

BOARD FOR JUDICIAL ADMINISTRATION



**WASHINGTON
COURTS**

MEETING PACKET

**FRIDAY, OCTOBER 15, 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. Steven Crossland, President-Elect
Washington State Bar Association

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. Steven Toole, President
Washington State Bar Association

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

Board for Judicial Administration

October 15, 2010
 9:30 a.m. – Noon
 AOC SeaTac Office
 SeaTac, Washington

Agenda

1. Call to Order	Judge Michael Lambo	
2. Welcome and Introductions	Judge Michael Lambo	
Action Items		
3. September 17, 2010 Meeting Minutes Action: Motion to approve the minutes of the September 17 meeting	Judge Michael Lambo	Tab 1
4. Appointments to the Justice in Jeopardy Implementation Committee Action: Motion to reappoint Paula Littlewood and appoint J. D. Smith and Lee Kerr and Lynne Jacobs to the Justice in Jeopardy Implementation Committee	Ms. Mellani McAleenan	Tab 2
Reports and Information		
5. Proposed Revisions to GR 31	Judge Marlin Appelwick Mr. Rowland Thompson Mr. Bob Welden	Tab 3
6. Justice in Jeopardy Outreach Committee Report	Judge Deborah Fleck	Tab 4
7. Washington Association of County Clerks Legislative Agenda	Mr. Kevin Stock	Tab 5
8. Washington Judiciary's Presentation to the Washington Citizens' Commission on Salaries for Elected Officials	Mr. Jeff Hall	Tab 6
9. Washington State Bar Association	Mr. Steven Toole Ms. Paula Littlewood	
10. Reports from the Courts Court of Appeals Superior Courts Courts of Limited Jurisdiction	Judge Dennis Sweeney Judge Stephen Warning Judge Stephen Brown	

11. Association Reports County Clerks Superior Court Administrators District and Municipal Court Administrators	Mr. Kevin Stock Ms. Delilah George Ms. Peggy Bednared	
12. Administrative Office of the Courts	Mr. Jeff Hall	
13. Other Business BJA Account Update Next meeting: November 19 Beginning at 9:30 a.m. at the AOC SeaTac Office, SeaTac	Judge Michael Lambo Ms. Mellani McAleenan	

**Board for Judicial Administration
Meeting Minutes**

**September 17, 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 Brown; Judge Ronald Culpepper; Judge Susan Dubuisson; Judge Deborah Fleck; Mr. Jeff Hall; Ms. Paula Littlewood; Mr. Sal Mungia; Judge Jack Nevin; Justice Susan Owens; Judge Kevin Ringus; Mr. Steven Toole; Judge Gregory Tripp; Judge Stephen Warning; Judge Dennis Sweeney; and Judge Chris Wickham

Guests Present: Ms. Peggy Bednared, Mr. M. Wayne Blair, Judge Harold Clarke III, Ms. Delilah George (by phone), Judge Steven Gonzalez, Mr. Earl Long, Ms. Shelley Maluo, Ms. Catherine Moore, Judge Christine Quinn-Brintnall, Dr. Arun Raja, and Mr. Kevin Stock

Staff Present: Ms. Colleen Clark, Ms. Vonnie Diseth, Ms. Mellani McAleenan, Mr. Dirk Marler, Mr. Ramsey Radwan, and Mr. Chris Ruhl

Call to Order

The meeting was called to order by Judge Lambo at 9:35 a.m. Those present introduced themselves.

Chief Justice Madsen and Judge Lambo called for an Executive Session and excused everyone that was not a BJA member for approximately 20 minutes. It was clarified that the Executive Session would include all voting and non-voting BJA members.

The general meeting resumed at 10:00 a.m.

August 20, 2010 Meeting Minutes

There was one change to the minutes; Judge Ringus did not attend the meeting.

It was moved by Judge Culpepper to approve the meeting minutes with the one revision of removing Judge Ringus from those present; Judge Wickham seconded. The motion carried.

Legislative Dinners

Ms. McAleenan explained that the legislative dinners are held every two years, prior to the long sessions. These dinners help renew legislative relationships and also introduce the judiciary to new legislators. It is anticipated that dinners this fall will cost approximately \$13,000 and the funds will come from the BJA private checking account; no state monies are used.

Judge Fleck moved to approve the expenditure for these dinners; Judge Dubuisson seconded. The motion carried.

Washington Problem Solving Courts

Judge Harold Clarke introduced a PowerPoint presentation on problem solving courts in Washington; there are approximately 50 drug courts and 18-20 other types of problem solving courts across the state. These include the following: mental health, veterans, drug (adult, juvenile, family, and reentry), DUI, homeless, truancy, and DV. Problem solving courts were started in Miami in 1989; in 2009 there were 2,500 drug courts across the United States. Problem solving courts will increase and evolve, they are cost efficient and reduce recidivism.

The Washington State Association of Drug Court Professionals (WSADCP) is a group of judges, prosecutors, drug court coordinators, treatment providers, and other drug court-related professionals that volunteer their time. The DSHS Division of Behavioral Health and Recovery (DBHR, represented by Earl Long), has received a federal grant for strategic planning for drug and other problem solving courts.

Problem solving courts are funded haphazardly. There are some federal grants and some county general fund dollars; counties donate time through judges, prosecutors, etc. There needs to be communication and work with the Legislature to develop consistent funding sources.

Judge Clarke would like the BJA to consider creating a policy statement supporting problem solving courts in the state, similar to the one on water adjudication. He would like to create a draft policy for the BJA to consider.

Judge Fleck expressed interest in seeing a draft policy and suggested including unified family courts, juvenile court evidence-based practices and family and juvenile court improvement programs (FJCIP) in the policy.

Judge Sweeney said that he understands that problem solving courts are here to stay and he has the greatest admiration for the judges involved with them. However, judges are not trained how to treat mental health or other social problems; we are doing these things because no one else is doing them. There are fundamental problems not being addressed by the other branches of government; they are either unwilling or unable to address the psychological, economical and social problems of this population. The courts are not constitutionally set up to deal with these issues.

Chief Justice Madsen said that the BJA Long-Range Planning (LRP) committee discussed this subject at their last meeting on August 31. The draft strategic plan will encourage problem solving courts and their availability throughout counties, including uniform funding. As a procedural matter, the LRP committee would appreciate policy statements as the plan is further developed.

Judge Lambo said that this issue needs further discussion and we should return to it in a couple of months.

Access to Justice Board Resolution

Judge Steven Gonzalez presented the Immigration Enforcement in Washington Courthouses resolution adopted by the Access to Justice Board on June 18, 2010. At this time he is just passing along the information, at some point in the future there may be a request for the BJA to adopt a similar policy to ensure that Washington courts remain open and accessible for all individuals and families.

Judge Gonzalez continued that now he understands how little we, as courts, know about immigration law. The fear people have about coming to court which is also an issue in juvenile court (parents afraid to come in). King County now has a policy that will not allow the enforcement of immigration warrants in the courtrooms. Immigration and Customs Enforcement (ICE) have said they would respect that policy and have put it in writing.

Judge Gonzalez concluded by stressing that education is very important and asked that the BJA include this topic on conference agendas and make time for plenary sessions on immigration.

Proposed WSBA Bylaws

Judge Warning said the Superior Court Judges' Association (SCJA) has concerns about the proposed changes, but they have arrived at an agreement. Both the SCJA and District and Municipal Court Judges' Association (DMCJA) have voted on the formal resolutions of the proposed bylaws and approved them.

Changes include:

- It is voluntary for a judge to pay a fee of approximately \$50 per year to preserve their ability to return to active status upon leaving the bench.
- The requirement to take the bar exam to return to practice has been dropped.
- There are no issues with a retired judge acting as a pro tem.

If a judge does not choose to pay the yearly fee, and if they do decide to return to practice, there is a penalty. They would be charged the active licensing fee for each year of non-compliance. For example, if they were in non-compliance for 10 years and the yearly licensing fee was \$450, they would be required to pay \$4500 to be in compliance.

Judge Warning added that there are two issues which include the language that judges cannot be officers or vote on WSBA committees.

It was clarified that when in judicial status, a judge cannot serve on a standing committee; but they can attend all open committee meetings, but cannot vote. They can serve on task forces and vote; and can also participate in sections unless their bylaws preclude it.

Ms. Moore added that there is a caveat; the Board of Governors has the option to make changes to bylaws before voting on them.

Judge Fleck moved that the BJA support this Bylaw change, Judge Brown seconded. The motion passed with Judge Sweeney opposed and Chief Justice Madsen abstaining.

BJA Public Records Act Work Group Report

Judge Appelwick reported that this work group had eight half-day meetings and AOC staff was a tremendous asset; he thanked Charley Bates, Rick Neidhardt and Beth Flynn for their expertise and assistance. The work group itself had a very diverse membership.

This work group was appointed at a time when 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.

While the work group did not share a common vision, a consensus was reached. The dissents are expressed in minority reports.

Significant areas of disagreement focused on four areas:

1. Application of PRA vs. court rule.
2. Whether the rule was too protective or too broadly provided for disclosure.
3. Protection of privacy interests of persons whose personal information may be contained in records disclosed.
4. Impacts on small courts.

The work group selected a court rule rather than inclusion within the PRA as the appropriate course. If a court rule is adopted, a best practices committee should be convened quickly to work on establishing a protocol to make it easy to follow in an attempt to minimize problems that might arise.

The decision to present the recommendation in the form of amendments to GR 31 as opposed to a new free standing rule was the decision of the Chair. The proposed rule would apply to all judicial agencies, not just courts. The only controversy with respect to inclusion relates to the WSBA as to its trade association functions. The proposed rule does not apply to the Judicial Conduct Commission.

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.
- Chambers records are a new category of records excluded from disclosure.

At the October BJA meeting those wishing to speak to minority reports will have a chance to do so, along with a question and answer opportunity. It is anticipated that additional discussion will be held at November's BJA meeting, with action on the report and any proposed amendments at the December meeting.

Chief Justice Madsen expressed the BJA's gratitude to Judge Appelwick, Judge Dubuisson and Judge Culpepper for all their efforts.

GR 29 Work Group

Mr. Hall reported that this was a BJA work group put together with a goal of providing guidance and resources for courts dealing with work-place related employee complaints against judges acting in their administrative capacity (prompted by a Federal Way issue).

Mr. Marler said that this would be a new service from AOC. AOC drafted a proposed charter and looked at resources that would be required to staff the effort. It was determined that it would take 100+ hours of staff time to develop along with funds for traveling – this is just to develop the process. This effort is complicated by known retirements, staffing reductions, possibly more to come, and furloughs. In this fiscal year, it would be very difficult to dedicate the resources to support this activity.

Mr. Hall added that AOC did explore options, but something would have to be stopped in order to free up resources for this; there didn't seem to be any good trade-offs. At this point, the issue concludes with this report.

Open Courts Work Group Report

Judge Quinn-Brintnall reported that this work group was to review existing guidance on court closures.

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.

They also 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.

State Budget Presentation

Dr. Arun Raha, Chief Economist, Department of Revenue, presented an overview of the current economic view of the state.

He began by stating that we have technically been in recovery since August, 2009. It seemed like we were moving forward and it was thought we would be out of the hole in mid-2012. Since then the momentum has stopped and that date has been pushed to the second quarter of 2013.

- The Bureau of Economic Analysis has changed their historical data and the economy is much weaker than thought.
- This is the worst economic situation since the Great Depression and there is no data on that recovery to compare to; we are in the slowest recovery on record.
- Stimulus money is winding down.
- After this recession we will have a group of people who change spending habits forever.
- People are paying down debt, saving more, and not spending.
- Big banks are doing well and community banks are not. The community banks lend to the small businesses; small businesses can't get credit so there is no job growth.

- Consumer confidence – remaining static in recessionary territory.
- Car sales before recession were averaging about 16.5 million nationwide. Last January it was about 9 million, currently about 11.5 million.
- The only growth improvement this year is home remodeling.
- Exports are slightly increasing (airplanes).
- Software, publishing and aerospace are going up slightly in Washington; the first two represent high wage industries.
- Job growth should be at the same rate as the nation, because of high wage industries (above) Washington is probably slightly above the national average.

Chief Justice Madsen and Judge Lambo thanked Dr. Raha for his presentation.

Washington State Bar Association

Mr. Mungia reported that the local rules task force is working with the SCJA; especially with family law issues. He also reported that as of next Friday (September 24), Mr. Steven Toole will become the WSBA President.

Judge Lambo welcomed Mr. Toole to the BJA.

Reports from the Courts

Supreme Court: Justice Owens reported that the court has begun having two-day en banc/administrative meetings.

Court of Appeals: Judge Sweeney reported that they are struggling with budget issues. They are also meeting regularly to discuss the process of developing a long-range plan for the Court of Appeals.

Superior Court Judges: Judge Warning reported that they have started legislative preparation, focusing on funding (Justice in Jeopardy, CASA, etc.). They have already begun meeting with legislators.

Courts of Limited Jurisdiction: Judge Brown reported that the DMCJA met last Friday; they are dealing with a lot of internal issues such as the law fund, public pro bono, funding issues, and difficult budgets.

Association Reports

County Clerks: No report.

Superior Court Administrators: No report.

District and Municipal Court Administrators: Ms. Bednared reported that a special board meeting has been held on the Department of Licensing (DOL) issue. Bi-monthly meetings have been instituted to work with DOL and the Administrative Office of the Courts (AOC). The Board met September 9 in Ellensburg and the Long-Range Planning retreat was held September 14. Discussion included the delivery of education and revamping the DMCMA Web site. Regionals

are being held in October at six locations around the state. Registration has been opened up to the MCA and superior court staff.

Administrative Office of the Courts

Mr. Hall reported that there have been budget issues and that there have been meetings with legislators, mainly to discuss JIS. The feasibility study contract is close to being signed. The Children in Family Services Review reviewed three superior courts across the state; the exit interview will be this afternoon.

There being no further business the meeting was adjourned at 12:25 p.m.

**Board for Judicial Administration
Nomination Form for BJA Committee Appointment**

BJA Committee: Justice in Jeopardy Implementation Committee
(i.e. Best Practices, Court Security, Justice in Jeopardy, Long-Range Planning, and Public Trust and Confidence)

Nominee Name: Paula Littlewood

Nominated By: Washington State Bar Association
(i.e. SCJA, DMCJA, etc.)

Term Begin Date: February 1, 2010

Term End Date: January 31, 2012

Has the nominee served on this subcommittee in the past? Yes No

If yes, how many terms have been served and dates of terms: 1 term

Additional information you would like the BJA to be aware of regarding the nominee:

Please send completed form to:

Beth Flynn
Administrative Office of the Courts
PO Box 41174
Olympia, WA 98504-1174
beth.flynn@courts.wa.gov

**Board for Judicial Administration
Nomination Form for BJA Committee Appointment**

BJA Committee: Justice in Jeopardy Implementation Committee
(i.e. Best Practices, Court Security, Justice in Jeopardy, Long-Range Planning, and Public Trust and Confidence)

Nominee Name: J. D. Smith

Nominated By: Washington State Bar Association
(i.e. SCJA, DMCJA, etc.)

Term Begin Date: February 1, 2010

Term End Date: January 31, 2012

Has the nominee served on this subcommittee in the past? Yes No

**If yes, how many terms have been served
and dates of terms:** _____

**Additional information you would like the BJA to be aware of regarding the
nominee:**

Please send completed form to:

Beth Flynn
Administrative Office of the Courts
PO Box 41174
Olympia, WA 98504-1174
beth.flynn@courts.wa.gov

**Board for Judicial Administration
Nomination Form for BJA Committee Appointment**

BJA Committee: Justice in Jeopardy Implementation Committee
(i.e. Best Practices, Court Security, Justice in Jeopardy, Long-Range Planning, and Public Trust and Confidence)

Nominee Name: Lee Kerr

Nominated By: Washington State Bar Association
(i.e. SCJA, DMCJA, etc.)

Term Begin Date: February 1, 2010

Term End Date: January 31, 2012

Has the nominee served on this subcommittee in the past? Yes No

**If yes, how many terms have been served
and dates of terms:** _____

**Additional information you would like the BJA to be aware of regarding the
nominee:**

Please send completed form to:

Beth Flynn
Administrative Office of the Courts
PO Box 41174
Olympia, WA 98504-1174
beth.flynn@courts.wa.gov

**Board for Judicial Administration
Nomination Form for BJA Committee Appointment**

BJA Committee: Justice in Jeopardy Implementation Committee
(i.e. Best Practices, Court Security, Justice in Jeopardy, Long-Range Planning, and Public Trust and Confidence)

Nominee Name: Lynne Jacobs

Nominated By: Court Management Council (CMC)
(i.e. SCJA, DMCJA, etc.)

Term Begin Date: February 1, 2010

Term End Date: Jan. 31, 2012

Has the nominee served on this subcommittee in the past? Yes No

**If yes, how many terms have been served
and dates of terms:** _____

**Additional information you would like the BJA to be aware of regarding the
nominee:**

Ms. Jacobs is the court administrator at King County District Court in Issaquah and is
President-Elect of the District and Municipal Court Managers Association (DMCMA).

Please send completed form to:

Beth Flynn
Administrative Office of the Courts
PO Box 41174
Olympia, WA 98504-1174
beth.flynn@courts.wa.gov

**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 oversight 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 court 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.

(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, 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"	<p>WCOG (Toby Nixon), ADN (Rowland Thompson), WSBA (TBD), OPD (TBD), BCE (TBD), AWSCA (TBD), DMCMA (TBD)</p>	

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

BOARD FOR JUDICIAL ADMINISTRATION PUBLIC RECORDS ACT WORK GROUP

Name	Address	Phone/Fax	E-Mail
Appellate Courts			
Judge Marlin Appelwick Chair	Court of Appeals, Division I One Union Square 600 University Street Seattle, WA 98101-4170	206-389-3926 Fax: 206-389-2614	m.appelwick@courts.wa.gov
Superior Court Judges			
Judge Ron Culpepper	Pierce County Superior Court 930 Tacoma Avenue S, Rm 334 Tacoma, WA 98402-2108	253-798-6640 Fax: 253-798-7214	rculpep@co.pierce.wa.us
District Court Judges			
Judge Susan Dubuissou	Thurston County District Court 2000 Lakeridge Dr SW, Bldg 3 Olympia, WA 98502-6001	360-786-5562 Fax: 360-754-3359	dubuiss@co.thurston.wa.us
Administrative Office of the Courts			
Mr. Jeff Hall	Administrative Office of the Courts Temple of Justice PO Box 41174 Olympia, WA 98504-1174	360-357-2120 Fax: 360-956-5794	jeff.hall@courts.wa.gov
Superior Court Administrators			
Ms. Marti Maxwell	Thurston County Superior Court 2000 Lakeridge Dr SW, Bldg 2 Olympia, WA 98502	360-786-5560 Fax: 360-754-4060	maxwellm@co.thurston.wa.us
District and Municipal Court Administrators			
Ms. Aimee Vance	Kirkland Municipal Court PO Box 678 Kirkland, WA 98083	425-587-3160 Fax: 425-587-3161	avance@ci.kirkland.wa.us
Washington Coalition for Open Government			
Mr. Toby Nixon	Microsoft Corporation 12113 NE 141st Street Kirkland, WA 98034	425-823-9779	president@washingtoncog.org toby@tobynixon.com
Mr. William Crittenden	927 N Northlake Way Ste 301 Seattle, WA 98103-3406	206-361-5972 Fax: 206-361-5973	wicrittenden@comcast.net
Washington State Bar Association			
Mr. Bob Welden	Washington State Bar Association 1325 4th Avenue, Ste 600 Seattle, WA 98101-2539	206-727-8232 Fax: 206-727-8314	bobw@wsba.org
Ms. Kristal Wiitala	DSHS Public Records/Privacy PO Box 45135 Olympia, WA 98504-5135	360-902-7649 Fax: 360-902-7855	witakk@dshs.wa.gov

Allied Daily Newspapers			
Mr. Rowland Thompson	Allied Daily Newspapers of Washington PO Box 29 Olympia, WA 98507	360-943-9960	anewspaper@aol.com
Office of Public Defense			
Ms. Sophia Byrd McSherry	Office of Public Defense PO Box 40 Olympia, WA 98504-	360-586-3164, ext 107 Fax: 360-586-8165	sophiabyrdmcsherry@opd.wa.gov
Staff			
Mr. Charley Bates	Administrative Office of the Courts PO Box 41170 Olympia, WA 98504-1170	360-705-5305 Fax: 360-956-5700	charles.bates@courts.wa.gov
Mr. Rick Neidhardt	Administrative Office of the Courts Temple of Justice PO Box 41174 Olympia, WA 98504-1174	360-357-2125 Fax: 360-956-5711	rick.neidhardt@courts.wa.gov
Ms. Beth Flynn	Administrative Office of the Courts Temple of Justice PO Box 41174 Olympia, WA 98504-1174	360-357-2121 Fax: 360-956-5711	beth.flynn@courts.wa.gov

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.

(10i) 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 black ink that reads "Doug Klunder". The signature is written in a cursive, flowing style.

Doug Klunder
Privacy Counsel

A. WORK GROUP REPORT

6. MINORITY REPORTS

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

DOUG KLUNDER
PRIVACY COUNSEL



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, slightly slanted style.

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 *Drilling 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 Defender;~~
 - 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 WSDA's regulatory function.]~~

~~[A minority report has been filed by Bob Walden on behalf of the WSDA 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 WSDA, 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 applies to all judicial agencies.

(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 [A6]: 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 2.64.131 and 42.17.310."

(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 provides 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.

ICOMMENT: 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)(1); 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: 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."]

Comment [A14]: This incorporates the language from Telford v. Thurston County Bd. of Comm's, 95 Wn. App. 349, 974 P.2d 886 (1999).

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

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. An email, including the metadata embedded within the email in its native form, constitutes a writing.

Comment [A16]: See prior Comment.

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 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

(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)~~ (4) ~~(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.

~~(9)~~ (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, which 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(4).

[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.]

(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.]

(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: 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.)

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

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).

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.

- 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 requestor as necessary to clarify the records being requested. The agency may also communicate with the requestor in an effort to determine if the requestor's need would be better served with a response other than the one actually requested. Any communication by the agency to the requestor 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 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)(S) 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)(d).~~

Comment [A39]: This is redundant since a requester 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 requester.

- 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 34-12-070.

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.]

SUPERIOR COURT OF WASHINGTON
FOR
THURSTON COUNTY

We are opposed to responding to an appellate decision finding that courts are not agencies subject to the PRA by implementing a rule change to contradict the holding. It appears the impetus for a rule change is in anticipation of legislative action to include the courts in the PRA as agencies. We do not think this is appropriate, from both a legal and policy bases for the reasons set forth below.

Resources

Our court currently addresses a limited number of PRA requests. If courts voluntarily decide that their records are public records, then the PRA statutory language and case law will apply to courts—including the extremely limited and outdated ability to collect for the massive costs required as well as the mandatory penalties. Even if this is not seen as the courts voluntarily including themselves under the PRA, it is our opinion that it will be inevitable that the PRA's provisions will be cited to as authority in interpreting this proposed court rule.

In this court we have seen small agencies completely unable to perform their normal functions in order to timely respond to PRA requests. The burden can be stifling regardless of whether any records are actually provided to the requestor. Under the PRA, all agency staff have the obligation to search for records, not just public information or public records, not just public information or public records staff. Similarly, there is no way that individual judges can be practically shielded from the work of looking for documents and assisting in determining exemptions. [The proposal's attempt to shield certain staff in (c) (3) and (c) (4) on page 3 is inconsistent with the PRA as currently understood] The additional duties imposed on all staff of agencies subject to the PRA have ballooned exponentially as requests have increased, and there is no reason to think courts would be any different. Some state agencies have compiled information on the resources utilized to respond to PRA requests that would be eye-opening to most judges. Additionally, county and municipal risk managers can attest to skyrocketing litigation costs for PRA cases in which any liability results in mandatory daily fines.

Credibility

If the concern is that the legislature would not be sympathetic to courts in modifying the PRA, there is no basis to believe that. Even if that were true, imagine how unsympathetic the legislature will be to courts' budget woes (which are severe) when those same courts have voluntarily agreed to perform additional functions at a huge potential cost in terms of dollars and personnel. It is one thing to have an additional burden thrust upon the courts after having an opportunity to testify at a legislative hearing as to the potential consequences, but it is another thing altogether to agree to take on additional responsibilities, then complain that the courts are overburdened. The scope and applications sections make clear this proposal intends to place burdens on non-judicial entities and cover many non-judicial records. Specifically, we agree with the minority report of Mr. Weldon. This rule would impose many obligations on entities far outside the BJA.

With respect to the sub-committee, it is our general concern that the committee does not understand the practicality of the proposal. For instance, stating that counsel would have the responsibility for redacting information ((2) (B) on page 6) assumes that counsel is involved and can access the document to perform that function—a very unrealistic assumption. Another example is that the section on charging of fees (page 15, section (h)), which is more restrictive than the PRA.

We are of the opinion that the BJA would not be successful in its attempt to create its own exemptions by rule (see pages 9-11). Moreover, one workgroup member (Allied Newspapers) has expressed the view that the PRA exemptions should not apply at all and that exceptions to providing records under this rule should be much more narrow than the narrow exceptions of the PRA. We also note that Allied Newspapers' minority report suggestions include deleting any reference to judicial integrity which we believe is important to BJA members.

The records of the Washington courts are already available since the executive branches of local governments hold the originals and/or copies of court budgets, expenditures, and other administrative records. Our case files are fully open to inspection. The work of the judges is done in open court and on the record. Our work is subject to appeal and review. The Judicial Conduct Commission is available to citizens who find objection to our behavior. Finally, as elected officials we are ultimately responsible to people.

Justice in Jeopardy Initiative Public Relations, Communication and Outreach

Message:

Trial courts and court-related services are mandatory governmental functions that require adequate, stable, and long-term funding. The state must maintain its commitment to an equitable investment in these core services.

Goals:

- Re-engage our partners, including the counties and cities, business, labor, WAPA, WDTL, good government groups, as well as legislators.
- “Refresh” the Justice in Jeopardy Initiative message with the state executive and legislative branches and with local government.
- Educate the public and community groups.

Tasks:

- Develop the message
 - Update the JIJ strategy and messages developed in 2008 by public relations firm JayRay Communications
2009 and ONGOING: The JIJ Outreach committee updated the key message to use with legislators for 2009 session focusing on holding the line in funding, courts as constitutionally mandated and the state as an equal partner with local government in their funding.
- Identify the messengers
 - Judges and judicial branch partners
 - Consult with stakeholders such as WSBA and cities and counties to ascertain their level of interest and involvement
- Develop a Communications and Media Workgroup
 - The Communications section would keep the JIJ members informed
 - The Media section would keep the public informed with consistent and regular media pieces
- Develop a “Speakers’ Bureau”
 - Solicit judges specifically willing to speak to community groups and editorial boards about JIJ
 - Create documents to be housed on JIJ webpage; offer WSBA the opportunity to utilize documents on their website or link to the JIJ page
- Identify the audiences
 - Leadership in local government and its organizations
 - Editorial boards
 - Legislators
 - Community groups
 - Other, such as business and labor groups

Methods:

- Regular JIJ updates
 - Biweekly legislative updates to JIJC members or other subscribers during the legislative session; provide these updates to WSBA if the Bar wishes to publish the information on their website or in their Newsflash
 - Communications with the Judicial Branch through publications such as Full Court Press
 - 2009 and ONGOING: A June 2009, 6-page special budget edition of Full Court Press focusing on legislative outcomes and JIJ:
<http://inside.courts.wa.gov/content/courtNews/FullCourtPressJune09Special.pdf>
 - Continual status updates of JIJ in articles on Jeff Hall, outgoing CJ Alexander, incoming CJ Madsen, and legislative activities.
<http://inside.courts.wa.gov/index.cfm?fa=controller.showPage&folder=courtNews&file=fullCourtPress>
 - Explore possibilities for a presence at judicial conferences
 - Write articles for state and local bar associations
 - 2009 and ONGOING:
 - A full edition of the WSBA Bar News in Nov. 2009 devoted to JIJ, with multiple articles and columns, including messages from legislators, Attorney General McKenna, Gov. Gregoire and judges
<http://www.wsba.org/media/publications/barnews/nov09-backup.htm>
 - A front page article on local JIJ benefits in the King County Bar Bulletin by Judge Fleck and Wayne Blair in July 2009
<http://www.kcba.org/newsevents/barbulletin/archive/2009/09-07/article1.aspx>
 - Several articles dedicated to JIJ and court funding in July, 2010 edition of the KCBA Bar Bulletin, including articles by Chief Justice Madsen and Judges Craighead and Hilyer, and a column from the KCBA president.
<http://www.kcba.org/newsevents/barbulletin/archive/2010/07/index.aspx>
- Formal communication with city and county organizations
 - ONGOING – In person meetings occurred at the leadership meeting last session and have continued at the staff level since that time.
 - Letters from the JIJC chairs
 - Offers for presentation to their committees or at state level conferences
 - Offers for articles in newsletters
- Legislative and executive branch contacts
 - Continue JIJ partner meetings with key legislative and executive branch Leaders
ONGOING – JIJ partners continually meet with legislative and executive branch leaders, separately and jointly, and meet with new legislators, often jointly, to educate them about JIJ.
 - Enlist judges to schedule informal coffee meetings with legislators
ONGOING – Judges are asked to meet with legislators for lunch or coffee when, strategically, the need arises. Judges have been encouraged through the Legislative Advocacy Guide to develop individual relationships with their legislators.

- Encourage judges to conduct court tours
BEING EXPLORED for January, 2011 and beyond. Court tours occurred in Spokane and Seattle in 2009.
- Enlist judges to make contacts on particular issues during the legislative Session
ONGOING – Judges either are asked to make contacts with legislators on specific issues, with Action Alerts or arranged meetings as needs dictate.
- Refresh advocacy guide
ONGOING – Guide will be updated for the 2011 session.
- Editorial board meetings
 - Meetings with Chief Justice and/or local judges, WSBA and local bar leaders seeking editorials and/or guest editorial placement
2010 and ONGOING: Chief Justice Madsen with Wendy Ferrell and Jeff Hall conducted an editorial board circuit around the state shortly after Chief Justice Madsen's inauguration. JIJ status fact sheets were created for these visits. This resulted in good contacts with the media for the next round of editorial board meetings, and a couple of positive editorials (notably The Olympian's editorial endorsement of the election of municipal court judges and News Tribune article about access to justice being in jeopardy): <http://www.theolympian.com/2010/04/15/1206919/state-should-have-acted-on-municipal.html>
<http://www.thenewstribune.com/2010/04/09/1141006/access-to-justice-is-in-danger.html>
- Communicate about JIJ with groups such as labor, business, good government groups, as well as community/service groups such as Rotary, offer attorneys and/or judges to speak; provide handouts
- Communications and Media Workgroup
 - Write guest editorial templates
2010 and ONGOING: A guest editorial to be co-authored by a local presiding judge and Chief Justice Madsen was drafted, but has not yet been circulated for approval for use.
 - Write Talking Points
 - Write the regular updates for internal and external communications
- Develop JIJ subpage on Courts website
COMPLETED: A special section dedicated to JIJ has been created on Washington Courts web site with a presence on the home page and links to all substantial research, reports, legislative materials and media articles and endorsements. It is regularly updated with new material, such as the July edition of KCBA Bulletin.
 - Update or create talking points
 - Update or develop appropriate handouts
 - Provide currently relevant historical data
 - Create subscription method for JIJ updates

OTHER:

ADDITIONALLY, the JIS funding became an unexpected target during 2010 legislative session, so message and materials were generated to help save that funding.

Justice in Jeopardy Outreach Plan

Fall Quarter

Message: Trial courts and court-related services are mandatory governmental functions that require adequate, stable, and long-term funding. The state must maintain its commitment to an equitable investment in these core services.

Goals:

- Re-engage our partners, including the counties and cities, business, labor, WAPA, WDTL, good government groups, as well as legislators.
- "Refresh" the Justice in Jeopardy Initiative message with the state executive and legislative branches and with local government.
- Educate the public and community groups.

Task: Courthouse Open Houses: Your Justice System at Work

The fall quarter will include planning for the first open house, to be held in early January at the Thurston County Superior Court. The open house will showcase the critical work being done for the public and the lack of funding for essential justice services. Invitation will be made to members of the media, legislators and the general public. Possible follow-up six weeks later with a similar open house in King County.

The open houses will be an extension of the Legal Aid Days currently organized every other year for the Equal Justice Coalition and will include an opening program, courthouse client story highlight and tour of the court.

A resolution from the Supreme Court/Board for Judicial Administration and an open-house "toolkit" will be provided to each jurisdiction on how to conduct their event. Focus will be on educating the public on the operations of the judicial branch of government and the critical role that access to justice has in the lives of Americans.

Public outreach materials:

- A "Justice in Jeopardy" handout/brochure identifying: a) successes of the effort b) the "gap" that still exists c) why justice matters and d) the consequences of inadequate funding (to be created)
- Copies of the [Washington State Courts Media Guide](#) (click link)
- Copies of [A Citizen's Guide to Washington Courts](#) (click link)
- Posters on the [Branches of Government](#) (click link)
- [Jury Appreciation Posters](#) (click link)

Media and legislative outreach:

- Press releases for each jurisdiction to local media inviting the public to the event
- Statewide press release announcing the events from the Supreme Court and the Board for Judicial Administration
- Letters of invitation from Presiding Judge to local legislators, county & city officials
- Guest editorials and local photos to newspapers by Presiding Judges following-up after the event

Court materials:

- A "Justice in Jeopardy" handout/brochure identifying: a) successes of the effort b) the "gap" that still exists c) why justice matters and d) the consequences of inadequate funding (to be created)
- Open House toolkit (To be created)
- Supreme Court/Board for Judicial Administration Resolution
- Legislative Advocacy Guide (To be revised for 2011)
- Court Tours for Legislators Guide (To be revised for 2011)
- Legislative Bench Book (To be revised for 2011)

Justice in Jeopardy Outreach Plan

Winter Quarter

Message: Trial courts and court-related services are mandatory governmental functions that require adequate, stable, and long-term funding. The state must maintain its commitment to an equitable investment in these core services.

Goals:

- Re-engage our partners, including the counties and cities, business, labor, WAPA, WDTL, good government groups, as well as legislators.
- "Refresh" the Justice in Jeopardy Initiative message with the state executive and legislative branches and with local government.
- Educate the public and community groups.

Task: Courthouse Open Houses: Your Justice System at Work

Hold the open courthouse in Thurston County Superior Court for a day at the beginning of January to the media, legislators and the general public, showcasing the critical work being done for the public and the lack of funding for essential justice services. Possible follow-up six weeks later with a similar open house in King County.

Task: [discuss possible other tasks, if any, under the headings below at JiJIC Sept. 17 meeting?]

CASA:

Office of Public Defense:

Office of Civil Legal Aid:

Washington State Bar Association:

Courts: State of the Judiciary Address

In January, the Chief Justice will present a State of the Judiciary Address to a joint session of the Washington State Legislature and the Governor.

Outreach opportunities:

- Statewide press coverage regarding the event
- Follow-up guest editorials from superior and district court judges following the address
- Editorial board follow-up

Court outreach materials to courts:

- A "Justice in Jeopardy" handout/brochure identifying: a) successes of the effort b) the "gap" that still exists c) why justice matters and d) the consequences of inadequate funding (to be created)
- Legislative Advocacy Guide (To be revised for 2011)
- Court Tours for Legislators Guide (To be revised for 2011)
- Legislative Bench Book (To be revised for 2011)

2011 WACO LEGISLATIVE RECOMMENDATION FORM



WACO Affiliate Submitting Proposal: Clerks

Brief Description of Issue: Protect funding for county clerk programs for the collection of court-ordered legal financial obligations (LFO) of offenders; clarify that the LFO judgment is in effect until satisfied; and, give clerks the authority to “withhold and deliver” funds of offenders to satisfy outstanding obligations.

Please describe, in as much detail as necessary, the problem that has been identified, the suggested solution, and the expected outcome should the issue be taken up. Please also include legislative drafting language. Please include relevant facts, figures and statistics as appropriate.

In the last biennium, the monies provided by the legislature to be used for the collection of court-ordered legal financial obligations were subjected to cuts by the Administrative Office of the Courts when the legislature reduced funding and AOC made reductions to the administrative budgets of some programs. This proposal will prohibit future cuts and reaffirm the legislative intent iterated in RCW 2.56.190 which states, “The administrative office of the courts shall not deduct any amount for indirect or directs costs, and shall distribute the entire amount appropriated by the legislature to the counties for county clerk collections budgets.”

Section 2 clarifies that while civil judgments are enforceable for a period of 10 years, unless extended, while a criminal judgment is in effect until the judgment is satisfied.

Section 3 gives clerks the same authority the Department of Corrections has to issue orders to banks, financial institutions or other entities to “withhold and deliver” the property or earnings of offenders to satisfy court-ordered obligations. Orders may not be issued to DOC. This authority was not transferred to clerks when they assumed the responsibility for collections from DOC.

Impact on WACO Affiliates:

Assessor: None

Auditor: None

Clerk: This revenue is needed to continue operation of collection programs in the office of the clerk.

Coroner: None.

Page 1 of 4

Auditors | Assessors | Clerks | Coroners | Prosecutors | Sheriffs | Treasurers

Prosecutor: None.

Sheriff: None.

Treasurer: None.

Impact on the public: Guaranteed funding of collection programs allows victims to recoup their losses at the hands of offenders and increases the credibility of the courts in that criminal judgments are enforced. Collected funds support the courts and local and state programs for crime victims. Since 2003 when the clerks' programs were started, the collection of restitution has increased by 61.2%. Victims are receiving \$18 million more than 2003 levels and crime victims funds are up over \$1 million.

Does this issue have a fiscal impact on counties? (Check all that apply)

Increased revenue to counties Decreased revenue to counties

Increased costs to counties Decreased costs to counties

No county fiscal impact

Does this issue require state expenditure of funds? Yes.

If Yes, approximately how much, and provide from what source: The state must restore approximately \$162,000 in program support bringing it back to 2009 levels. The collection of LFOs provides revenue to the state as well. The LFO programs have provided over \$2 million in additional revenue to the state.

Does this issue require a change to the RCW? Yes.

If Yes, please provide the appropriate RCW Title, Chapter and Section to be created, amended or deleted: Amend RCW 2.56.190 to include language that "(the LFO funding) shall not be subject to administrative or other budget reductions except those specifically made by the legislature," and, RCW 4.56.190 shall state, "a judgment from a criminal sentence for a crime... in which case the lien will remain in effect until the judgment is fully satisfied."

Section 3 is the same verbiage as SB 6193 from the 2008 session with the exception that DOC is exempted from the orders to "withhold and deliver."

Has this issue been presented to the Legislature before? Yes.

Section 3 was SB 6193 from the 2008 session. DOC objected but has been removed in this proposal.

If this issue is taken up by WACO, are there specific legislators that WACO should contact regarding the issue?

Representative Judy Warnick has sponsored other legislation for the collection of LFOs.

Has this issue been presented to other WACO Members? Yes..

Last session the WACO Legislative Committee was made aware of cuts to LFO programs following adoption of the budget. The WACO Legislative Committee and Board took a position against the reduction.

Is your affiliate willing and able to spend time in Olympia during the session to meet with legislators, and testify to this issue in Legislative committee hearings? Yes.

If WACO acts on the request, what individuals/entities are likely to agree with WACO's position on the issue: All crime victim groups.

If WACO acts on the request, what individuals/entities are likely to disagree with WACO's position on the issue, and why? Possibly AOC since they would absorb the cuts if the money is restored to LFOs.

Several legislators are very sympathetic to offenders.

Submitted by,

NAME: Betty Gould

AFFILIATE TITLE: Thurston County Clerk and Chair of WSACC Legislative Committee.

DATE SUBMITTED: Click here to enter a date.

THIS SECTION FOR WACO LEGISLATIVE COMMITTEE USE ONLY	
Legislative Committee Action:	
Date:	
Approved by:	

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-0025.3/11 3rd draft

ATTY/TYPIST: AI:crs

BRIEF DESCRIPTION: Addressing court-ordered legal financial obligations collected by the county clerks.

AN ACT Relating to court-ordered legal financial obligations collected by the county clerks; and amending RCW 2.56.190, 4.56.190, 9.94A.7606, 9.94A.7607, 9.94A.7608, and 9.94A.7609.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 2.56.190 and 2003 c 379 s 21 are each amended to read as follows:

By October 1, 2003, and annually thereafter, the administrative office of the courts shall distribute such funds to counties for county clerk collection budgets as are appropriated by the legislature for this purpose, using the funding formula recommended by the Washington association of county officials. The administrative office of the courts shall not deduct any amount for indirect or direct costs, and shall distribute the entire amount appropriated by the legislature to the counties for county clerk collection budgets. The legal financial obligations funds shall not be subject to the administrative office of the courts administrative budget reductions or other budget reductions by the administrative office of the courts. Said funds shall not be deemed to have been reduced unless

specifically identified by the legislature. The administrative office of the courts shall report on the amounts distributed to counties to the appropriate committees of the legislature no later than December 1, 2003, and annually thereafter.

The administrative office of the courts may expend for the purposes of billing for legal financial obligations, such funds as are appropriated for the legislature for this purpose.

Sec. 2. RCW 4.56.190 and 1994 c 189 s 3 are each amended to read as follows:

The real estate of any judgment debtor, and such as the judgment debtor may acquire, not exempt by law, shall be held and bound to satisfy any judgment of the district court of the United States rendered in this state and any judgment of the supreme court, court of appeals, superior court, or district court of this state, and every such judgment shall be a lien thereupon to commence as provided in RCW 4.56.200 and to run for a period of not to exceed ten years from the day on which such judgment was entered unless the ten-year period is extended in accordance with RCW 6.17.020(3), or unless the judgment results from a criminal sentence for a crime that was committed on or after July 1, 2000, in which case the lien will remain in effect until the judgment is fully satisfied. As used in this chapter, real estate shall not include the vendor's interest under a real estate contract for judgments rendered after August 23, 1983. If a judgment debtor owns real estate, subject to execution, jointly or in common with any other person, the judgment shall be a lien on the interest of the defendant only.

Personal property of the judgment debtor shall be held only from the time it is actually levied upon.

Sec. 3. RCW 9.94A.7606 and 1991 c 93 s 7 are each amended to read as follows:

(1) The department or county clerk may issue to any person or entity, except to the department, an order to withhold and deliver property of any kind, including but not restricted to, earnings that

are due, owing, or belonging to the offender, if the department or county clerk has reason to believe that there is in the possession of such person or entity, property that is due, owing, or belonging to the offender. Such order to withhold and deliver may be issued when a court-ordered legal financial obligation payment is past due:

(a) If an offender's judgment and sentence or a subsequent order to pay includes a statement that other income-withholding action under this chapter may be taken without further notice to the offender.

(b) If a judgment and sentence or a subsequent order to pay does not include the statement that other income-withholding action under this chapter may be taken without further notice to the offender but the department or county clerk has served a notice on the offender stating such requirements and authorizations. The service shall have been made by personal service or any form of mail requiring a return receipt.

(2) The order to withhold and deliver shall:

(a) Include the amount of the court-ordered legal financial obligation;

(b) Contain a summary of moneys that may be exempt from the order to withhold and deliver and a summary of the civil liability upon failure to comply with the order; and

(c) Be served by personal service or by any form of mail requiring a return receipt.

(3) The department or county clerk shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by any form of mail requiring a return receipt, a copy of the order to withhold and deliver to the offender at the offender's last known post office address, or, in the alternative, a copy of the order shall be personally served on the offender on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with an explanation of the right to petition for judicial review. If the copy is not mailed or served as this section provides, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the offender promptly made and supported by

affidavit showing that the offender has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver.

Sec. 4. RCW 9.94A.7607 and 1991 c 93 s 8 are each amended to read as follows:

(1) A person or entity upon whom service has been made is hereby required to:

(a) Answer the order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the order; and

(b) Provide further and additional answers when requested by the department or county clerk.

(2) Any person or entity in possession of any property that may be subject to the order to withhold and deliver shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver;

(ii) Deliver the property to the appropriate clerk of the court as soon as the twenty-day answer period expires;

(iii) Continue to withhold earnings payable to the offender at each succeeding disbursement interval and deliver amounts withheld from earnings to the appropriate clerk of the court within ten days of the date earnings are payable to the offender;

(iv) Inform the department or county clerk of the date the amounts were withheld as requested under this section; or

(b) Furnish the appropriate clerk of the court a good and sufficient bond, satisfactory to the clerk, conditioned upon final determination of liability.

(3) Where money is due and owing under any contract of employment, expressed or implied, or other employment arrangement, or is held by any person or entity subject to withdrawal by the offender, the money shall be delivered by remittance payable to the order of the appropriate clerk of the court.

(4) Delivery to the appropriate clerk of the court of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(5) The person or entity required to withhold and deliver the earnings of a debtor under this action may deduct a processing fee from the remainder of the offender's earnings, even if the remainder would otherwise be exempt under RCW 9.94A.761. The processing fee may not exceed:

(a) Ten dollars for the first disbursement to the appropriate clerk of the court; and

(b) One dollar for each subsequent disbursement.

(6) A person or entity shall be liable to the obligee in an amount equal to one hundred percent of the value of the court-ordered legal financial obligation that is the basis of the order to withhold and deliver, or the amount that should have been withheld, whichever amount is less, together with costs, interest, and reasonable attorneys' fees if that person or entity fails or refuses to deliver property under the order.

The department or county clerk is authorized to issue a notice of debt pursuant to and to take appropriate action to collect the debt under this chapter if a judgment has been entered as the result of an action by the court against a person or entity based on a violation of this section.

(7) Persons or entities delivering money or property to the appropriate clerk of the court under this chapter shall not be held liable for wrongful delivery.

(8) Persons or entities withholding money or property under this chapter shall not be held liable for wrongful withholding.

Sec. 5. RCW 9.94A.7608 and 1991 c 93 s 9 are each amended to read as follows:

An order to withhold and deliver or any other income-withholding action authorized by this chapter may be served on the main office of a bank, savings and loan association, or credit union or on a branch office of the financial institution. Service on the main office shall

be effective to attach the deposits of an offender in the financial institution and compensation payable for personal services due the offender from the financial institution. Service on a branch office shall be effective to attach the deposits, accounts, credits, or other personal property of the offender, excluding compensation payable for personal services, in the possession or control of the particular branch served.

Notwithstanding any other provision of RCW 9.94A.760 and 9.94A.7601 through 9.94A.761, if the department or county clerk initiates collection action against a joint bank account, with or without the right of survivorship, or any other funds which are subject to the community property laws of this state, notice shall be given to all affected parties that the account or funds are subject to potential withholding. Such notice shall be by first-class mail, return receipt required, or by personal service and be given at least twenty calendar days before withholding is made. Upon receipt of such notice, the nonobligated person shall have ten calendar days to file a petition with the department or the superior court contesting the withholding of his or her interest in the account or funds. The department or county clerk shall provide notice of the right of the filing of the petition with the notice provided in this paragraph. If the petition is not filed within the period provided for herein, the department or county clerk is authorized to proceed with the collection action.

Sec. 6. RCW 9.94A.7609 and 1991 c 93 s 10 are each amended to read as follows:

(1) The department or county clerk may issue a notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver.

(2) The notice of debt may be personally served upon the offender or be mailed to the offender at his or her last known address by any form of mail requiring a return receipt, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the total court-ordered legal financial obligation and the amount to be paid each month.

(b) A statement that earnings are subject to a notice of payroll deduction.

(c) A statement that earnings or property, or both, are subject to an order to withhold and deliver.

(d) A statement that the net proceeds will be applied to the satisfaction of the court-ordered legal financial obligation.

(4) Action to collect a court-ordered legal financial obligation by notice of payroll deduction or an order to withhold and deliver shall be lawful after twenty days from the date of service upon the offender or twenty days from the receipt or refusal by the offender of the notice of debt.

(5) The notice of debt will take effect only if the offender's monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

(6) The department or county clerk shall not be required to issue or serve the notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver if either the offender's judgment and sentence or a subsequent order to pay includes a statement that income-withholding action under this chapter may be taken without further notice to the offender.



WASHINGTON
COURTS

**WASHINGTON JUDICIARY'S
PRESENTATION TO THE
WASHINGTON CITIZENS'
COMMISSION ON SALARIES
FOR ELECTED OFFICIALS**

2010

**WASHINGTON JUDICIARY'S PRESENTATION TO THE
WASHINGTON CITIZENS' COMMISSION ON
SALARIES FOR ELECTED OFFICIALS**

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WASHINGTON
COURTS

THE DUTIES OF JUDGES IN WASHINGTON COURTS
Establishing Appropriate Judicial Salaries

*Report to the Washington Citizens' Commission
on Salaries for Elected Officials*

October 2010

Administrative Office of the Courts
www.courts.wa.gov

THE DUTIES OF JUDGES IN WASHINGTON COURTS ESTABLISHING APPROPRIATE JUDICIAL SALARIES

*Report to the Washington Citizens' Commission on Salaries for Elected Officials
October 2010*

INTRODUCTION

In creating the Washington Citizens' Commission on Salaries for Elected Officials, the Legislature stated the policy of the state is to base salaries for judges and other elected officials on realistic standards: 1) according to the duties of their offices, and 2) so that citizens of the highest quality will be attracted to public service (RCW 43.03.300).

To attract high quality judicial candidates to the bench, and to retain these individuals, establishing *and maintaining* an adequate salary is essential. Having salaries that are sufficient to attract talented people is a common problem for all government agencies; however, it is especially difficult for the judiciary. When experienced lawyers consider trading private practice for public service on the bench they know that they will be prohibited from practicing law, and must forego all outside business and professional interests as a condition of holding office. Unlike other public servants, judges must curb most other financial endeavors in order to preserve their impartiality. At the same time, they know that the potential monetary benefits of private practice usually exceed that of public service in the judiciary. Therefore, adequate salaries, which do not erode with inflation, become a crucial incentive for attracting and retaining high quality candidates.

The most reasoned approach to judicial salary setting lies in ongoing regular increases, which reflect the rising cost of living. This approach is viewed as the single most important factor in attracting high quality candidates to judicial office. Judges do not expect to achieve parity with many of their colleagues in private practice. But, at a minimum, the expected economic sacrifices of a career on the bench must not be further compounded by a failure to keep judicial salaries at pace with inflation. Additionally, regular cost of living increases provide recognition, by the citizens of Washington, for the important work and services judges provide (represented below). It is a fundamental recommendation of the Washington State Judiciary that the salaries of Washington State judges be regularly adjusted to a level that, at a minimum, reflects the annual effect of inflation.

TYPICAL RESPONSIBILITIES OF JUDGES

Judges are expected to preside at criminal trials, impose punishment for crimes, preside over civil cases, decide complex issues on appeal, manage growing caseloads, and see that the courts' orders are enforced. Our communities expect judges to resolve disputes that involve violence, family abuse, and juvenile crime, as well as settle civil conflicts among individuals, business and government agencies. The duties of judges require them to remain impartial and to make difficult, often unpopular decisions. Judges also have an administrative responsibility—they must make sure the courts run efficiently and safely, and that citizens have access to the justice system.

A "typical" day for a trial court judge involves a variety of different duties. For example, a judge will spend a portion of the day "in chambers" reviewing the files of cases to be heard. During these times, judges may also hear minor motions and requests "ex parte," outside the formal courtroom. Sometimes judges may be asked to interrupt other activities to hear an emergency matter, such as a request for a domestic violence protection order. Judges spend a large portion of their time on the bench presiding over trials, sentencing hearings and other proceedings. Each court has a presiding judge who assigns cases and manages the court's calendar for other judges on the court. Judges also hold "settlement hearings" to help parties resolve their disputes rather than going to trial. Judges supervise their staff and attend meetings, often held over the noon hour, with the other judges on their bench to make policy decisions relating to court procedures. On a typical day, a judge may also leave the court to attend a committee meeting or participate in a school activity such as *Judges in the Classroom*.

A "typical" day for a Court of Appeals judge also involves a variety of different duties. When Court of Appeals judges hear oral arguments in cases, they sit in panels of three judges. Before oral argument, the judges assigned to each three-judge panel receive copies of the pre-hearing memoranda and parties' briefs for each case. The judges review these documents along with the record from the trial court in order to prepare for oral argument. The judges hear oral argument on up to seven cases during each hearing day. During argument they ask questions in order to clarify or direct analysis and argument. Immediately following the arguments, the panel of judges meets to discuss the issues in the case and make an initial decision, that is, whether to affirm, reverse, or remand the case back to the trial court for further action. The judges also discuss the reasoning for their decision and assign a judge to write the opinion in the case. The Court of Appeals judges also decide motions for reconsideration, motions to modify a commissioner's ruling, etc. The judges supervise a personal staff consisting of a judicial secretary and two law clerks. Like trial court judges, appellate judges also participate on committees and community or school activities. They may also sit as temporary judges in the trial courts to help with the caseload in those courts.

The Supreme Court is the state's highest court. Opinions of the Supreme Court become the law of the state, and set precedent for subsequent cases decided in Washington. All nine justices sit as a panel to hear oral arguments. Following oral arguments, the justices meet (conference) to discuss the case. Following the conference a justice is assigned to write the majority opinion and, if appropriate, another justice is tasked with writing the dissenting opinion. The justices also have supervisory responsibility over certain activities of the Washington State Bar Association including attorney admission and discipline matters. The justices have responsibility for adopting rules that govern court practices and processes statewide. As leaders of the state judicial branch, the justices frequently preside over efforts to improve the judicial system by serving as chairs or members of the Board for Judicial Administration, the Gender and Justice Commission, the Minority and Justice Commission, the Interpreter Commission, the Judicial Information System Committee, the Bench-Bar-Press Committee, the Board for Court Education, and many others.

DUTIES OF JUDGES

Hear Cases and Resolve Disputes

District Courts

There were over 1.2 million cases filed in Washington's district courts during calendar year 2009.

Parking infractions, which are generally handled administratively, contributed 157,358 case filings to the total. The over 1 million remaining cases represent the core judicial caseload filings for the year.

Traffic infraction cases, at 722,460 filings, made up the largest portion (67.9%) of the core caseload, followed by civil cases (10.8%), other traffic misdemeanor cases (6.8%), non-traffic misdemeanor cases (6.3%), DUI/physical control cases (2.8%), small claims cases (2.2%), non-traffic infraction cases (1.6%), petitions for protection orders related to domestic violence and anti-harassment (1%), and felony complaints (.5%). Please note: Due to rounding, percentages may not add precisely to 100.

The increase in civil jurisdiction to include claims of \$50,000 (beginning June 2000) has allowed the limited jurisdiction courts to share the civil burden with superior courts. A representative case would be an auto accident dispute with an insurance company. The 2008 Legislature raised the civil-jurisdiction limit to \$75,000.

Superior Courts

From 2008-2009, superior court case filings decreased by .4% (1,200 filings), resolutions decreased by 1.9% (5,722 resolutions), and completions decreased by 1.8% (5,401). Across the same period, trial proceedings decreased by .2% (16 proceedings), and non-trial proceedings decreased by 6.9% (54,593 proceedings).

Across case types, the largest percentage increases from 2008 to 2009 occurred in civil filings (5.2%, or 7,111 filings) and domestic/Uniform Interstate Family Support Act (UIFSA) filings (3.5% or 1,352 filings).

The largest percentage decreases occurred in juvenile dependency filings (14.1%, or 3,411 filings) and criminal filings (9.6%, or 4,340 filings).

As in prior years, civil cases were the largest single category of filings, accounting for about 2 out of every 5 case filings (47%), case resolutions (46.2%), and case completions (46.1%). In contrast, civil trial proceedings accounted for about 1 out of every 6 trial proceedings (17.2%), and civil non-trial proceedings were about 1 out of every 13 non-trial proceedings (7.8%).

Court of Appeals

Washington's Court of Appeals received 4,303 new filings in 2009. Division I which serves Northwest Washington received 43.2%, Division II which serves Southwest Washington received 33.6%, and Division III which serves Eastern Washington received 23.2%.

Supreme Court

The Supreme Court received 1,561 new case filings in 2009, including 737 (47.2%) petitions for review, 142 (9.1%) discretionary reviews, 330 (21.1%) personal restraint petitions, 90 (5.8%) attorney admission and discipline matters, and 262 (16.8%) other reviews, including direct appeals from the trial courts, actions against state officers, and cases certified from federal court. All cases in which the death penalty has been imposed are reviewed directly by the Supreme Court. Please note: Due to rounding, percentages may not add precisely to 100.

Find Better Ways to Resolve Disputes

- Society demands new ways to handle old problems. Specialized drug courts have been created in many counties at the initiative of Washington judges. Specialized courts require judges to learn special skills, such as how to influence defendants to make their own decision to move away from a lifestyle involving drugs. This often requires judges to spend extra time

- building one-on-one relationships with defendants. Early results indicate these efforts by judges are paying off in terms of fewer repeat offenders.
- Mental Health Courts have been formed in several jurisdictions to allow judges, lawyers and treatment providers to work as a team to find ways to limit criminal behavior by identifying appropriate treatment or interventions.
 - The Washington State Family and Juvenile Court Improvement Plan (FJCIP) was adopted by the Board for Judicial Administration and start-up funds were provided by the 2008 Legislature. The FJCIP sets in motion a strategy to encourage and fund improvements to local court operations that are consistent with Unified Family Court (UFC) principles. The statewide plan promotes a system of local improvements that are incremental and measurable. The impetus for this project was the desire among judges, the Legislature, and stakeholders to improve court operations for children and families. To date, 16 courts are funded for the initial phase which includes local leadership development, fund case coordinator staff, and pay for specialized education for judicial officers who preside over cases involving children and families.
 - District and municipal courts in several counties including King and Spokane have started programs to help reinstate the licenses of drivers who have lost their license as a result of unpaid traffic tickets. These drivers may keep their licenses as long as they adhere to a payment schedule.
 - Yakima County now allows drivers to contact the court by e-mail to explain why they received a traffic ticket, and to ask the Court for a reduced fine. The number of in-person hearings in these cases has been reduced by half.
 - The Clark County and Kitsap County trial courts have created a centralized domestic violence court as a way to provide quicker attention and more coordinated services in these cases.
 - Many superior courts rely on “courthouse facilitators” to help litigants without attorneys understand their court case and what they will be expected to do to resolve their case. Courthouse facilitators work especially with litigants in marriage dissolution cases.

Ensure Courts Are Accessible When People Need Help

- Judges increasingly are called upon to perform their duties “after normal business hours.” For example, trial judges are assigned every weekend to hear the “jail calendar” and make appropriate release decisions. Trial court judges are frequently called at night by law enforcement officers to consider issuance of “telephone search warrants” and requests to hear petitions for domestic violence protection.
- Judges must make sure the court is accessible to all people—including those who do not have or want an attorney to represent them. Some estimates indicate that in nearly 60% of all domestic relations cases at least one party is self-represented. Judges are expected to simplify their procedures so that everyone, *not* just attorneys are able to appear in court effectively.

- Washington has seen a large increase in litigants who speak a language other than English. A variety of languages in addition to Spanish—including Russian, Vietnamese, Korean and many others—are commonly heard in our courthouses today. Judges have a duty to make sure everyone who has a case before the court can communicate and understand what is being said. The courts' customers have changed, and judges are expected to change the way they conduct their business in order to serve their communities.
- Both the Americans with Disabilities Act and the Washington Law Against Discrimination require courts to make both their facilities and their programs and services accessible to persons with disabilities, including deaf and hard of hearing persons. In addition, recently promulgated General Rule 33 sets forth a process courts and judges must follow in receiving and responding to requests for accommodation in order to ensure that court buildings, programs, and services are equally accessible by all.

Stay on Top of Changes in the Law

- Judges are expected to keep abreast of changes in state and federal statutes as well as developments in case law. Judges at all levels are expected to maintain their personal proficiency and knowledge of the changes to statutes and the impact of recent case laws.
- All judges and court commissioners are required by court rule to complete a minimum of 45 hours of continuing judicial education in a three year period.

Keep Courthouses Safe

- Violent events in courthouses require judges to spend time planning and implementing courtroom security precautions.
- Outside the courtroom, some judges have been required to take extra steps to protect themselves and their families against threats of violence from angry litigants. While judges accept it as their duty to do everything possible to keep court staff and the public safe, they do their work with an awareness of the increasing risk associated with their jobs.

Manage the Courts

- Trial court presiding judges assign and monitor the flow of cases, and see that new judges are trained and oriented to their jobs.
- Judges manage probation services and, in some locations, juvenile detention facilities.
- Judges are responsible for the administration of their court, including oversight of the court's budget and personnel. In larger courts, judges are assisted by professional administrators and clerks.
- Judges adopt local court rules directing the management and processing of cases.

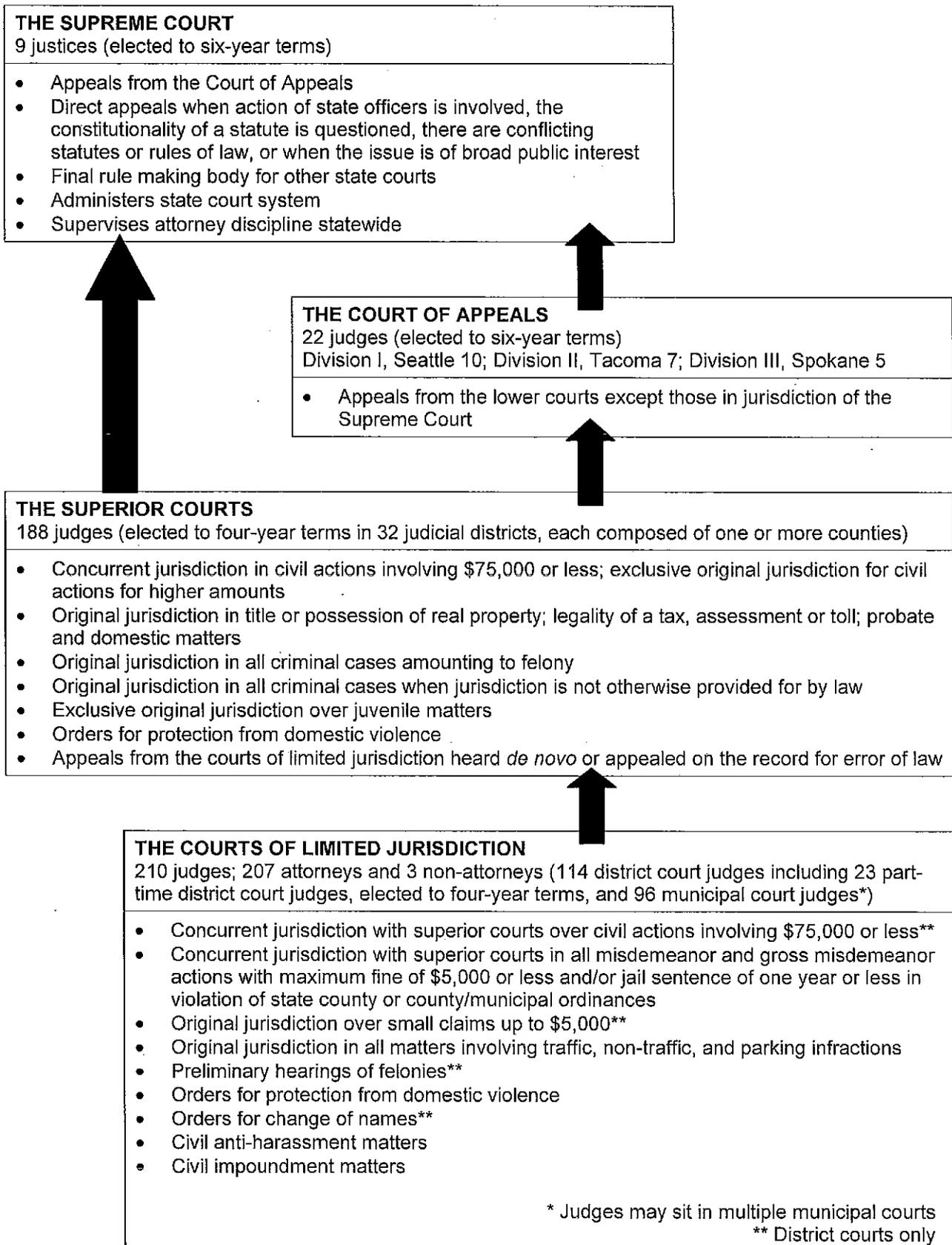
- Judges often chair or are members of local government councils or boards that address policy, practice and budget issues across local criminal justice systems.
- Judges participate in many community and school activities such as “*Judges in the Classroom*,” Mock Trial competitions, and neighborhood justice forums.

Manage the State Court System

The Washington court system is a decentralized, non-unified court system. Therefore, in addition to hearing and deciding cases and managing their local courts, judges ensure coordination of statewide policy and practice through the participation in judicial associations, boards, commissions, committees and taskforces:

- Judges direct the development of the statewide court computer system, the Judicial Information System.
- Judges serve on commissions that explore ways to make the system better by addressing barriers to access and bias based on gender, race, ethnicity, age, physical and mental abilities, income, and other characteristics of people who interact with the courts and justice system.
- Judges work with executive branch state agencies on policy and practice issues where their work intersects. Examples including working with the Department of Social and Health Services on services provided to families in dependency cases and with the Department of Licensing on records relating to drivers’ licenses and traffic infraction dispositions.
- Judges work with the Legislature on legislation that affects the administration of justice.
- Judges develop the curriculum for educational programs for judicial officers regarding the administration of justice, the application of new laws, and social science research on the effectiveness of court programs.
- Judges work on the development of proposed statewide court rules and the Supreme Court justices are responsible for final consideration, amendment, and adoption of proposed statewide court rules.
- Supreme Court justices are responsible for lawyer discipline and the final review of matters related to judicial discipline recommending suspension, removal or retirement.

Washington State Court System, 2010



**WASHINGTON STATE JUDICIARY
YEARS OF SERVICE AND AGE INFORMATION**

COURTS OF RECORD (Supreme Court, Court of Appeals, Superior Courts)

	Number	Percentage*
Number of judges with 20 or more years of service on the bench as of December 31, 2010	27	12.3%
Number of judges age 65 or older as of December 31, 2010	37	16.9%
Number of judges 50 years old or younger as of December 31, 2010	14	6.4%

COURTS OF LIMITED JURISDICTION (District and Municipal Courts)

	Number	Percentage
Number of judges with 20 or more years of service on the bench as of December 31, 2010	36	17.1%**
Number of judges age 65 or older as of December 31, 2010	21	10.0%***
Number of judges 50 years old or younger as of December 31, 2010	35	16.7%***

* Based on 219 judges, with data missing from one judge

** Based on 210 judges, with data missing from 11 judges

*** Based on 210 judges, with birthdate data missing from 11 judges

**WASHINGTON STATE LAW SCHOOL DEANS
SALARY INFORMATION**

As of October 2010

University of Washington Law School Dean Salary	\$352,008
Seattle University Law School Dean Salary	
Gonzaga University Law School Dean Salary	Gonzaga has a policy of not disclosing personnel information of this sort

As of October 2008

University of Washington Law School Dean Salary	\$255,600
Seattle University Law School Dean Salary	Salary range for professors and entry-level deans: \$120,000 - \$250,000
Gonzaga University Law School Dean Salary	\$233,028

As of October 2006

University of Washington Law School Dean Salary	\$251,580
Seattle University Law School Dean Salary	\$241,114
Gonzaga University Law School Dean Salary	Salary Range: \$175,100 – \$236,900 Current salary being paid is close to the top of the range.

As of October 2004

University of Washington Law School Dean Salary	\$197,880
Seattle University Law School Dean Salary	\$220,830
Gonzaga University Law School Dean Salary	Salary Range: \$160,000 – \$190,000 Current salary being paid is close to the top of the range.

As of January 2003

University of Washington Law School Dean Salary

\$190,200

Seattle University Law School Dean Salary

\$210,038

Gonzaga University Law School Dean Salary

Confidential – per Director and
Corporate Counsel

**COMPARISON OF WASHINGTON'S JUDICIAL SALARIES
WITH FEDERAL JUDICIAL SALARIES
American Bar Association Policy**

STATE AND FEDERAL JUDICIAL SALARIES

Washington	Salary	Federal	Salary
		U.S. Supreme Court Chief Justice	\$233,500
		U.S. Supreme Court Associate Justices	\$213,900
Supreme Court	\$164,221	U.S. Circuit Courts of Appeal	\$184,500
Court of Appeals	\$156,328		
Superior Court	\$148,832	U.S. District Court	\$174,000
District Court	\$141,710		
		U.S. Court of Federal Claims	\$174,000
		U.S. Court of International Trade	\$174,000
		U.S. Bankruptcy Court	\$160,080
		Magistrate Judges – U.S. District Court	\$160,080

Note: The American Bar Association in 1981 adopted the following policy: "Be it resolved that the American Bar Association recommends that salaries of justices of the highest courts of the states should be substantially equal to the salaries paid to judges of the United States court of appeals, and the salaries of the state trial judges of courts of general jurisdiction should substantially equal the salaries paid to judges of the United States district courts."

The judges of the state courts are called on to decide many more disputes than the judges of the federal courts. Their decisions affect the "life, liberty and property" of literally millions of citizens every year. While only on rare occasions do their decisions achieve the publicity accorded by the media to many decision of the United States Supreme Court, the quality of justice accorded in state courts is in reality the quality of justice in the United States. (Annual Report of the American Bar Association, August 10-12, 1981 New Orleans, Louisiana)

**FORMER WASHINGTON STATE JUDGES
CURRENTLY IN FEDERAL COURTS**

**U.S. District Court - Eastern and
Western Districts of Washington:**

U.S. District Judges

*Judge Robert J. Bryan
Judge John C. Coughenour
*Judge Carolyn R. Dimmick
*Judge Richard A. Jones
*Chief Judge Robert S. Lasnik
Judge Ronald B. Leighton
*Judge Ricardo S. Martinez
Senior Judge William Fremming Nielsen
*Judge Walter T. McGovern
*Judge Marsha J. Pechman
Judge Rosanna Malouf Peterson
Senior Judge Justin L. Quackenbush
Judge James L. Robart
*Judge Barbara Jacobs Rothstein
Judge Benjamin H. Settle
Judge Edward F. Shea
Chief Judge Lonny R. Suko
*Senior Judge Fred Van Sickle
*Senior Judge Robert H. Whaley
Judge Thomas S. Zilly

Magistrate Judges

Magistrate Judge J. Richard Creatura
Magistrate Judge James P. Donohue
*Magistrate Judge James P. Hutton
Magistrate Judge Cynthia Imbrogno
*Magistrate Judge Karen L. Strombom
Magistrate Judge Mary Alice Theiler
Magistrate Judge Brian A. Tsuchida

**U.S. Bankruptcy Court - Eastern and
Western Districts of Washington:**

Judges

Judge Marc Barreca
*Chief Judge Frank L. Kurtz
Judge Brian Lynch
Chief Judge Karen A. Overstreet
Judge John Rossmeissl
Judge Paul B. Snyder
Judge Samuel J. Steiner
Judge Patricia Williams

* Former Washington State Judge

**FORMER WASHINGTON STATE JUDGES
CURRENTLY IN MEDIATION AND ARBITRATION SERVICES**

Judicial Dispute Resolution (JDR)

*William Baker
*Charles Burdell Jr.
*George Finkle
*Larry A. Jordan
*Paris Kallas
*Steve Scott

Judicial Arbitration and Mediation Services (JAMS)

*Patricia Aitken
John B. Bates Jr.
M. Wayne Blair
Alexander "Lex" Brainerd
Fred R. Butterworth
William J. Cahill
Zela "Zee" G. Claiborne
*Robert J. Doran
Keneth Gibbs
Edward A. Infante
*J. Kathleen Learned
Lester J. Levy
*Terry Lukens
James Nagle
Douglas Oles
*Robert H. Peterson
Martin Quinn
*Gerard M. Shellan
Catherine A. Yanni

*Former Washington State Judge

**MEDIAN AND MEAN SALARIES OF IN-HOUSE NORTHWEST STAFF
ATTORNEYS
2010**

Position	Median	Mean
General Counsel (>1,000 employees)	\$200,000	\$221,474
General Counsel <=1,000 employees	\$149,250	\$162,832
Director of Legal Services	\$144,588	\$154,252
Attorney- Senior	\$129,344	\$130,152
Attorney- Senior Specialized	\$157,290	\$147,774

Source: 2010 Milliman Northwest Management and Professional Salary Survey (2010)

**NATIONAL COMPENSATION SURVEY
Hourly Wage Percentiles
2009**

Position	50% (median)	75%	90%
Lawyer	\$111,030.40 (\$53.38 x 2080 hrs)	\$163,009.60 (\$78.37 x 2080 hrs)	\$207,584 (\$99.80 x 2080 hrs)

Source: US Department of Labor; Bureau of Labor Statistics (June 2010) – www.bls.gov

**SALARIES OF ATTORNEYS IN WASHINGTON
2010**

Position	50% (median)	75%	90%
Lawyer	\$101,774.40 (\$48.93 x 2080 hrs)	\$139,900.80 (\$67.26 x 2080 hrs)	N/A

Source: Washington State Employment Security Department Workforce Explorer (2010) – <http://www.workforceexplorer.com/cgi/databrowsing/occExplorerQSSelection.asp?menuChoice=occExplorer>

**SALARIES OF ATTORNEYS IN SEATTLE
2010**

Position	50% (median)	75%	90%
Lawyer	\$115,523.20 (\$55.54 x 2080 hrs)	\$153,088.00 (\$73.60 x 2080 hrs)	N/A

Source: Washington State Employment Security Department Workforce Explorer (2010) – <http://www.workforceexplorer.com/cgi/databrowsing/occExplorerQSSelection.asp?menuChoice=occExplorer>

**MEDIAN SALARIES FOR ATTORNEYS IN THE PACIFIC REGION
(includes California, Oregon and Washington)
2006**

Position	Salary
Equity Partner/Shareholder	\$313,168
Non-Equity/Partner	\$238,472
Associate/Staff Attorney	\$118,970
New Graduates	\$89,000

Source: Altman Weil Law Department Compensation Benchmarking Survey (2006)



National Comparison of State Court Judicial Salaries

October 2010

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JUDICIAL SALARY COMPARISON

Rank of Washington versus Other States

Comparison Date	Court Level	Salary	Actual Ranking	Normalized Ranking ¹
October 2010	Supreme	\$164,221	14/50	14/50
	Court of Appeals	\$156,328	11/39	13/39
	Superior	\$148,832	11/50	14/50
	District	\$141,710	3/17	5/17
October 2008	Supreme	\$164,221	11/50	12/49
	Court of Appeals	\$156,328	8/39	10/39
	Superior	\$148,832	8/50	7/49
	District	\$141,710	1/17	2/17
October 2006	Supreme	\$145,636	14/50	13/48
	Court of Appeals	\$138,636	12/39	13/39
	Superior	\$131,988	11/50	12/48
	District	\$125,672	4/16	4/16
November 2004	Supreme	\$137,276	13/50	16/49
	Court of Appeals	\$130,678	10/39	12/39
	Superior	\$124,411	11/50	15/49
	District	\$118,458	4/17	4/16
October 2002	Supreme	\$134,584	12/50	16/47
	Court of Appeals	\$128,116	11/39	16/39
	Superior	\$121,972	10/50	19/47
	District	\$116,135	4/17	8/14

¹ Figures were calculated based on states' cost of living index.

NORMALIZATION OF SALARIES

Comparing salaries between states can be misleading. States with a higher cost of living tend to have higher salary schedules. Each table includes a listing of the salaries adjusted for the differences in cost of living. The National Center for State Courts (NCSC) has derived an adjustment measure for most states called the ACCRA (American Chamber of Commerce Researchers Association) factor which was based on ACCRA Cost-of-Living Index.

The ACCRA cost of living factors were derived by looking at average costs of goods and services purchased by a typical professional and/or managerial household. The “basket” of goods and services consists of six components indices — grocery items, utilities, housing, transportation, health care, and other goods and services.

This factor is used here to “normalize” salaries across all states. The “normalization” formula is as follows:

$$\text{Normalized Salary} = \text{Actual Judicial Salary} / (\text{ACCRA Factor} / 100)$$

Prior to the October 2002 report, the Administrative Office of the Courts (AOC) used per capita income to normalize salaries. The technique described above is the same, only the adjustment factor differs. Thus, care should be exercised in comparing the normalized results to prior years’ reports.

Cost of Living Index source:

ACCRA Cost-of-Living Index, National Center for State Courts, *Survey of Judicial Salaries*, Volume 35, Number 1, As of January 1, 2010.

Judicial Salary source:

National Center for State Courts, *Survey of Judicial Salaries*, Volume 35, Number 1, As of January 1, 2010.

JUDICIAL SALARY COMPARISON
HIGHEST APPELLATE COURT as of January 2010¹

	State	Actual Salary		State	Normalized Salary
1	California	\$218,237	1	Illinois	\$209,096
2	Illinois	\$201,819	2	Alabama	\$195,956
3	Pennsylvania	\$186,450	3	Tennessee	\$186,588
4	New Jersey	\$185,482	4	Pennsylvania	\$184,897
5	Delaware	\$185,050	5	Virginia	\$184,355
6	Alaska	\$184,908	6	Georgia	\$184,294
7	Virginia	\$183,839	7	Delaware	\$181,957
8	Alabama	\$180,005	8	Iowa	\$174,751
9	Hawaii	\$174,984	9	Michigan	\$169,929
10	Nevada	\$170,000	10	Texas	\$165,508
11	Georgia	\$167,210	11	Indiana	\$163,669
12	Tennessee	\$165,336	12	California	\$163,620
13	Michigan	\$164,610	13	Nevada	\$157,949
14	Washington	\$164,221	14	Washington	\$156,954
15	Iowa	\$163,200	15	Oklahoma	\$156,036
16	Connecticut	\$162,520	16	Arkansas	\$155,720
17	Maryland	\$162,352	17	Florida	\$154,560
18	Florida	\$157,976	18	Nebraska	\$154,103
19	Arizona	\$155,000	19	Ohio	\$151,915
20	Rhode Island	\$152,403	20	Missouri	\$150,935
21	Indiana	\$151,328	21	Utah	\$150,903
22	New York	\$151,200	22	Wisconsin	\$150,422
23	Texas	\$150,000	23	Kansas	\$148,855
24	New Hampshire	\$146,917	24	Louisiana	\$148,492
25	Massachusetts	\$145,984	25	Kentucky	\$148,351
26	Minnesota	\$145,981	26	Arizona	\$146,850
27	Utah	\$145,350	27	New Jersey	\$144,592
28	Wisconsin	\$144,495	28	Alaska	\$144,077
29	Louisiana	\$143,131	29	North Carolina	\$142,419
30	Ohio	\$141,600	30	Minnesota	\$142,143
31	Arkansas	\$139,821	31	South Carolina	\$141,852
32	Colorado	\$139,660	32	Colorado	\$132,972
33	Nebraska	\$139,278	33	South Dakota	\$129,604
34	Oklahoma	\$137,655	34	Connecticut	\$129,241
35	North Carolina	\$137,249	35	Wyoming	\$129,226
36	South Carolina	\$137,171	36	Idaho	\$129,112
37	Missouri	\$137,034	37	Maryland	\$127,927
38	Kansas	\$135,905	38	West Virginia	\$127,866
39	Kentucky	\$135,504	39	Rhode Island	\$127,108
40	Wyoming	\$131,500	40	North Dakota	\$124,430
41	Vermont	\$129,245	41	New Hampshire	\$124,285
42	Oregon	\$125,688	42	New Mexico	\$123,765
43	New Mexico	\$123,691	43	Massachusetts	\$123,422
44	West Virginia	\$121,000	44	Mississippi	\$121,615
45	Idaho	\$119,506	45	New York	\$120,162
46	Maine	\$119,476	46	Maine	\$110,228
47	South Dakota	\$118,173	47	Oregon	\$109,790
48	North Dakota	\$118,121	48	Montana	\$109,423
49	Montana	\$113,964	49	Vermont	\$109,160
50	Mississippi	\$112,530	50	Hawaii	\$107,030

¹ All states reported salaries as of January 2010.

**JUDICIAL SALARY COMPARISON
INTERMEDIATE APPELLATE COURT as of January 2010¹**

Thirty-nine states have intermediate appellate courts

	State	Actual Salary		State	Normalized Salary
1	California	\$204,599	1	Illinois	\$196,798
2	Illinois	\$189,949	2	Alabama	\$194,729
3	Alabama	\$178,878	3	Georgia	\$183,165
4	Pennsylvania	\$175,923	4	Tennessee	\$180,386
5	New Jersey	\$175,534	5	Pennsylvania	\$174,458
6	Alaska	\$174,696	6	Virginia	\$168,795
7	Virginia	\$168,322	7	Indiana	\$159,099
8	Georgia	\$166,186	8	Iowa	\$158,368
9	Hawaii	\$162,012	9	Michigan	\$156,334
10	Tennessee	\$159,840	10	California	\$153,396
11	Washington	\$156,328	11	Texas	\$151,716
12	Connecticut	\$152,637	12	Arkansas	\$150,924
13	Michigan	\$151,441	13	Washington	\$149,410
14	Florida	\$150,077	14	Oklahoma	\$147,824
15	Arizona	\$150,000	15	Florida	\$146,832
16	Maryland	\$149,552	16	Nebraska	\$146,397
17	Iowa	\$147,900	17	Utah	\$144,051
18	Indiana	\$147,103	18	Kansas	\$144,050
19	New York	\$144,000	19	Kentucky	\$142,374
20	Utah	\$138,750	20	Arizona	\$142,113
21	Minnesota	\$137,552	21	Wisconsin	\$141,907
22	Texas	\$137,500	22	Ohio	\$141,616
23	Wisconsin	\$136,316	23	Louisiana	\$141,283
24	Louisiana	\$136,183	24	Missouri	\$141,213
25	Arkansas	\$135,515	25	South Carolina	\$138,305
26	Massachusetts	\$135,087	26	New Jersey	\$136,837
27	Colorado	\$134,128	27	North Carolina	\$136,485
28	South Carolina	\$133,741	28	Alaska	\$136,120
29	Nebraska	\$132,314	29	Minnesota	\$133,936
30	Ohio	\$132,000	30	Idaho	\$128,032
31	North Carolina	\$131,531	31	Colorado	\$127,704
32	Kansas	\$131,518	32	Connecticut	\$121,381
33	Oklahoma	\$130,410	33	Maryland	\$117,841
34	Kentucky	\$130,044	34	New Mexico	\$117,577
35	Missouri	\$128,207	35	New York	\$114,440
36	Oregon	\$122,820	36	Massachusetts	\$114,210
37	Idaho	\$118,506	37	Mississippi	\$113,531
38	New Mexico	\$117,506	38	Oregon	\$107,285
39	Mississippi	\$105,050	39	Hawaii	\$99,096

¹All states reported salaries as of January 2010.

**JUDICIAL SALARY COMPARISON
GENERAL TRIAL COURT as of January 2010¹**

	State	Actual Salary		State	Normalized Salary
1	California	\$178,789	1	Illinois	\$180,587
2	Illinois	\$174,303	2	Tennessee	\$174,156
3	Alaska	\$170,976	3	Delaware	\$166,028
4	Delaware	\$168,850	4	Pennsylvania	\$160,502
5	New Jersey	\$165,000	5	Georgia	\$159,541
6	Pennsylvania	\$161,850	6	Virginia	\$158,578
7	Nevada	\$160,000	7	Arkansas	\$151,751
8	Virginia	\$158,134	8	Nevada	\$148,657
9	Hawaii	\$157,620	9	Iowa	\$147,446
10	Tennessee	\$154,320	10	Alabama	\$146,901
11	Washington	\$148,832	11	Texas	\$146,199
12	Connecticut	\$146,780	12	Michigan	\$144,440
13	Arizona	\$145,000	13	Nebraska	\$142,545
14	Georgia	\$144,752	14	Washington	\$142,246
15	Florida	\$142,178	15	Oklahoma	\$140,981
16	Rhode Island	\$140,642	16	Florida	\$139,104
17	Maryland	\$140,352	17	Arizona	\$137,376
18	Michigan	\$139,919	18	Utah	\$137,199
19	Iowa	\$137,700	19	Kentucky	\$136,435
20	New Hampshire	\$137,084	20	Indiana	\$135,893
21	New York	\$136,700	21	Louisiana	\$135,040
22	Arkansas	\$136,257	22	South Carolina	\$134,759
23	Alabama	\$134,943	23	California	\$134,045
24	Texas	\$132,500	24	Wisconsin	\$133,875
25	Utah	\$132,150	25	Alaska	\$133,221
26	South Carolina	\$130,312	26	North Carolina	\$132,777
27	Louisiana	\$130,165	27	Missouri	\$132,706
28	Massachusetts	\$129,694	28	Kansas	\$131,475
29	Minnesota	\$129,124	29	Ohio	\$130,190
30	Nebraska	\$128,832	30	New Jersey	\$128,625
31	Wisconsin	\$128,600	31	Minnesota	\$125,729
32	Colorado	\$128,598	32	Wyoming	\$123,035
33	North Carolina	\$127,957	33	West Virginia	\$122,583
34	Indiana	\$125,647	34	Colorado	\$122,439
35	Wyoming	\$125,200	35	South Dakota	\$121,054
36	Kentucky	\$124,620	36	Idaho	\$121,049
37	Oklahoma	\$124,373	37	North Dakota	\$119,718
38	Vermont	\$122,867	38	Rhode Island	\$117,299
39	Ohio	\$121,350	39	Connecticut	\$116,724
40	Missouri	\$120,484	40	New Hampshire	\$115,967
41	Kansas	\$120,037	41	Mississippi	\$112,580
42	West Virginia	\$116,000	42	New Mexico	\$111,698
43	Oregon	\$114,468	43	Maryland	\$110,592
44	North Dakota	\$113,648	44	Massachusetts	\$109,650
45	Idaho	\$112,043	45	New York	\$108,639
46	Maine	\$111,969	46	Vermont	\$103,773
47	New Mexico	\$111,631	47	Maine	\$103,302
48	South Dakota	\$110,377	48	Montana	\$102,612
49	Montana	\$106,870	49	Oregon	\$99,990
50	Mississippi	\$104,170	50	Hawaii	\$96,410

¹ All states reported salaries as of January 2010.

**JUDICIAL SALARY COMPARISON
DISTRICT COURT as of January 2010¹**

Twenty-three states have courts with subject matter jurisdiction comparable to Washington State district courts and salaries established by the state, rather than local units of government.

	State	Actual Salary		State	Normalized Salary
1	Alaska	\$ 145,000	1	Michigan	\$ 142,459
2	Virginia	\$ 142,000	2	Virginia	\$ 142,399
3	Washington	\$ 141,710	3	Nebraska	\$ 138,305
4	Michigan	\$ 138,000	4	Indiana	\$ 136,275
5	New Hampshire	\$ 137,000	5	Washington	\$ 135,439
6	Rhode Island	\$ 135,000	6	Florida	\$ 131,103
7	Florida	\$ 134,000	7	Minnesota	\$ 125,609
8	Massachusetts	\$ 130,000	8	Kentucky	\$ 123,714
9	Minnesota	\$ 129,000	9	Colorado	\$ 117,109
10	Hawaii	\$ 128,000	10	New Hampshire	\$ 115,895
11	Maryland	\$ 127,000	11	North Carolina	\$ 113,106
12	Indiana	\$ 126,000	12	Alaska	\$ 112,981
13	Nebraska	\$ 125,000	13	Rhode Island	\$ 112,594
14	Colorado	\$ 123,000	14	Massachusetts	\$ 109,909
15	Kentucky	\$ 113,000	15	Wyoming	\$ 101,219
16	North Carolina	\$ 109,000	16	Maryland	\$ 100,071
17	Wyoming	\$ 103,000	17	Hawaii	\$ 78,292

¹ All states reported salaries as of January 2010.

² Listed courts possess jurisdiction similar to Washington District Courts, which hear, for example, traffic, small claims, and civil case types. Courts were excluded if they hear case types, such as juvenile cases, not handled by Washington District Courts. States with judicial salaries that vary across jurisdictions were also excluded.

Appendix: ACCRA Factor¹, Survey of Judicial Salaries

State	ACCRA Factor*
Alabama	91.86
Alaska	128.34
Arizona	105.55
Arkansas	89.79
California	133.38
Colorado	105.03
Connecticut	125.75
Delaware	101.7
Florida	102.21
Georgia	90.73
Hawaii	163.49
Idaho	92.56
Illinois	96.52
Indiana	92.46
Iowa	93.39
Kansas	91.3
Kentucky	91.34
Louisiana	96.39
Maine	108.39
Maryland	126.91
Massachusetts	118.28
Michigan	96.87
Minnesota	102.7
Mississippi	92.53
Missouri	90.79
Montana	104.15
Nebraska	90.38
Nevada	107.63
New Hampshire	118.21
New Jersey	128.28
New Mexico	99.94
New York	125.83
North Carolina	96.37
North Dakota	94.93
Ohio	93.21
Oklahoma	88.22
Oregon	114.48
Pennsylvania	100.84
Rhode Island	119.9
South Carolina	96.7
South Dakota	91.18
Tennessee	88.61
Texas	90.63
Utah	96.32
Vermont	118.4
Virginia	99.72
Washington	104.63
West Virginia	94.63
Wisconsin	96.06
Wyoming	101.76

*Rounded numbers, as reported by NCSC.

¹ ACCRA Factor is the average costs of goods and services purchased by a typical professional/manager household. The "basket" of goods and services consists of six components indices – grocery items, utilities, housing, transportation, health care and other goods and services. Source: NCSC, Survey of Judicial Salaries, Volume 35 Number 1, As of January 1, 2010.