

**Superior Court of the State of Washington
for the County of King**

Richard F. McDermott
Presiding Judge

King County Courthouse
516 Third Avenue, C-203
Seattle, Washington 98104-2381

January 27, 2012

Clerk of the Supreme Court
Attention: Camilla Faulk
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed GR 31A

Dear Ms. Faulk:

The King County Superior Court judges and administrative staff are committed to providing excellent service to our court customers and the people of King County, and are likewise committed to the concept of openness of our court's records and processes. We recognize that the Public Records Act does not apply to the courts; however, we do have an obligation to facilitate access to the courts and answer to the public's inquiries. We consider each request for information we receive promptly, and respond to each of them thoughtfully and with as much information as is practicable.

In 2011, King County Superior Court received approximately 45 formal requests for records, separate from the numerous requests received by the Clerk's Office for court records. Approximately 5-10 hours per request were spent by staff to research the requested records and prepare a response. This does not include over 100 hours spent by the County's senior deputy prosecuting attorneys in advising the Court on each request. In addition, the Court's staff member responsible for responding to such requirements was named in a lawsuit regarding a records request involving disclosure of juror records. The case required a change of venue to Snohomish County Superior Court, and was dismissed on summary judgment in favor of the respondent. The plaintiff then followed up with an appeal filed with the WA State Supreme Court, which was not accepted; the Court of Appeals will hear the case, which will take additional preparation on the part of the Court's staff and office of the prosecuting attorney.

The Court has seen an alarming number of records requests from disgruntled former litigants. Although several have posed their requests as an activity promoting "transparency in government", it appears their requests are intended to mar the reputations of judicial officers,

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staff and others whom they believe are responsible for negative consequences resulting from their individual case. In a few instances, these requestors have posed security threats to judicial officers and have required additional legal action or intervention from law enforcement.

Regarding GR31A, King County Superior Court has provided significant input and representation in the revisions associated with the current form of the rule. There have been several changes made which are considered very positive, and the court has appreciated having the opportunity to be part of the rule development process. If this rule is adopted, one of the most critical to King County is maintaining the current form of GR 31A(e)(1)(B)(4) related to the deliberative process.

There remain several concerns, however, with the current form of the rule and with its implementation. The primary areas of concern involve: cost to the court/county, both in terms of resources in fulfilling requests and potential costs of litigation; development of "best practices" and records retention policies to guide the process; lack of clarity with the appeals process; and confusion about the distinction between some court records, chambers records, and administrative records.

First, it does not appear that any projections have been developed regarding the fiscal impact this rule will have. There may be significant costs associated with implementation, not only for court staff who will be responsible for gathering records and responding to a potentially higher volume of requests, but also for the Office of the Prosecuting Attorney in advising and, potentially defending, the Court in litigation/appeals. Without allocation of additional resources to adequately staff local courts to address records requests, this rule amounts to an unfunded mandate for the courts.

Second, the rule refers to the development and guidance of "best practices" as assisting in implementation; however, the process by which these will be developed and a timeline to do so does not appear to have been determined. It is highly doubtful that best practice documentation will be available, along with associated training for all courts statewide, in time for the proposed rules implementation date of July, 2012. It is certain that development of best practices for a rule with impacts of this magnitude for organizations as complex as courts will not be easily achieved. Tied with the best practices issue is that of records retention policies and schedules, which have not existed for many courts outside the realm of the legal record maintained by the court clerk.

Third, the processes by which responses of individual jurisdictions to records requests may be contested create unique implementation issues. For example, the fact that there is an internal court process by which the decision of the public records officer could be disputed presents conflicts for the court as employer of the person serving in that capacity. In general, the fact that there are multiple tracks by which a decision might be contested is confusing and will surely pose problems in application without clear guidance.

Finally, the rule needs to more clearly distinguish between court records, chambers records, and administrative records. There are many records that do not appear to be accounted for, and these records will surely pose questions of interpretation and application in practice. It is also unclear as to which types of staff are included in the protected category of "chambers records" – law clerks are specifically called out, but it is unclear as to whether this category also covers administrators in small counties who fulfill multiple roles, bailiffs, court clerks, and the like.

While we appreciate the revisions that have been incorporated into the current version of GR 31A, there are many more issues needing to be addressed.

Sincerely,



Richard F. McDermott
Presiding Judge

RFM:aj