBA different from most other judicial agencies listed in the current draft of GR 31. It has its own bylaw on records disclosure which is consistent with the proposed amendments to GR 31. For these reasons, GR 31 should not be made applicable to the WSBA

XIV. RECORDS DISCLOSURE & PRESERVATION

A. Given the important role of the attorney in society and the Bar's singular authority over the provision and providers of legal services, the Bar is committed to maintaining its records in a manner that makes them as open and available to its members and the public as is reasonably possible. Through such openness, the Bar intends to make information available to the people of Washington that will allow them to become informed about matters regarding the provision of legal services and other topics falling under the Bar's authority.

B. The Bar, in accordance with published rules, shall make available for its members and/or public inspection and copying all Bar records, unless the record falls within the specific exemptions of these bylaws or is made confidential by the Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct, the Admission to Practice Rules, the Rules for Enforcement of Limited Practice Officer Conduct, GR 25, or any other applicable statute or rule. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by these bylaws or the above-referenced rules or statutes, the Bar shall delete identifying details in a manner consistent with those rules when it makes available or publishes any Bar record; however, in each case, the justification for the deletion shall be explained fully in writing.

1. The Bar shall establish, maintain, and make available for its members and/or public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of Bar records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.
2. No fee shall be charged for the inspection of Bar records. No fee shall be charged for locating Bar records or documents and making them available for copying unless the request entails a substantial use of staff time to locate and gather the documents. In no event may the Bar charge a per page cost greater than an actual per page cost established by the Bar.
3. The Bar shall not distinguish among persons requesting records and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate a statute, court order, or rule which exempts or prohibits disclosure of specific information or records to certain persons. Bar facilities shall be made available to any person for the copying of Bar records except when and to the extent that this would unreasonably disrupt the operations of the Bar. The Bar shall honor requests received by mail for identifiable Bar records unless exempted by provisions of these bylaws or other rules.
4. Bar records shall be available for inspection and copying during the customary office hours of the Bar.
5. a.—The following are exempt from public inspection and copying:

(1a) Personal information in files maintained for employees, appointees, or elected officials of the Bar to the extent that disclosure would violate their right to privacy.

(2b) Specific information, records, or documents relating to lawyer or Limited Practice Officer discipline that is not expressly classified as public information or confidential information by court rule.

(3c) Information revealing the identity of persons who have assisted a Bar investigation or filed grievances or complaints with the Bar, if disclosure would endanger any person's life, physical safety, or property.

(4d) Test questions, scoring keys, and other examination data used by the Bar to administer a license, employment, or academic examination.

(5e) The contents of real estate appraisals made by the Bar relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(6f) Valuable formulae, designs, drawings, and research data obtained by the Bar within five years of the request for disclosure when disclosure would produce private gain and loss to the Bar.

(7g) Preliminary or intra-Bar memoranda, notes, and e-mails, and other documents in which recommendations or opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when referenced during an open meeting or cited by the Bar in connection with any of its actions.

(h) Manuals, policies, and procedures, developed by Bar staff, that are directly related to the performance of investigatory, disciplinary, or regulatory functions, except as may be specifically made public by court rule;

(9i) Applications for employment with the Bar, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(10j) The residential addresses and residential telephone numbers of Bar employees or volunteers which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(11k) Information that identifies a person who, while a Bar employee:

(1a) Seeks advice, under an informal process established by the Bar, in order to ascertain his or her rights in connection with a potentially discriminatory or unfair employment practice; and

(2b) requests his or her identity or any identifying information not be disclosed.

(12l) Membership information; however

(1) status, business addresses, business telephones, facsimile numbers, electronic mail addresses (unless the member has requested that it not be made public), bar number, and dates of admission, shall not be exempt, provided that, for reasons of personal security or other compelling reason, the Executive Director may, on an annual basis, approve the confidentiality of any such information; and

(2) age information may be used as a criterion for eligibility for membership in a WSBA division or section, but only when used in conjunction with year of admission.

- (13m) Applications for admission to the Bar and related records;
- (14n) Information which would identify bar examiners responsible for writing and/or grading specific bar exam questions;
- (15o) Proceedings and records of the Board of Bar Examiners;
- (16p) Proceedings and records of the Law Clerk Board, including information, records, or documents received or compiled that relate to any application for admission to the Law Clerk program, or to the retention of any current participant in the Law Clerk program;
- (17q) Proceedings and records of the Practice of Law Board, including information, records, or documents received or compiled regarding the investigation, or potential investigation, of any incident or alleged incident of the unauthorized practice of law;
- (18r) Proceedings and records of the Character and Fitness Board, including information, records, or documents received or compiled that relate to any application for admission, special admission, special licensing, or change of membership status or class, except where those proceedings are specifically made public by court rule;
- (19s) Records relating to requests by members for ethics opinions to the extent that they contain information identifying the member or a party to the inquiry,
- (20t) Proceedings and records of the Judicial Recommendation Committee,
- (21u) Records and proceedings of any Fee Arbitration Program, Mediation Program, or other alternative dispute resolution program which may be administered by the Bar,
- (22v) Records and proceedings of the Personnel and Awards Committees,
- (23w) Records and proceedings of the Hearing Officer Selection Panel, except as made public by the Panel;
- (24x) Personnel records of Bar employees, whether permanent, temporary, or contract, except for information relating to compensation for job classifications, verifying periods of employment or, when specifically requested, the Executive Director's current annual compensation; and
- (25y) Any other documents or records made confidential by statute, court rule, or court order.

- b- The above exempted information will be redacted from the specific records sought. Statistical information not descriptive of any readily identifiable person or persons will be disclosed.
6. Responses to requests for Bar records shall be made promptly by the Bar. In acknowledging receipt of a records request that is unclear, the Bar may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the Bar need not respond to it. Denials of requests must be accompanied by a written statement of the specific reasons therefor.
 7. Whenever the Executive Director concludes that a Bar record is exempt from disclosure and denies a person opportunity to inspect or copy such record for that

reason, the person may appeal that decision to the Board of Governors. The Board of Governors shall provide the person with its written opinion on whether the record is exempt.

8. The disclosure of information under this section should not violate an individual's right to privacy by amounting to a disclosure of information about that person that 1) would be highly offensive to a reasonable person, or 2) is not of legitimate concern to the public.
9. Nothing in this section shall be construed to require publication in the Washington Administrative Code or the maintenance of indexes of records.

A. WORK GROUP REPORT

6. MINORITY REPORTS

b. Protection of record subject interests in records requests, submitted by Doug Klunder, ACLU



To: Board of Judicial Administration
Date: September 13, 2010
Re: Protection of record subject interests in records requests

When public records, including judicial administrative records, contain personal information about individuals, there are three parties with potential interests in those records: a member of the public who requests the records, the agency that controls the records, and the subject of the records. In some cases the interests of two or more parties may be allied, but in other cases each party has its own distinct interests.

The Public Records Act (PRA), Chapter 42.56 RCW, recognizes each of these interests. It is, of course, focused on the interests of a requester, since the entire purpose of the PRA is to effectuate a right of public access to public records. It recognizes the interests of the agency both by ensuring that access procedures do not impede the efficient operations of the agency, and by exempting certain types of information when disclosure of that information would interfere with the agency's work. The interests of record subjects are most clearly recognized in the variety of exemptions from public disclosure for various types of personal information.

The proposed changes to GR 31 largely mimic the PRA in this regard, recognizing the three different interests. Similarly, the procedures for requesters and judicial agencies to enforce their rights are much the same under the proposed rule as the PRA, including the initial agency determination, an intra-agency appeal, an arbitration process, and review by the courts. (Arbitration is a new addition; the PRA does not currently provide for arbitration, but there have been legislative proposals to add arbitration to the PRA as well.)

There is one area, however, in which the proposed rule falls short: providing a procedure for subjects of records to enforce their rights. There is no procedure for a subject to find out their records have been requested, and no opportunity for a subject to present his or her interests even if the subject does discover a request has occurred. The PRA, in contrast, allows agencies to notify subjects, RCW 42.56.520 and .540, and allows a subject to move for an injunction against disclosure, RCW 42.56.540.

We believe that similar procedures should be incorporated in the draft rule. Without those procedures, record subjects can only hope that judicial agencies will defend their interests. Considering that judicial agencies face potential liability (in the form of attorney fees and costs) for nondisclosure, and face no penalty whatever for disclosing records, it may be a slim hope indeed. This is especially true when the personal information requested falls into a grey area, where reasonable people may disagree about whether the information is covered by one of the exemptions from disclosure.

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JESSE WING
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

We therefore suggest the following additions to the proposed rule:

Sec. (f)(2)(A)(7) NOTICE TO RECORD SUBJECTS. Unless otherwise required or prohibited by law, a judicial agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested.

Sec. (f)(2)(B)(6) RIGHTS OF RECORD SUBJECTS. A person who is named in a requested record, or to whom the record specifically pertains, has a right, but not an obligation, to initiate review of an agency decision to disclose the requested record under sections (f)(2)(B)(3)-(5), or to participate as a party in any review initiated by a requester under sections (f)(2)(B)(3)-(5). If either the record subject or the record requester objects to alternative review under section (f)(2)(B)(4), such alternative review shall not be available.

Thank you for your consideration of this additional language to protect the interests of record subjects.

Sincerely,

A handwritten signature in cursive script that reads "Doug Klunder". The signature is written in black ink and is positioned centrally below the word "Sincerely,".

Doug Klunder
Privacy Counsel

A. WORK GROUP REPORT

6. MINORITY REPORTS

c. Protection of privacy in records requests, submitted by Doug Klunder, ACLU



To: Board of Judicial Administration
Date: September 14, 2010
Re: Protection of privacy in records requests

The American Civil Liberties Union of Washington (ACLU) welcomes this opportunity to comment on privacy provisions in the proposed amendments to GR 31. We are a statewide, non-partisan, non-profit organization with over 20,000 members, dedicated to the preservation and defense of constitutional and civil liberties. One of those civil liberties is the right of access to information about our government, necessary to allow public oversight of government workings. Another civil liberty is the right to personal privacy, and the right to control the dissemination of information about one's private life. The ACLU has advanced both of these liberties, participating in numerous cases involving the Public Records Act (PRA) as *amicus curiae*, as counsel to parties, and as a party itself. In addition to litigation, the ACLU has participated in legislative and rule-making procedures surrounding access to a wide variety of public records.

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Most of the time there is no conflict between these liberties. Indeed, open access to government documents is necessary to ensure that the government respects the privacy guaranteed to and demanded by its constituents. When government maintains personal information, however, disclosure of that information may violate individuals' privacy. When the PRA was passed by initiative in 1972, the voters specifically stated that the purpose was to assure "full access to information concerning the conduct of government" and that access must be "mindful of the right of individuals to privacy." By this reasoning, personal information that does not advance the oversight of government conduct should not be disclosed to the public.

The Washington Supreme Court properly recognized this close to 25 years ago, and established a balancing test for personal information, permitting nondisclosure of public records if the privacy interest in those records outweighs the public interest in disclosure. *In re Rosier*, 105 Wn.2d 606, 717 P.2d 1353 (1986). This test is similar to those prescribed by the Court for determining whether court proceedings and records should be available to the public. *Cowles Publishing Co. v. Murphy*, 96 Wn.2d 584, 637 P.2d 966 (1981); *Seattle Times v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982).

Regrettably, the Legislature chose to amend the PRA in response to *Rosier*, and eliminated both the generalized privacy exemption and the balancing test used to evaluate privacy interests. Laws of 1987, ch. 403 (now codified as RCW 42.56.050). It is quite possible that this legislative amendment has contributed to the proliferation of exemptions added to the PRA over the past 25 years—since there is no longer a generalized privacy exemption, the Legislature has been forced to regularly add specific exemptions when it becomes aware of new types of personal information maintained in public records.

Protection of personal privacy has thus become a cumbersome and haphazard process. In order for the Legislature to act to protect personal information, it must first learn that such information exists in public records, which typically happens only when some individual, agency, or advocacy organization is successful in catching the Legislature's attention.¹ And, of course, even when the Legislature is aware of the existence of personal information (and the need to protect it), passage of a bill is subject to the vagaries of politics and competing priorities. The result is that it may be years before any particular personal information is protected, quite often long after such information has been released to a requester and the damage has already been done.

The ACLU therefore urges the judicial system not to follow the example of the current PRA with respect to privacy as it considers adoption of a rule governing access to judicial administrative records. Instead, the rule should recognize the privacy-protective spirit of the original initiative enacted by the people, and follow the judicial tradition of balancing privacy interests against the public interest in disclosure. It must be remembered that "the basic purpose and policy of [public access to records] is to allow public scrutiny of government, rather than to promote scrutiny of particular individuals who are unrelated to any governmental operation." *Rosier*, 105 Wn.2d at 611.

There are at least two ways the proposed rule could incorporate a balancing test for personal information. Language could be added to section (f)(1)(A), to ensure that the redaction provision is a substantive provision rather than merely procedural. A better solution, however would be the creation of a new subsection in section (f)(1) We suggest the following language:

PROTECTION OF PERSONAL PRIVACY. The basic purpose and policy of public access to judicial agency administrative records is to allow public scrutiny of government, rather than to promote scrutiny of particular individuals who are unrelated to any governmental operation. Consistent with Article 1, Section 7 of the Washington State Constitution, and in order to protect personal privacy, a judicial agency need not allow access to information in administrative records when the personal privacy interest in that information outweighs the public interest in disclosure, whether or not the information is explicitly covered by an exemption in paragraphs (A) and (B) above. Consistent with paragraph (A), access must be provided to the remaining portions of the administrative records, with only as much information deleted as is necessary to protect personal privacy.

Adoption of such a provision would ensure that personal privacy remains protected even when the need arises for new personal information to be collected or maintained by a judicial agency. And it would avoid the need for frequent updating of the court

¹ There is no proactive mechanism for the Legislature to discover what personal information is held by government agencies and determine whether that information should be protected from public disclosure. The Legislature has so far declined to order a survey of personal information in state-held records, let alone in records held by local governments. *See, e.g.*, Senate Bill 5869 (2007).

rule, which involves a process even more cumbersome than legislative amendments to the PRA.

Thank you for your consideration of this additional language to protect the privacy interests of record subjects.

Sincerely,

A handwritten signature in black ink that reads "Doug Klunder". The signature is written in a cursive, flowing style with a large initial "D".

Doug Klunder
Privacy Counsel

A. WORK GROUP REPORT

6. MINORITY REPORTS

**d. Concerns regarding
implementation and administration
impacts on small courts, submitted
by Marti Maxwell, AWSCA**

Bates, Charles

From: BJA Public Records Act Work Group [BJAPRA@LISTSERV.COURTS.WA.GOV] on behalf of Marti Maxwell [maxwellm@CO.THURSTON.WA.US]
Sent: Tuesday, September 14, 2010 3:12 PM
To: BJAPRA@LISTSERV.COURTS.WA.GOV
Subject: [BJAPRA]

Ladies and Gentlemen:

I continue to have concerns about the burden this rule change will have on the limited and general jurisdiction courts - especially small courts where there is only one judge and the 'administrator' is likely to be the court reporter. I am most troubled that we cannot follow other states and exempt judicial officer and employee communications, particularly intra-court e-mail. I foresee misuse of the rule to intimidate judicial officers and employees. I wonder what will happen in small jurisdictions when a judge is trying a case and a party or parties start PRA requests - will the judicial officer have to recuse? Lastly, this will be a significant financial hardship for already underfunded courts.

Marti Maxwell, Administrator
Superior Court of Washington
For Thurston County
2000 Lakeridge Drive SW
Olympia, WA 98502

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A. WORK GROUP REPORT
6. MINORITY REPORTS
**e. Objections & Dissent to
Proposed Revisions, submitted by
Rowland Thompson, ADNW**

OBJECTIONS & DISSENT TO PROPOSED REVISIONS (Sept. 10, 2010) TO GR 31

Board for Judicial Administration Public Records Act Work Group

By Allied Daily Newspapers of Washington

The purpose of this brief report is to articulate several of the major concerns of Allied Daily Newspaper of Washington (ADNW) in regards to the proposed revisions to GR 31, and to explain the general reasoning of several of its additions to those revisions provided to the Work Group on September 13, 2010. In doing so, ADNW first acknowledges that the vast majority of the Work Group's proposed revisions are to the public's benefit. Specifically, this is because many of the additions are reflective of the fact that Article I, Section 10 of the Washington State Constitution provides the constitutional basis for broad access to all aspects of judicial administration, and that such access should not be limited absent compelling and overriding interests to the counter. ADNW particularly approves of the proposed procedural mechanisms for seeking review of a judicial agency's decision to deny access to requested administrative records, including the multiple alternate avenues for seeking such review, and the substantive requirements placed upon judicial agencies to justify any assertion of an exemption or prohibition on disclosure.

However, there are several areas in which ADNW disagrees with the proposed revisions, most of which are already articulated in the ADNW's edited version of the Work Group's September 10, 2010 revisions provided on September 13, 2010, and seeks here to elaborate on the content of those comments.

A. Article I, Section 10

Because they color and guide the entirety of GR 31 and the proposed revisions, some of the fundamental principles of Article 1, Section 10 of the Washington State Constitution, should be articulated as a threshold matter.

Under Article I, Section 10 of the Washington State Constitution, "[j]ustice in all cases shall be administered openly." This provision is mandatory. State v. Duckett, 141 Wn. App. 797, 804, 173 P.3d 948 (2007) (citation omitted). The provision has been interpreted to mean that the public and the press have a right of access to judicial proceedings and court documents—in both civil and criminal cases. Dreiling v. Jain, 151 Wn.2d 900, 908, 915, 93 P.3d 861 (2004) ("[T]he policy reasons for granting public access to criminal proceedings apply to civil cases as well.... These policies relate to the public's right to monitor the functioning of our

courts, thereby insuring quality, honesty and respect for our legal system.”) (citation omitted); **see also** ADNW v. Eikenberry, 121 Wn.2d 205, 211, 848 P.2d 1258 (1993) (affirming that “it is the right of the people to access open courts where they may freely observe the administration of civil and criminal justice”); **see also** Federated Publ’n Inc. v. Kurtz, 94 Wn.2d 51, 60, 615 P.2d 440 (1980) (Article I, Section 10 applies to all judicial proceedings).

The strong policy and rationale behind the public’s constitutional right to open court proceedings and records has been repeatedly recognized by the Washington and United States Supreme Courts. The United States Supreme Court articulated the general policy behind keeping courts open:

The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.

Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 508 (1984) (“Press-Enterprise I”) (citation omitted); **see also** Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 604 (1980) (Blackmun, J., concurring) (“[T]he public has an intense need and a deserved need to know about the administration of justice in general; about the prosecution of local crimes in particular; about the conduct of the judge, the prosecutor, defense counsel, other public servants, and *all the actors in the judicial arena...*”) (emphasis added) (citation omitted). Further, absence of public scrutiny “breed[s] suspicion of prejudice and arbitrariness, which in turn spawns disrespect for the law[.]” *Id.* at 595 (Brennan, J., concurring). This policy has been echoed by the Washington State Supreme Court:

The open operation of our courts is of utmost public importance. Justice must be conducted openly to foster the public’s understanding and trust in our judicial system and to give judges the check of public scrutiny. Secrecy fosters mistrust. This openness is a vital part of our constitution and our history. The right of the public, including the press, to access trials and court records may be limited only to protect significant interests and any limitation must be carefully considered and specifically justified.

Dreiling, 151 Wn.2d at 903-04; **see also** Federated Publication, 94 Wn.2d at 66 (“[T]he judiciary must preserve the public right of access to proceedings to the maximum extent possible.”) (Utter, C.J., concurring and dissenting).

B. Policy and Purpose of GR 31

In ADNW's comments accompanying its proposed revisions to the September 10, 2010 version of the revised GR 31, it noted that it is essential that the policy and purpose provision of GR 31 explicitly articulate the text of Article I, Section 10, and the scope of Section 10's protections of the public's right to access all judicial records. Most important, it must be noted within the revised GR 31 that the public's constitutional protections to its right to access extend beyond only case records held by an actual court, see above, but also to all the administration records of those judicial agencies.

There is a dearth of case law within Washington regarding the scope of the prior GR 31, and the vast majority of cases discussing the scope of Article I, Section 10 is relegated to discussing sealing court records and keeping court proceedings open under the five-part test established in Seattle Times v. Ishikawa, 97 Wn.2d 30, 37, 640 P.2d 716 (1982). Because of this, it is imperative that the purpose of policy section of the revised GR 31 clearly articulates that the rule is simply the mechanism by which the public can assert its constitutional interest in accessing judicial records, that the rule itself is not the source of this right to access, and that the scope of the public's interest in the judicial process is not limited to only case records.

The language of Article I, Section 10 specifically refers to the "*administration of justice*", and there is no indication from case law or other interpretation of the provision that the public does not have a constitutional interest in accessing the entirety of the judicial process as a general principle—which necessarily implicates the dozens of judicial agencies that serve their respective roles in allowing this process to function. See Cowles Publ'g. Co. v. Murphy, 96 Wn.2d 584, 637 P.2d 966 (1981) ("Although the informed public concept is generally associated with the legislative and executive branches, it is equally true of those involved in the judicial process."). All of the judicial agencies articulated in the revised GR 31, are all publicly-financed, or require mandatory dues or fees, and are all instrumental in their own way to the judicial process in general—that a judicial agency is not a court should not be dispositive as to the extent to which the public can monitor the activities of agency it subsidizes, even through statutorily created mandatory membership.

C. Incorporation of PRA Principles

While ADNW believes that the incorporation of certain aspects of the Public Records Act ("PRA"), ch. 42.56 RCW, is crucial to the proposed revisions to GR 31, particularly in regards to informing the procedural aspects of the judicial review section, it must be noted that it has concerns that the limitations of the PRA will inappropriately be applied to the public's constitutional right of access to judicial records.

Many of ADNW's comments specifically add provisions of the PRA or adopt applicable provisions from the PRA's Model Rules, see WAC 44-14. In reality, many of the requirements placed upon agencies under the PRA translate directly to help ensure the public's constitutional access to records under GR 31, such as the narrow interpretation of exemptions, the policy of broad disclosure, the placing of the burden on the agency to justify any withholding or redaction of requested judicial records, the requirement on agencies to provide timely and written notice to requestors where appropriate, and the requirement that agencies give explicit reasons for the actions it takes, etc.

As indicated by ADNW's suggested additions to subsection (f)(2), the most important area in which the PRA, particularly its Model Rules, provides substantive guidance to the proposed GR 31 is in the provisions articulating the public's access to the administrative records retained by a given judicial agency. Specifically, in the "substantive response" section regarding how a judicial agency is to respond to a request for administrative judicial records, multiple provisions from the Model Rules are appropriate for incorporation to guide both requestors and also judicial agencies. ADNW's proposed additions reflect this fact.

This is especially important in this instance because of the aforementioned dearth of case law (which will be even more bereft in the years following these revisions to GR 31) and also because of the ambiguity within the PRA itself as to how particular provisions apply in practice; in other words, without the guidance of the Model Rules, there are several issues that would otherwise be unaddressed in total. In the interest of expediting the public's access to such records, and in the interest of avoiding litigation that would be both needless and costly to everyone, it would serve all parties best by including as much guidance as feasibly possible within the provisions themselves to avoid any ambiguity.¹ ADNW anticipates that the vast majority of its proposed additions on this issue will not be considered controversial, such as the requirement that the agency make an "objectively reasonable" search for the requested records, or that the judicial agency provide electronic judicial records in electronic format if so requested, or to what extent a judicial agency may charge a requestor for the copying of the records they retain. There is no discernable justification to deviate from the PRA and its attendant interpretations on these topics, especially when many are designed to benefit both the requestor and the agency.

¹ This need for clarity is addressed throughout ADNW's comments to the proposed revision of GR 31, and not only in the section addressed in the text. Avoiding ambiguity is of paramount importance in the drafting of any rule or statute, and using plain and specific language will best facilitate the will of the rule-making body in adopting the rule or statute. See, e.g., Wash. State Dept. of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002) (when the language within statutes is plain and unambiguous, it must be presumed that the language within them reflects the intent of the Legislature).

In fact, several of the proposed revisions provided by ADNW tend to favor the interests of judicial agencies, including the proposed addition allowing the agency to abandon the records request if the requestor fails to clarify or fails to timely inspect the responsive records on the specified date(s). Such provisions, adapted from corollary provisions within the PRA and its Model Rules, are reflective that requestors too have some minimal obligations in seeking their records, and to the greatest extent possible, that judicial agency resources will not be wasted in responding to a requestor that has been less than diligent in accessing their records.

However, any revised rule must acknowledge that there is a crucial distinction between the basis for GR 31 and the PRA. Language within the revised GR 31 must be unambiguous that the public's right of access to judicial records is constitutional in nature, and therefore necessarily broader in scope and more protected than the public's *statutory* right to access agency records under the PRA. As it stands now, the proposed revisions have a clause indicating that the PRA may be used as non-binding guidance in interpreting GR 31, which makes sense in most circumstances.

More problematic is the proposed provision (struck by ADNW) that incorporates all of the PRA's exemptions and prohibitions into the new GR 31. Automatic incorporation of all the PRA's exemptions, which the Legislature specifically adopted as to agency public records and *not* judicial records, is inappropriate and premature here. There must be a distinction made within GR 31 between using the PRA as guidance (*i.e.*, the fact that a category of record or information is exempt under the PRA may be *persuasive evidence* that access may be limited or denied under GR 31) and automatically adopting each of the over 300 exemptions and prohibitions either written or incorporated into the PRA.

In other words, the express exemptions already listed in the proposed GR 31 as to judicial administrative records, and the generally-applicable exemptions for personal identifying information, should be sufficient until and unless the Supreme Court modifies GR 31 to expressly incorporate more exemptions, or all of the PRA's exemptions. At this point, it would be premature and inconsistent with Article I, Section 10's presumption of openness to judicial records to presume that all of the PRA's exemptions should be adopted without further debate and reasoned analysis from the proper deciding body.

D. "Common Law Balancing Test"

One of the more troubling additions to the proposed revisions to GR 31 is the suggested implementation of the "common law balancing test" in deciding the application of exemptions to administrative judicial agency records. First of all, the "common law" route of access described in **Cowles Publ'g v. Murphy**, 96 Wn.2d 584, 637 P.2d 966 (1981) and later in **Beuhler v. Small**, 115 Wn. App. 914, 64 P.3d 78 (2003) is separate from that afforded by Article I,

Section 10—both of those cases clearly distinguish between the two. As recognized in federal cases cited in Cowles, the “common law” right of access is largely derived from the First Amendment to the U.S. Constitution, and *not* the law that actually controls these issues in Washington, which is unquestionably more broad. See Cowles Publ’g., 96 Wn.2d at 588 (citing Nixon v. Warner Communications, Inc., 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978)).

Moreover, reliance on the ambiguous “safety and well-being” dicta from Cowles is further made inapplicable here because the Court was specifically discussing how disclosure of the disputed *criminal* records (including search warrants and affidavits from witnesses) “may discourage informants from providing information out of fear for their safety and well-being.” 96 Wn.2d at 590. In other words, the language from Cowles was not establishing any kind of substantive balancing test, but was instead articulating several general reasons against disclosure in a scenario similar to the one before it—reasons that are now subsumed under the five-part constitutional test from Ishikawa, decided two years after Cowles. Related to this point, ADNW has adapted language from the Ishikawa test (“serious and imminent” risk) into the privacy consideration under the “right of access” section for the administrative records held by judicial agencies. Further, the Court in Cowles was discussing a specific category of records that obviously carry a higher inherent risk of putting an individual in physical danger if released in an unredacted form—such a presumption is not present with the vast majority of the administrative judicial agency records to which this “balancing test” would apply.² Additionally, the “balancing test” from Cowles is worded very ambiguously, carrying with it a risk of swallowing the presumption of openness if adopted, and it seeks to protect things explicitly addressed in other sections of the revised GR 31—this makes adoption of the rule not only inappropriate, but also superfluous.

There is thus no basis in law to adopt as a “balancing test” the dicta from Cowles, which was not applied in that case as a test of any kind, was later supplanted by Ishikawa, and addressed a category of records covered by different standards than the judicial agency administrative records addressed in the revised GR 31.

ADNW hopes that this report has provided some guidance and explanation for most of the comments it made to the proposed revision of GR 31. Again, many of the proposed additions are deserving of praise, and will provide additional mechanisms to help ensure the public’s constitutional right to access judicial records if implemented.

² ADNW notes also that the case records at issue in Cowles were ordered disclosed. See Cowles Publ’g., 96 Wn.2d at 590 (“The public’s interest in an open legal process convinces us that our judicial process is best served by ordering that these records should be available to the public.”).

DRAFT
SEPTEMBER 10, 2010

The most recent changes, which incorporate the work group's decisions from the September 8th meeting, are shown in a blue font.

Shown in yellow highlighting are two issues that the work group still needs to address via the listserv:

- *the common law test on pages 9 and 11, and*
- *a new proposal from the Bar for an exemption on page 10.*

GR 31 ACCESS TO COURT JUDICIAL RECORDS

(a) Policy and Purpose. It is the policy of the courts judiciary to facilitate access to court judicial records as provided by Article I, Section 10 of the Washington State Constitution, which mandates that "[j]ustice in all cases be administered openly". This policy applies to both civil and criminal cases. Strict enforcement of this policy is fundamental to ensuring quality, honesty, and respect for all aspects of the judiciary. Access to court judicial records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article 1, section 7 of the Washington State Constitution. ~~Restrictions derived from statutes and restrictions in court rules, shall also apply and as required for the integrity of judicial decision making.~~ These restrictions and the exemptions described herein shall be narrowly construed, with the burden on the judicial agency to demonstrate that any such restriction or exemption justifies any infringement on the access to judicial records, and Any exemption or restriction on access to a judicial record is inapplicable to the extent that the exempt or restricted information may be redacted. Access shall not unduly burden the business of the courts judiciary.

[COMMENT: The work group expanded this provision so that it applies to all judicial records (not only case records) and all judicial agencies (not just courts).]

(b) Scope. This rule governs the right of public access to judicial records, including case records, and must be read within the context of Article I, Section 10 of the Washington State Constitution. This rule applies to all court judicial 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

Comment [A1]: This sentence is a paraphrasing of quoted language from *Dreiling v. Jain*, 151 Wn.2d 900, 915, 93 P.3d 861 (2004) (citation omitted).

Comment [A2]: "[T]he integrity" language was struck because such an ambiguous statement invites an exception that may swallow the general rule.

Comment [A3]: This language was largely derived from the Public Records Act, at RCW 42.56.030.

Comment [A4]: Aside from the explicit exemptions regarding certain categories of judicial records, the only generally applicable restriction is that for private identifying information—using the PRA's language from RCW 42.56.210(1) is appropriate to clarify that the presence of such identifying information cannot justify a total denial to access.

Comment [A5]: It should be made clear that Article I, Section 10's policy is the underlying principle to the access to all judicial records and court proceedings.

record. Administrative records are not within the scope of this rule. Court Case records are further governed by GR 15 and GR 22.

[COMMENT: The work group expanded this provision so that it applies to all judicial records, not just case records.]

Comment [A6]: A reference to GR 15 is necessary for clarity's sake.

(c) Application of Rule.

(1) ~~This rule applies to the following judicial agencies:~~

- A. ~~The Supreme Court and the Court of Appeals;~~
- B. ~~The superior, district, and municipal courts;~~
- C. ~~Board for Judicial Administration;~~
- D. ~~Administrative Office of the Courts;~~
- E. ~~Judicial Information System Committee;~~
- F. ~~Minority and Justice Commission;~~
- G. ~~Gender and Justice Commission;~~
- H. ~~Board for Court Education;~~
- I. ~~Interpreter Commission;~~
- J. ~~Certified Professional Guardian Board;~~
- K. ~~Commission on Children in Foster Care;~~
- L. ~~Washington State Pattern Jury Instruction Committee;~~
- M. ~~Pattern Forms Committee;~~
- N. ~~Court Management Council;~~
- O. ~~Bench Bar Press Committee;~~
- P. ~~Judicial Ethics Advisory Committee;~~
- Q. ~~Office of Public Guardianship;~~
- R. ~~Washington Center for Court Research;~~
- S. ~~Office of Civil Legal Aid;~~
- T. ~~Office of Public Defense;~~
- U. ~~State Law Library;~~
- V. ~~Washington State Bar Association;~~

Comment [A7]: The list of judicial agencies was moved into the "Definition" section, at part (d), since any list of judicial agencies in the "Application" section could be read to be exclusive, as opposed to a non-exclusive list of examples.

~~*[COMMENT: The work group debated the rule's application to the WSBA. The work group applied the Telford factors for determining which entities are the "functional equivalents" for public agencies under the Public Records Act. The Telford factors are (1) governmental function; (2) level of governmental funding; (3) extent of governmental involvement or regulation; and (4) creation by government. The work group concluded that the WSBA was the functional equivalent of a judicial agency for purposes of the proposed rule. The work group considered excluding from the scope of this rule the WSBA's functions as a trade organization (as opposed to its regulatory functions) but rejected this approach because the WSBA's dues are mandatory, making them similar to a government-imposed fee. Existing court rules on public access already address much*~~

~~of the Bar's regulatory activities; it is expected that the existing rules would cover much of the documents for WSBA's regulatory function.]~~

~~A minority report has been filed by Bob Welden on behalf of the WSBA on this item. Minority reports are included earlier in the work group's report.]~~

- W. ~~County clerk's offices with regard to their duties to the superior court and their custody of superior court records;~~

~~[COMMENT: In most counties, the county clerk is an independently elected position. The county clerk's office acts as the legal custodian of superior court records, and members of the office act under the supervision of judges in the courtroom, but the office also has duties that are outside the judicial arena. This rule would apply only with regard to the office's duties to the court and its records.]~~

- X. ~~Superior Court Judges Association, District and Municipal Court Judges Association, and similar associations of judicial officers and employees;~~

~~[COMMENT: The work group debated whether these associations should be governed by this rule. Just as with the WSBA, the work group looked to the Taft factors and determined that these associations are the "functional equivalent" of judicial agencies and thus should be covered by the rule.]~~

- Y. ~~All other judicial entities that are overseen by a court, whether or not specifically identified in this section (c)(1); and~~

- Z. ~~All subgroups of the entities listed above, including committees, task forces, commissions, boards, offices, and departments;~~

~~[COMMENT: The proposal includes a list of specific judicial agencies, along with catch-all provisions in subparagraphs (Y) and (Z). The work group took this approach to make sure there was no mistake as to the original intentions for the rule's scope. BJA and/or the Supreme Court will have the opportunity to replace the list with a more general definition of "judicial agency."]~~

(2) This rule applies to all judicial agencies.

(-2)(3) This rule does not apply to the Commission on Judicial Conduct. The Commission is encouraged to incorporate any of the provisions in this rule as it deems appropriate.

~~[COMMENT: The Commission on Judicial Conduct is not governed by a court. The commission has a heightened need for maintaining independence from courts. It would be inappropriate to dictate to the commission its policies on public records.]~~

Comment [A8]: This provision should include reference to WAC 292-10-020, which states in part, "All Commission public records are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 2.64.111 and 42.17.310."

(-3)(4) A judicial officer is not an agency. Record requests shall be directed to the designated public records officer of the judicial agency.

~~[COMMENT: This provision protects judges and court commissioners from having to respond personally to public records requests. Records requests would instead go to the court's public records officer.]~~

(4)(5) A person or entity contracted entrusted by a judicial agency with the storage and maintenance of its public records, whether part of a judicial agency or a third party, is not a judicial agency. Such person or entity may not respond to a request for access to judicial records, absent express written authority from the judicial agency, or separate authority in rule or statute to grant access to the documents.

Comment [A9]: "Entrusted" implies a delegation of power or authority, when in reality these third parties are simply contracted to be housing bodies for the public records of a judicial entity.

[COMMENT: Judicial e-mails and other documents sometimes reside on IT servers, some are in off-site physical storage facilities. This provision prohibits an entity that operates the IT server from disclosing judicial records. The entity is merely a bailee, holding the records on behalf of the judicial agency, rather than an owner of the records having independent authority to release them. Similarly, if a court puts its paper records in storage with another entity, the other entity cannot disclose the records. In either instance, it is the judicial agency that needs to make the decision as to releasing the records. The records request needs to be addressed by the judicial agency's public records officer, not by the person or entity having control over the IT server or the storage area. On the other hand, if the judicial agency archives its records with the state archivist, relinquishing its own authority as to disposition of the records, the archivist would have separate statutory authority to disclose the records.]

(e) (d) Definitions.

(1) "Access" means the ability to view or obtain a copy of a ~~court~~ judicial record.

(2) "Administrative record" means any record pertaining to the management, supervision or administration of the judicial branch, including any court, board, or committee appointed by or under the direction of any court or other entity within the judicial branch, or the office of any county clerk. any public record created by or maintained by a judicial agency or subgroup of a judicial agency and related to the management, supervision, or administration of the agency.

[COMMENT: The Public Records Work Group has developed a list of categories of records maintained by judicial agencies. The list is annotated with the Work Group's expectation of whether such records are subject to disclosure. The list is found as an appendix to the work group's report. It is intended for illustrative purposes only.]

(3) "Bulk distribution" means distribution of all, or a significant subset, of the information in ~~court~~ case records, as is and without modification.

(4) "~~Court~~ Case record" includes, but is not limited to: (i) Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding, and (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created

or prepared by the court that is related to a judicial proceeding. ~~Court Case~~ record does not include ~~data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers;~~ administrative records as defined by (d)(2) of this section; chambers records as defined by (5)(a) of this section; or information gathered, maintained, or stored by a government agency or other entity to which the court has access but which is not entered into the record.

~~(5)(6)~~ (a) "Chambers record" means any writing that is created by or maintained by any judicial officer or chambers staff, and is maintained solely within under the judicial officer's chambers control, whether directly related to an official judicial proceeding or other chambers activities, and whether physically stored outside of chambers.

"Chambers staff" means a judicial officer's law clerk, judicial intern, judicial extern, and any other staff that when providing support directly to the judicial officer at chambers.

Comment [A10]: Clarity was needed to ensure that this definition is extremely narrow.

Comment [A11]: The rule needs to make clear that the records need to be uniformly under the power of the chambers, but do not need to be physically located within a judicial officer's chambers to be considered "chambers records."

(b) Chambers records are not public records. Case records and administrative records do not become chambers records merely because they are in the possession or custody of a judicial officer or the staff of that officer's chambers. Records that would otherwise be subject to disclosure as administrative records are not immune from public disclosure by reason of being placed solely under the control of a judicial officer or the staff of that officer's chambers.

[COMMENT: Access to chambers records could necessitate a judicial officer having to review all records to protect against disclosing case sensitive information or other information that would intrude on the independence of judicial decision making. This would effectively make the judicial officer a de facto public records officer and could greatly interfere with judicial functions. Records may remain under chambers control even though they are physically stored elsewhere. However, records that are otherwise subject to disclosure should not be allowed to be moved into chambers control as a means of avoiding disclosure.]

~~(5)~~ (6) "Criminal justice agencies" are government agencies that perform criminal justice functions pursuant to statute or executive order and that allocate a substantial part of their annual budget to those functions.

~~(6)~~ (7) "Dissemination contract" means an agreement between a ~~court~~ case record provider and any person or entity, except a Washington State court (Supreme Court, court of appeals, superior court, district court or municipal court), that is provided ~~court~~ case records. The essential elements of a dissemination contract shall be promulgated by the JIS Committee.

(7) (8) "Judicial Information System (JIS) Committee" is the committee with oversight of the statewide judicial information system. The judicial information system is the automated, centralized, statewide information system that serves the state courts.

(8) (9) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

~~(10) This rule applies to the following judicial agencies:~~ "Judicial agency" means an office, board, commission, or other similar entity that is that serves an administrative function for a court. A task force, committee, work group, or sub-group created by a court or judge is a "judicial agency". Judicial agencies include, but are not limited to:

- AA. The Supreme Court and the Court of Appeals;
- BB. The superior, district, and municipal courts;
- CC. Board for Judicial Administration;
- DD. Administrative Office of the Courts;
- EE. Judicial Information System Committee;
- FF. Minority and Justice Commission;
- GG. Gender and Justice Commission;
- HH. Board for Court Education;
- II. Interpreter Commission;
- JJ. Certified Professional Guardian Board;
- KK. Commission on Children in Foster Care;
- LL. Washington State Pattern Jury Instruction Committee;
- MM. Pattern Forms Committee;
- NN. Court Management Council;
- OO. Bench Bar Press Committee;
- PP. Judicial Ethics Advisory Committee;
- QQ. Office of Public Guardianship;
- RR. Washington Center for Court Research;
- SS. Office of Civil Legal Aid;
- TT. Office of Public Defense;
- UU. State Law Library;
- VV. Washington State Bar Association;

Comment [A12]: Although the Supreme Court will likely modify this general definition, this definition should be sufficient.

[COMMENT: The work group debated the rule's application to the WSBA. The work group applied the Telford factors for determining which entities are the "functional equivalents" for public agencies under the Public Records Act. The Telford factors are (1) governmental function; (2) level of governmental funding; (3) extent of governmental involvement or

regulation; and (4) creation by government. The work group concluded that the WSBA was the functional equivalent of a judicial agency for purposes of the proposed rule. The work group considered excluding from the scope of this rule the WSBA's functions as a trade organization (as opposed to its regulatory functions) but rejected this approach because the WSBA's dues are mandatory, making them similar to a government-imposed fee. Existing court rules on public access already address much of the Bar's regulatory activities; it is expected that the existing rules would cover much of the documents for WSBA's regulatory function.]

[A minority report has been filed by Bob Welden on behalf of the WSBA on this item. Minority reports are included earlier in the work group's report.]

WW. County clerk's offices with regard to their duties to the superior court and their custody of superior judicial court records;

[COMMENT: In most counties, the county clerk is an independently elected position. The county clerk's office acts as the legal custodian of superior court records, and members of the office act under the supervision of judges in the courtroom, but the office also has duties that are outside the judicial arena. This rule would apply only with regard to the office's duties to the court and its records.]

Comment [A13]: This was for clarification that the rule applies to Municipal and District courts as well.

XX. Superior Court Judges Association, District and Municipal Court Judges Association, and similar associations of judicial officers and employees.

[COMMENT: The work group debated whether these associations should be governed by this rule. Just as with the WSBA, the work group looked to the Telford factors and determined that these associations are the "functional equivalent" of judicial agencies and thus should be covered by the rule.]

YY. All other judicial entities that are overseen by a court or serve as a functional equivalent, whether or not specifically identified in this section (d)(10)(e)(4); and

ZZ. All subgroups of the entities listed above, including but not limited to committees, task forces, commissions, boards, offices, work groups, and departments. This includes the subgroups of entities that serve as the functional equivalent of a judicial agency.

Comment [A14]: This incorporates the language from Telford v. Thurston County Bd. of Comm'rs, 95 Wn. App. 149, 974 P.2d 886 (1999).

[COMMENT: The proposal includes a list of specific judicial agencies, along with catch-all provisions in subparagraphs (Y) and (Z). The work group took this approach to make sure there was no mistake as to the original intentions for the rule's scope. BJA and/or the Supreme Court will have the opportunity to replace the list with a more general definition of "judicial agency."]

(9) (10) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

~~(10)~~ (11) "Public purpose agency" means governmental agencies included in the definition of "agency" in RCW 42.17.020~~(2)~~ and other non-profit organizations whose principal function is to provide services to the public.

(12) "Public record" includes any writing, except chambers records, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any judicial agency regardless of physical form or characteristics. A public record may be considered "used" by the judicial agency even if it does not physically possess the record. Electronic records may be public records, including the metadata of such electronic public records.

COMMENT: The definition is adapted from the Public Records Act. The work group added the exception for chambers records, for consistency with other parts of the proposed rule.]

Comment [A15]: These additions to the definition of "public record" are based on PRA case law and the Model Rules, and are not controversial.

(13) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated. An email, including the metadata embedded within the email in its native form, constitutes a writing.

[COMMENT: The definition is taken from the Public Records Act.]

Comment [A16]: See prior Comment.

~~(d)~~ **(e) Access- Case Records.**

(1) **Right of Access to Case Records.** The public shall have access to all court case records except as restricted by federal law, state law, court rule, or court order, or case law.

Comment [A17]: "Case law" is ambiguous, as it could denote a trial court opinion or something less than a published appellate decision. If case law is to remain part of this provision, elaboration on what case law means should be included.

~~(e)~~ **(2) Personal Identifiers Omitted or Redacted from Court Case Records**

~~(4)~~ **(A)** Except as otherwise provided in GR 22, parties shall not include, and if present shall redact, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the Court.

~~(A)~~ (1) Social Security Numbers. If the social security number of an individual must be included in a document, only the last four digits of that number shall be used.

~~(B)~~ (2) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document.

~~(C)~~ (3) Driver's License Numbers.

(2) (B) 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, but the party that filed the pleading has the primary obligation to correct any failure to redact the specified identifying information. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion. To redact the above personal identifying information, whether in the original filing or upon motion of any party, a party does not need to comply with GR 15.

COMMENT

This rule does not require any party, attorney, clerk, or judicial officer to redact information from a court case record that was filed prior to the adoption of this rule.

Comment [A18]: GR 15 applies to all court records, but clarification is needed that these specific categories of information are an exception to the procedures of GR 15, which in most instances requires also compliance with the constitutional sealing and redaction test from Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982).

(f) (3) Distribution of Court Case Records Not Publicly Accessible

~~(1)~~ (A) A public purpose agency may request court case records not publicly accessible for scholarly, governmental, or research purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. In order to grant such requests, the court or the Administrator for the Courts must:

~~(A)~~ (1) Consider: (i) the extent to which access will result in efficiencies in the operation of the judiciary; (ii) the extent to which access will fulfill a legislative mandate; (iii) the extent to which access will result in efficiencies in other parts of the justice system; and (iv) the risks created by permitting the access.

~~(B)~~ (2) Determine, in its discretion, that filling the request will not violate this rule.

~~(C)~~ (3) Determine the minimum access to restricted ~~court~~ case records necessary for the purpose is provided to the requestor.

~~(D)~~ (4) Assure that prior to the release of ~~court~~ case records under section ~~(f) (1)~~ ~~(e)(3)(A)~~, the requestor has executed a dissemination contract that includes terms and conditions which: (i) require the requester to specify provisions for the secure protection of any data that is confidential; (ii) prohibit the disclosure of data in any form which identifies an individual; (iii) prohibit the copying, duplication, or dissemination of information or data provided other than for the stated purpose; and (iv) maintain a log of any distribution of ~~court~~ case records which will be open and available for audit by the court or the Administrator of the Courts. Any audit should verify that the ~~court~~ case records are being appropriately used and in a manner consistent with this rule.

~~(2)~~ (B) Courts, court employees, clerks and clerk employees, and the Commission on Judicial Conduct may access and use ~~court~~ case records only for the purpose of conducting official court business.

[COMMENT: The work group received a request from the Office of Public Defense to expand the provision above to address access by OPD and OCLA to case records. The work declined to incorporate this request, as it is beyond the scope of the work group's charge to address the public's access to judicial records.]

~~(3)~~ (C) Criminal justice agencies may request ~~court~~ case records not publicly accessible.

~~(A)~~ (1) The provider of ~~court~~ case records shall approve the access level and permitted use for classes of criminal justice agencies including, but not limited to, law enforcement, prosecutors, and corrections. An agency that is not included in a class may request access.

~~(B)~~ (2) Agencies requesting access under this section of the rule shall identify the ~~court~~ case records requested and the proposed use for the ~~court~~ records.

~~(C)~~ (3) Access by criminal justice agencies shall be governed by a dissemination contract. The contract shall: (i) specify the data to which access is granted; (ii) specify the uses which the agency will make of the data; and (iii) include the agency's agreement that its employees will access the data only for the uses specified.

~~(g)~~ **(4) Bulk Distribution of Court Case Records**

~~(1)~~ (A) A dissemination contract and disclaimer approved by the JIS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of ~~court~~ case records.

~~(2)~~ (B) A request for bulk distribution of ~~court~~ case records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request.

~~(3)~~ (C) The use of ~~court~~ case records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the ~~court~~ case records is prohibited.

~~(h)~~ **(5) Appeals Relating to JIS Records.** Appeals of denials of access to JIS records maintained at state level shall be governed by the rules and policies established by the JIS Committee.

~~(i)~~ **(6) Notice.** The Administrator for the Courts shall develop a method to notify the public of access to ~~court~~ case records and the restrictions on access.

(f) Administrative Records.

(1) Administrative Records—Right of Access.

A. ~~The public has a right of access to all administrative records except as exempted by federal laws, state laws, this rule and other court rules, court orders, or case law.~~

The public has a right of access to judicial agency administrative records unless access is exempted or prohibited under this rule, other court rules, federal statutes, state statutes, or court orders, or case law. The public's right to the open administration of justice under Article I, Section 10 of the Washington State Constitution is not limited to actual case records, but all judicial records of judicial agencies. To the extent that access would be exempt or prohibited under the Public Records Act, Chapter 42.56 RCW, access is also exempt or prohibited under this rule. This rule is to be liberally construed in favor of access to the requestor, and all restrictions to access are to be narrowly construed. To the extent required to prevent an unreasonable invasion of personal privacy interests a significant serious and imminent risk to individual privacy or safety or vital government interests, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each instance, the justification for the deletion shall be timely provided fully in writing to the requestor of the judicial agency's administrative records. Any exemption or restriction on access to a administrative record is inapplicable to the extent that the exempt or restricted information may be redacted. Any internal policy or regulation regarding the disclosure or non-disclosure of administrative records adopted previous or subsequent to the adoption of this rule must be consistent with the provisions herein.

Comment [A19]: The public's access to judicial records is constitutional in nature, and the restrictions to access under the PRA, while construed narrowly, should not be controlling.

Comment [A20]: The "serious and imminent" language is derived from Ishikawa, supra.

Comment [A21]: Much of this is adapted from corollary rules within the PRA, specifically RCW 42.56.210(1).

[COMMENT FOR WORK GROUP: The rationale for this change is set forth in yellow highlighting on page 11.]

B. In addition to exemptions referred to in paragraph (A) above, the following categories of administrative records or information contained therein are exempt from public access:

Comment [A22]: This was added because "[i]dentity of writing assignment judges" is not a category of record but a category of information.

(1) Requests for judicial ethics opinions;

[COMMENT: This item was requested by the Judicial Ethics Advisory Committee.]

(2) Identity of writing assignment judges in the appellate courts prior to issuance of the opinion;

[COMMENT: The exemption was suggested by Judge Quinn Brintnall at a BJA meeting.]

(3) Minutes of meetings held by judges within a court to the extent release of the minutes would unreasonably endanger the integrity of the decision-making process;

[COMMENT: The work group discussed whether meeting minutes should be broadly exempted from public access, or whether some smaller subset of such minutes should be exempted. The work group voted in favor of the broad exemption; a minority report may be written on this point.]

Comment [A23]: "Minutes of meetings" is a broad exemption, and needs a modifying clause.

[NOTE TO WORK GROUP: We switched the order of exemptions (3) and (5), so that court-related exemptions are kept together.]

(4) Evaluations and recommendations for candidates seeking appointment or employment within a judicial agency, but only to the extent that redaction of any identifying information would be insufficient to protect the integrity of the appointment or hiring process;

[COMMENT: Requested by the WSBA, with regard to evaluations and recommendations for judicial appointments. The provision has been broadened to cover similar documents maintained by other judicial agencies.]

Comment [A24]: This comment is related to the previous one, where some kind of modification is necessary to prevent this exemption from being overbroad and applicable to records that should not be exempt.

(5) Personal identifying information, including individuals' home contact information, financial account numbers, Social Security numbers, driver's license numbers, and identification/security photographs;

[COMMENT: Requested by staff for the Office of Public Defense. The work group considered including private financial information in this provision, but ultimately concluded that financial information is already addressed in

the Public Records Act's exemptions. The work group discussed whether dates of birth should be included here, but did not reach consensus.

(6) An attorney's request, in a criminal prosecution, to a judicial agency for a trial or appellate court defense expert, investigator, or social worker, any report or findings submitted to the attorney or judicial agency by the expert, investigator, or social worker, and the invoicing and payment of the expert, investigator or social worker, but only until the time of entry of the judgment and sentence in that proceeding, unless a written waiver is obtained from the requesting attorney;

[COMMENT: Was requested by the Office of Public Defense.]

Comment [A25]: The language as it was originally presumed the reader was aware this only applies to criminal cases, but it should be clear.

(7) Documents, records, files, investigative notes and reports, including the complaint and the identity of the complainant, associated with a judicial agency's internal investigation of a complaint against the agency or its contractors during the course of the investigation. This exemption does not apply to such records upon conclusion of the internal investigation within the judicial agency, nor any records related to the outcome of any such investigation. The outcome of the agency's investigation is not exempt.

[COMMENT: Was requested by the Office of Public Defense.]

Comment [A26]: Much of this additional language is derived from the PRA and its attendant case law, specifically related to RCW 42.56.240(1).

(8) Manuals, policies, and procedures, developed by Bar staff, that are directly related to the performance of investigatory, disciplinary, or regulatory functions, except as may be specifically made public by court rule.

[COMMENT FOR WORK GROUP: The Bar has renewed its request to include this proposed exemption in the rule. The Bar's other proposals for exemptions have been withdrawn. The work group needs to decide whether to include this exemption.]

Comment [A27]: This rule is written too broadly and should either be stricken or modified in the same manner that others above were. It is understandable that the WSBA would like to maintain some control over how misbehavior is detected and pursued, but as it stands, the exemption almost certainly encompasses records that do not implicate such things.

[COMMENT: The work group also received proposals for several additional exemptions, but decided against including them here. The proposals were to exempt:

- Investigative records of regulatory or disciplinary agencies. (The work group lacked sufficient information about the variety of practices that the judicial agencies use in order to draft appropriate language.)
- Private financial information, including financial account numbers. (The work group determined that this information is already protected under the Public Records Act.)
- Dockets/index information for protected case types. (The work group determined that this information is already protected.)

- Copyrighted information. (The work group lacked sufficient information to draft appropriate language.)
- Testing/screening materials/results. (The work group determined that this information is already protected under the Public Records Act.)
- Performance measures for evaluating court processes. (The work group decided that this information should generally be open to public access, even if the information is subject to public misinterpretation.)

C. **Access to Juror Information.** Individual juror information, other than name, is presumed to be private. After the conclusion of a jury trial, the attorney for a party, or party pro se, or member of the public, may petition the trial court for access to individual juror information under the control of court. Upon a showing of good cause, the court may permit the petitioner to have access to relevant information. The court may require that juror information not be disclosed to other persons.

[COMMENT: This provision was moved here from later in the rule.]

D. **Access to Master Jury Source List.** Master jury source list information, other than name and address, is presumed to be private. Upon a showing of good cause, the court may permit a petitioner to have access to relevant information from the list. The court may require that the information not be disclosed to other persons.

[COMMENT: This provision was moved here from later in the rule.]

E. ~~**Common Law Test.** If release of particular records could endanger the safety or well-being of an individual or could undermine the discharge of a constitutional or statutory responsibility, the release decision will be governed by the common-law's public-access balancing test.~~

[DECISION STILL TO BE MADE BY WORK GROUP: At the last meeting, the work group discussed a few concerns about the common law test (previously set forth in Paragraph E on the next page), including concerns about keeping the common law test as essentially as its own exemption and concerns about the vague phrase "well-being." Staff was asked to research the origin of the "well-being" phrase in this context. The phrase comes from Cowles Publishing v. Murphy, 96 Wn.2d 584 (1981). The Cowles opinion states on one page that one of the interests to be balanced is the interest of "safety and well-being," but on the next page the opinion frames the interest as individual privacy and safety. (The phrase is also used in Michigan's court rule.)

In light of the various concerns discussed at the last meeting, and the inconsistency within Cowles as to "well-being", we propose the following solution:

Comment [A28]: This should be eliminated. It is not appropriate within an exemption list, and should be within the judicial review section if at all. Common law access is largely derived from federal First Amendment law as interpreted by the federal courts. In Washington, Article I, Section 10 is worded much more broadly and is unquestionably more protective of the public's right to access judicial records. The test is already incorporated above in the privacy test and redaction sections, so this seems superfluous.

- Delete Paragraph E above. With this change, the common law test would have only a very limited applicability under this rule – a court could use it as a tie-breaker in de novo review cases under Paragraph (2)(B)(5) below.
- In any event, the rule would be better off not referring to "well-being".
- Protect safety concerns can be protected by amending paragraph (f)(1)(A) on page 9, so that paragraph (f)(1)(A)'s privacy language (which has already been approved) would be expanded to include safety. This change would allow agencies to redact information based on safety concerns, rather than allowing broader nondisclosure.

(2) Administrative Records—Process for Access.

A. Administrative Records—Procedures for Records Requests.

- (1) AGENCIES TO ADOPT PROCEDURES. Each judicial agency must adopt a policy or internal regulation implementing this rule and setting forth its procedures for ~~accepting~~ receiving and responding to public records requests. The agency's policy must include the designation of a public records officer and ~~may~~ require that requests for access be submitted in writing, and that requests be submitted only to the agency's designated public records officer. Best practices for handling public records requests shall be developed under the authority of the Board for Judicial Administration.
- (2) PUBLICATION OF PROCEDURES FOR REQUESTING PUBLIC RECORDS. Each judicial agency must prominently publish the procedures for requesting access to its records, its policies regarding access to records, and its organizational information. If the agency has a website, the procedures must be ~~included~~ displayed on that website in a manner reasonably calculated to provide notice ~~there~~. The publication shall include the public records officer's work mailing address, telephone number, fax number, and e-mail address. An agency may not invoke any internal policy or regulation that was or is not in compliance with this publication requirement, unless the requestor had actual notice of such policy or regulation.
- (3) INITIAL RESPONSE. Each judicial agency must initially respond to a ~~written~~ request for access to a public record within five working days of its receipt. The response shall acknowledge receipt of the request and include a good-faith estimate of the time needed to respond to the request. The estimate may be

Comment [A29]: Much of this language is adapted from the PRA Model Rules, specifically WAC 44-140-020 and its comments.

Comment [A30]: Although oral requests are less effective and raise several problematic issues that written requests usually do not, the rule should not require a written request.

later revised, if necessary, with reasons for the revised time estimate provided to the requestor by the agency in writing. Any estimated response time less than thirty (30) days from the date of the request is presumptively reasonable unless the request is for a small number of records. For purposes of this rule, "working days" mean days that the judicial agency, including a part-time municipal court, is open.

Comment [A31]: This is adapted from the PRA Model Rules, specifically WAC 44-14-040 and its comments.

- (4) COMMUNICATION WITH REQUESTER. Each judicial agency must communicate with the requester as necessary to clarify the records being requested. The agency may also communicate with the requester in an effort to determine if the requester's need would be better served with a response other than the one actually requested. Any communication by the agency to the requester seeking clarification or prioritization must be made promptly and in writing.
- (5) SUBSTANTIVE RESPONSE. All judicial agencies are obligated to provide its fullest assistance to requestors in obtaining access to administrative records. A judicial agency may not distinguish between requestors of administrative records or inquire as to the reasons for any request, except to the extent provided herein, statute or court rule. Each judicial agency must respond to the substance of the records request within the timeframe specified in the agency's initial response to the request, or within the timeframe specified in a later revision of that estimate. If the agency is unable to fully comply within this timeframe, then the agency should comply to the extent practicable and provide a new good faith estimate for responding to the remainder of the request. If the agency does not fully satisfy the records request in the manner requested, the agency must justify in writing any deviation from the terms of the request. A response may consist of either allowing inspection of the requested records, or by providing copies of those responsive records. The judicial agency must make an objectively reasonable search for the requested records, but has no obligation under this rule to create a responsive administrative record. The judicial agency only has the obligation to provide an administrative record in existence at the time of the request, and is not required to supplement a response with records that come into existence after the request. The judicial agency must provide any responsive records, even if another judicial agency possesses or retains the record as well. Judicial agencies are encouraged to store administrative records in electronic format to the extent feasible, and must provide electronic administrative records in electronic format if so requested, but are not obligated to provide paper records in an electronic format if doing so would unduly burden the judicial agency. Any cancellation or

clarification of the scope of the request must be confirmed by the requestor in writing before the agency can consider it effective. A judicial agency may consider a request for administrative records abandoned if the requestor does not respond to a written request for clarification or prioritization within thirty (30) days; such abandonment, or a written withdrawal of the request by the requestor, would remove the judicial agency's obligation to further respond to the request. A judicial agency should memorialize when it considers its response fully responsive to the request and the request therefore closed.

Comment [A32]: These additional provisions have been adapted from the PRA Model Rules, and have proven very instructive to courts and agencies in practice.

(6) EXTRAORDINARY REQUESTS LIMITED BY RESOURCE CONSTRAINTS. If a particular request is for a large number of administrative records or otherwise of a magnitude that the judicial agency cannot fully comply within a reasonable time due to constraints on the agency's time, resources, and personnel, the agency shall communicate this information to the requestor in writing, in detail sufficient to provide reasonable notice of the reasons for the agency's inability to fully comply. The agency ~~must~~ may attempt to reach agreement with the requestor as to narrowing the request to a more manageable scope, or for a prioritization of responses and as to a timeframe for the agency's response, which may include a schedule of installment responses. If the agency and requestor are unable to reach agreement, then the agency shall respond to the extent practicable and inform the requestor that the agency has completed its response. Judicial agencies are encouraged to provide records responsive to such requests in partial installments.

Comment [A33]: The judicial agency should always be required to provide written indication as to why it cannot comply with the letter of the law.

(7) LATER DISCOVERED RECORDS. If after the judicial agency has provided all responsive records it discovers responsive records that were not provided initially, it must promptly provide written notice of such discovery to the requestor and provide an reasonable estimate for an expedited inspection or copying of those records.

Comment [A34]: This provision is necessary so as to prevent a judicial agency from delaying providing any access by waiting until all the responsive records have been gathered.

(6)(3) DESTRUCTION OF REQUESTED ADMINISTRATIVE RECORDS. A judicial agency may not destroy a requested administrative record until a pending request for that record is closed, even if the applicable retention schedule or guidelines would otherwise allow for the destruction of such record.

Comment [A35]: Adapted from the PRA and its case law, specifically RCW 42.56.100.

B. Administrative Records—Review of Public Records Officer's Response.

(1) NOTICE OF REVIEW PROCEDURES. The public officer's response to a public records request shall include a written summary of the procedures under which the requesting party may seek further review.

- (2) TIMELINE FOR SEEKING REVIEW. The timelines set forth in section (f)(2)(A) shall apply likewise to requests for review of the public records officer's response.
- (3) FURTHER REVIEW WITHIN AGENCY. Each agency shall provide a method for review by the agency's director or presiding judge. For an agency that is not a court, the presiding judge shall be the presiding judge of the court that oversees the agency. The agency may also establish intermediate levels of review by policy or internal regulation; such policy or regulation must be published. The agency shall make publicly available the applicable forms for seeking review of agency decisions, and is encouraged to the extent possible to post such forms on the agency's website. The review proceeding shall be informal and summary. The review proceeding shall be held within five working days from when the requestor provides proper written indication that he or she is seeking review. If that is not reasonably possible, then within five working days the review shall be scheduled for the earliest practical date; the reasons for the revised estimate must be timely provided to the requestor in writing.

Comment [A36]: "Intermediate levels of review" must have explanatory language as it is so ambiguous that it has no substantive meaning. Requiring publication of what the "review" is would at least provide notice of the requestor of what that process entails, absent inclusion in the rule.

Comment [A37]: Language should be added indicating what these terms mean, specifically addressing such things as whether there is a hearing, what evidentiary law applies, etc.

[COMMENT: The work group discussed whether the rule should authorize the director or the presiding chief judge to designate another person to handle these reviews. The work group did not reach agreement on this question.]

- (4) ALTERNATIVE REVIEW. As an alternative to review under section (f)(2)(B)(3), a requesting person may seek review by a person outside the judicial agency. If the judicial agency is a court or directly reportable to a court, the outside review shall be by a visiting judicial officer. If the judicial agency is not a court or directly reportable to a court, the outside review shall be by a person agreed upon by the requesting person and the judicial agency. In the event the requesting person and the judicial agency cannot agree upon a person, the presiding superior court judge in the county in which the judicial agency is located shall either conduct the review or appoint a person to conduct the review. The review proceeding shall be informal and summary. In order to choose this option, the requesting person must sign a written waiver of any further review of the decision by the person outside the judicial agency. The decision by the person outside the judicial agency is final and not appealable. Attorney fees and costs to the requestor are not available under this option.

[COMMENT: The bifurcated procedures for review are intended to provide flexible, prompt, informal, and final procedures for review of public records decisions. The

option for a visiting judge allows a requester to have the review heard by an outside decision-maker; in the interest of obtaining prompt, final decisions, a requester selecting this option would be required to waive further review. If the Legislature creates a new entity to review public records decisions made by agencies of the executive branch, then the work group recommends that the BJA consider using this entity for review of judicial records decisions as well.]

(5) DE NOVO REVIEW IN SUPERIOR COURT.

- i. A requester may seek superior court review of a decision made by a judicial agency under section (f)(2)(B)(3). The burden of proof shall be on the agency to establish that refusal to permit public inspection and-or copying is in accordance with section (f)(1) which exempts or prohibits disclosure in whole or in part of specific information or records. Judicial review of all agency actions shall be de novo. The superior court shall apply section (f)(1) of this rule in determining the accessibility of the requested documents. Any ambiguity in the application of section (f)(1) to the requested documents shall be resolved by analyzing access under the common law's public access balancing test, where disclosure is balanced against whether it poses a significant risk to individual privacy or safety.

[COMMENT: The common law's balancing test is addressed in detail in Cowles Publishing v. Murphy, 96 Wn.2d 584 (1981), and Beuhler v. Small, 115 Wn.App. 914 (2003). Disclosure is balanced against whether it poses a significant risk to individual privacy or safety.]

Comment [A38]: See relevant Comment above. The "common law balancing test" should not be applicable here as the same principles are largely already incorporated into the revised rule.

- ii. The right of deDe novo review in superior court is not available to a requester who sought review under the alternative process set forth in section (f)(2)(b)(4).

Comment [A39]: This is redundant since a requestor cannot seek review of the decision under that option.

(6) MONETARY SANCTIONS.

- i. In the de novo review proceeding under section (f)(2)(B)(5), the superior court may in its discretion award reasonable attorney fees and costs to a requesting party if the court finds that the agency fails to show that (1) the agency's response was deficient/sufficient, (2) the requester did not specify the particular deficiency to the agency, or and (3) the agency did-cure not cure the deficiency.

Comment [A40]: The language here has been modified to ensure that if the agency fails any one of the three grounds listed, a court has discretion to award fees and costs to the requestor.

- ii. Sanctions, including attorneys' fees and costs, may be imposed against either party under CR 11, if warranted.
- iii. Except as provided in sections (6)(i) and (ii), a judicial agency may not be required to pay attorney fees, costs, civil penalties, or fines.

[COMMENT: The work group's recommendation is to initially limit the availability of monetary sanctions against judicial agencies. If the experience with this approach were to show that more significant sanctions are merited, then those could be added at an appropriate time. This approach was also used when the Public Records Act was also originally enacted; it makes sense to take the same approach with this rule. It may well be that the limited sanctions that would be available under this rule, coupled with the rule's creation of speedy review procedures, will be sufficient to ensure compliance without the imposition of additional sanctions.]

Comment [A41]: This is unnecessary since there is no reason CR 11 would not apply to any particular action in superior court.

Comment [A42]: The utility of this provision is unclear. Part (i) already makes clear that the award of fees and costs to a requestor is discretionary, and this provision only restates that in different language and adds penalties and fines, which if at all applicable, should be mentioned in part (i).

(2) (g) **Judicial Records—Judicial Agency Rules.** Each court by action of a majority of the judges may from time to time make and amend local rules governing access to court **judicial** records not inconsistent with this rule. Each judicial agency may from time to time make and amend agency rules governing access to its judicial records not inconsistent with this rule.

(3) (h) **Judicial Records—Charging of Fees.**

(1) A fee may not be charged to view court **judicial** records at the courthouse.

(2) A fee may not be charged for the redaction or gathering of responsive records, nor for any other costs incurred by the agency in preparing the records for **inspection**.

(2) A fee may be charged for the photocopying or scanning of **judicial** records. If another court rule or statute specifies the amount of the fee for a particular type of record, that rule or statute shall control. Otherwise, the amount of the fee may not exceed the amount that is authorized in the Public Records Act, Chapter 42.56 RCW. The agency may not charge a requestor for the copying required to redact records in preparation for **inspection**.

(3) The agency may require a deposit in an amount not to exceed ten percent of the **estimated** cost of providing copies for a request. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or

Comment [A43]: Adopted from the PRA and its Model Rules, specifically RCW 42.56.120 and WAC 44-14-070.

Comment [A44]: See Comment above.

reviewed within 30 days, the agency is not obligated to fulfill the balance of the request.

[COMMENT: Paragraph (3) above incorporates a modified version of the Public Records Act's "deposit and installments" language.]

(i) Effective Date of Amendment.

- (a) The amendment expanding this rule beyond case records goes into effect on January 1, 2012, and applies to all public records requests submitted on or after that date.

[COMMENT: A rule adopted in early 2011 would usually have an effective date of September 1, 2011. The delayed effective date is intended to allow time for development of best practices and for training.]

- (b) Until January 1, 2012, public access to judicial documents shall continue to be analyzed using the existing court rules and statutes, as applicable, and the common law balancing test. The Public Records Act, Chapter 42.56 RCW, may be used as non-binding guidelines.

[Adopted effective October 26, 2004; amended effective January 3, 2006.]



WASHINGTON COURTS

GR 29 Protocols and Resources Development Project Charter

Project Title: GR 29 Protocols and Resources Development

Project Start Date: October 2010

Projected Finish Date: July 1, 2011

Project Sponsor: Board for Judicial Administration

Work Group Membership:

Judge Sara Derr, DMCJA
Judge David Larson, DMCJA
Judge Kathleen O'Connor, SCJA
Judge Rebecca Baker, SCJA

Others?

Court administrators
County clerks?

Plus for input and advice the possible involvement of others such as Reiko Callner, HR experts, prosecuting attorneys, etc.

AOC Staff: Brian Backus
Shannon Hinchcliffe
Michele Shields

Project Goals and Objectives:

Goal

- Provide guidance and resources for courts dealing with work-place related employee complaints against judges acting in their administrative capacity.

Objectives

- Identify best practices for judges dealing with work-place related employee complaints against judges acting in their administrative capacity.
- Develop guidelines with standards and protocols. For example:
 - Standards of conduct for judges when they act in their administrative capacity.
 - Recommended personnel policies for courts.
 - Recommended complaint procedures.
 - Steps to take for judges in one and two judge courts; steps to take for presiding judges in larger courts; steps to take if complaint is against presiding judge, etc.
 - Mechanisms, standards and protocols for investigation of complaints.
 - Guidance on dealing with executive branch personnel policies and processes, and agencies such as county and city human resources departments.
- Develop training curriculum.
- Identify and develop resources. For example:
 - Online information such as Inside Courts presiding judges page including guidelines developed by the Work Group.
 - Links to identified legal resources.

Project Benefits:

- Judges and administrators have usable resources for handling work-place related employee complaints against judges acting in their administrative capacity.
- Judges and administrators are trained, have knowledge, and know where resources are.
- Courts handle complaints more effectively; risk that complaint is not handled properly is reduced.

Approach:

The Work Group is expected to meet four times. AOC will support the Work Group by do research, drafting work products and providing administration (meeting scheduling and other coordination).

The project is expected to entail these phases:

I. Phase 1 – Preparation

- Confirm project schedule.
- Refine scope.
- Identify deliverable work products.
- Identify immediate project tasks.

Outcome: Clear understanding of scope. AOC can begin research tasks.

II. Phase 2 – Information Gathering

- Research.
- Identify alternatives.
- Prepare for presentation to Work Group.

Outcome: Good understanding of issues and options.

III. Phase 3 – Discussion and Guidelines Development

- Review research.
- Get input from experts.
- Confirm scope.
- Begin drafting guidelines, etc.

Outcome: Work product is now clear and can begin to be developed.

IV. Phase 4 – Complete Draft Work Products

- Prepare complete drafts of all work products.
- Discuss and refine.
- Resolve all remaining issues.

Outcome: Work product is complete and needs only finishing touches.

V. Phase 5 – Complete Work Products

- Complete guidelines, etc.
- Report to BJA.

Outcome: Guidelines can be published; training class can be developed..

Issues, Risks, and Challenges:

- Limited experience and body of knowledge in the subject area.
- Need to fit protocols with existing processes and requirements.

Project Communication and Reporting:

- AOC will maintain documents; coordinate communications; etc..
- Work Group will report to BJA upon completion of project.

Preliminary Schedule/Milestones/Deliverables:

Dates	Activities
October & November 2010	Phase 1. Preparation
December 2010 – April 2011	Phase 2. Information Gathering
April and May 2011	Phase 3. Discussion and Guidelines Development
May and June 2011	Phase 4: Complete Draft Work Products
July 2011	Phase 5. Complete Work Products & Report to BJA

Resource Requirements:

- Travel budget for one in-person meeting; all other meetings will be by telephone conference call
- AOC staff time: 100+ hours

**Open Courts Work Group
Report to Board for Judicial Administration (BJA)**

Open Courts Work Group Membership

COA Rep and WG Chair	Judge Christine Quinn-Brintnall
SCJA Rep	Judge Ronald Culpepper
DMCJA Rep	Judge Sara Derr
AWSCA	Evelyn Bell
DMCMA	Trish Kinlow
Clerks	Barb Miner
AOC Staff	Michele Shields
AOC Staff	Shannon Hinchcliffe

Meetings

The Open Courts Work Group held meetings via telephone conference on June 14, June 24, June 30, and August 3, 2010. A majority of the members were in attendance at each meeting.

Work Group Charge from BJA

Review existing guidance regarding court closures and determine whether

- Chief Justice Alexander's letter needs to be reissued from Chief Justice Madsen
- A definition or set of minimum standards regarding what constitutes an 'open court' is necessary
- A General Rule is necessary to provide guidance

Discussion of Work and Research

The work group explored whether a letter similar to that issued by Chief Justice Alexander in the fall of 2008 should be issued by the current Chief Justice. The previous letter discussed court closure's based on budgetary issues and the constitutional requirements that courts should remain open except on nonjudicial days.

The work group also explored whether or not a general rule should be adopted to provide guidance and/or minimum standards for what constitutes an 'open' court. There was some discussion about what could be considered as minimum standards: presence of judge(s); presence of court staff; public access to the court; capability to file necessary paperwork; minimum number of hours court should be open per day; who has to be present for a court to be considered 'open' – a judge, a department, or a clerk, can a judge or clerk be present if they are available via phone or e-mail, etc.

The main issue discussed throughout each of the meetings was whether or not the issue of minimum standards for and/or the definition of 'open courts' is the proper subject for a general court rule or, perhaps, courts of limited jurisdiction rule.

The work group researched operating hours for superior courts and courts of limited jurisdiction. Most of these courts have regular daily hours open to the public. However, some courts have adopted alternatives to typical operating hours or procedures for a variety of reasons. For example, one county superior courthouse door is locked one day per month for furlough. On that day, the court posts a sign with a phone number to call to access the clerk's office. At the courts of limited jurisdiction level, one county includes four courts with alternate days for closure. If one court is closed, the three remaining courts are open and will conduct business on behalf of the closed court.

The work group also researched the history of courts of limited jurisdiction. In 1980, courts of limited jurisdiction became 'courts of record', courts whose proceedings are permanently recorded. RCW 3.02.020. Under the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ), the superior court's review of a final decision of court of limited jurisdiction is a review for errors of law. Decisions made by a judge who is not admitted to the practice of law in Washington and decisions in small claims are still reviewed de novo (as courts of limited jurisdiction were reviewed prior to 1980) and are procedurally governed by CRLJ 73 and 75.

The work group also reviewed statistics the courts report to the Administrative Office of the Courts (AOC). Per these statistics, the 2009 reported court closures and the 2010 projected court closures include 1 closure for superior court, 13 closures for district court, and 161 closures for municipal court. The rationale for court closure varied and included, but not limited to, the following reasons: furlough, closed one day per week, closed in conjunction with all city closure, project, staff training, and inability to maintain staff.

The work group members expressed concerns about whether issuing a general court rule is the appropriate avenue as the concerns regarding 'open courts' stem from budget constraints imposed by the executive branch. Members also discussed their concerns about the ramifications of closures and their potential impact on the public's access to the courts for emergent issues like protection orders. However, the work group concluded that, as a budget tool, the underlying 'open courts' issue is not a question of law or procedure. The underlying access to justice issue is a proper subject for judicial resolution when presented in an active case or controversy. For example, when someone's action is dismissed as barred by the statute of limitation because the court was closed in fact but not through GR 21. Therefore, in the group's opinion, a general court rule defining or providing minimum standards for 'open courts' is not appropriate. Moreover, given the diversity in district and municipal court cultures a single definition of 'open court' or 'court day' was not readily apparent. The work group discussed one alternative; forward the issue to the BJA Best Practices Committee.

Legal Authority related to closure of courts

With one exception (see below), courts are required to be open except for non-judicial days:

- ▶ Washington Constitution Article IV, § 2:

... The [**Supreme Court**] shall always be open for the transaction of business except on nonjudicial days. ...

- ▶ RCW 2.04.030:

The **Supreme Court** and the **court of appeals** shall always be open for the transaction of business except on Saturdays, Sundays, and legal holidays designated by the legislature.

- ▶ Washington Constitution Article IV, § 6:

... [**Superior courts**] shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. ... Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days.

- ▶ CR 77(d):

(d) **Superior Courts Always Open.** The **superior courts** are courts of record, and shall be always open, except on nonjudicial days.

- ▶ RCW 2.08.030:

The **superior courts** are courts of record, and shall be always open, except on nonjudicial days.

- ▶ RCW 3.30.040:

The **district courts** shall be open except on nonjudicial days. ... The court shall sit as often as business requires in each city of the district which provides suitable courtroom facilities, to hear causes in which such city is the plaintiff.

- ▶ RCW 35.20.020:

The [**Seattle**] **municipal court** shall be always open except on nonjudicial days. It shall hold regular and special sessions at such times as may be prescribed by the judges thereof. ...

Exception: For municipal courts (other than Seattle Municipal Court), the city may decide the days and hours of operation:

RCW 3.50.110:

The **municipal court** shall be open and shall hold such regular and special sessions as may be prescribed by the legislative body of the city or town: PROVIDED, that the municipal court shall not be open on nonjudicial days.

Work Group Recommendation

The work group recommends that an updated letter from the current Chief Justice discussing court closure and the constitutional requirements that courts should remain open except on nonjudicial days be sent to superior courts and courts of limited jurisdiction.

The work group agreed that a definition or minimum standards for 'open courts' is not appropriate for a court rule. The committee agreed that access to justice is an important issue and that making a clerk and judge available during open business hours should be a priority matter for all courts.