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Editorials

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Editorial: Judicial subcommittee should not mess with General Rule 15

With a proposal to vastly expand court secrecy, the state Supreme Court is fuzzing the line between reviewing and making law.

Seattle Times Editorial



THE Washington state Constitution is unequivocal about public access to courts. Section 10 reads, “Justice in all cases shall be administered openly, and without unnecessary delay.”

But in practice, it is not so simple. There is an obvious tension between institutional transparency and individual requests for privacy. Courts, for example, protect psychiatric-commitment records and allow plaintiffs in sensitive civil cases to proceed with initials only, yet they conduct child welfare hearings in the open.

That balancing act is now threatened by a disturbing proposal to throw the blanket of secrecy over a vastly larger set of court records. A judicial subcommittee has proposed a change to a court rule, General Rule 15, which was heard on Monday by the full Supreme Court. The court should reject

the change.

The proposal lowers the legal threshold for sealing an array of records, particularly in civil cases, and it would grant near-total secrecy to criminal cases that don’t end in a conviction.

If enacted, this should be known as the “disappearing docket” rule. Justice — mandated by the Constitution to be conducted openly — would vanish from public searches.

The impetus for this proposal derives from a consequence of the digital age. An eviction record is a click away via online searches, as is a theft charge that ended up being dismissed. A few clicks, and applications for employment or an apartment rental are torn up.

Real consequences. But the proposed changes to General Rule 15 carry others. Wouldn’t a fire department want to know if a prospective firefighter had an arson charge dismissed? What about damning evidence in a court file documenting early warnings about a pedophile priest or teacher?

Balancing transparency and privacy requires a public policy debate. The Supreme Court is not that venue; the state Legislature is. Just last year, lawmakers worked with advocates from all sides on a new law allowing for easier sealing of juvenile records.

The Supreme Court is the place for retroactive review of the law, not proactive law creation. General Rule 15 changes, if approved, would not be open to review by the Legislature because the legislative branch cannot set rules for the judicial branch.

The Supreme Court has already opened itself for criticism about violating the vital separation of powers in the education-funding McCleary case. The Supreme Court is threatening to hold the Legislature in contempt of court, and has demanded lawmakers appear, hat in hand, to answer for its budgeting decisions.

With General Rule 15, the court is again fuzzing the line between judicial and legislative authorities. The Supreme Court should step back, dismiss the proposed rule changes and kick these questions of privacy to the domed building across the Capitol campus.

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