Faulk, Camilla

From: Richard Pope [rp98007@gmail.com]
Sent: Wednesday, November 30, 2011 4:54 PM
To: Faulk, Camilla
Cc: rp98007@gmail.com
Subject: Comments on Proposed GR 31A (Published for Comment in June 2011)

First of all, the numbering system within the proposed rule is unwieldy -- especially in GR 31A(e), entitled "Administrative Records". As it is, one has to go through several layers of subsections, sub-subsections, and sub-sub-subsections, etc., to get to the operative rules. For example, the procedure for reviewing a Public Records Officer response starts out at GR 31A(e)(3)(B) and then has as many as two more sublevels -- for example GR 31A(e)(3)(B)(5)(i) describes the procedure for review in Superior Court and GR 31A(e)(3)(B)(6)(i) deals with an award of attorney fees to the requesting party.

I would propose breaking subsection GR 31A(e) down into three different subsections, as follows:

(1) **GR 31A(e) -- Administrative Records—Right of Access**. This sub-section would contain everything in proposed sub-subsections GR 31A(e)(1) and GR 31A(e)(2)

(2) **GR 31A(f) -- Administrative Records—Procedures for Records Requests**. This sub-section would contain everything in proposed sub-sub-subsection GR 31A(e)(3)(A)

(3) **GR 31A(g) -- Administrative Records—Review of Public Records Officer's Response**. This sub-section would contain everything in proposed sub-sub-subsection GR 31A(e)(3)(B)

Then proposed subsections GR 31A(f) to GR 31A(i) can be renumbered to GR 31A(h) to GR 31A(k).

This way, the superior court review procedure would fall under GR 31A(g)(5)(A), instead of GR 31A(e)(3)(B)(5)(i), saving two levels of sub-organization, and making for much easier citations. Likewise, the attorney fee provision would fall under GR 31A(g)(6)(A), instead of GR 31A(e)(3)(B)(6)(i). As a result, GR 31A will be much easier to read, as well as make citations to.

Second, I would abolish the exemption for the Washington State Bar Association contained in proposed GR 31A(c)(3). This makes reference to a supposed GR 12.4, which does not presently exist. There was a proposed GR 12.4 that was published in November 2011, with a comment period expiring on April 30, 2012. Adopting proposed GR 31A(c)(3) would make no sense, unless GR 12.4 was adopted at the same time (or before).

I will submit comments on GR 12.4 during the April 30, 2012 expiration time frame, but I am strongly opposed to that rule. Among other things, the existing definition of public records contained in Article XIV of the WSBA By-Laws makes more sense and is much more oriented towards public disclosure of WSBA records, that what the Supreme Court has proposed in GR 12.4. In addition, the procedure for WSBA Board of Governors review in Article XIV of the WSBA By-Laws should be retained, instead of being abolished as proposed by the Supreme Court in GR 12.4. It would be appropriate to add the superior court review procedure in proposed GR 31A(e)(3) for review of WSBA Board of Governors decisions under Article XIV of the WSBA By-Laws. The review by the Chief Justice (only) in proposed GR 12.4 seems to be, frankly, patently ridiculous. There are neither procedural nor substantive guidelines for the Chief Justice to conduct review of the WSBA Executive Director's decision. Moreover, the Chief Justice, acting alone, lacks subject matter jurisdiction to do anything whatsoever. Among other things, Article IV, Section 2 of the Washington Constitution provides that "a majority of [the Supreme Court justices] shall be necessary to form a quorum, and pronounce a decision". This constitutional provision cannot be altered by court rule to allow the Chief Justice

to act alone under any circumstances.

In any event, regardless of whether a special rule is adopted for the WSBA, the Supreme Court should preserve everything currently contained in Article XIV of the WSBA By-Laws regarding public records. Article XIV was duly approved by the WSBA Board of Governors, a body elected by the active membership of the WSBA. The WSBA Board of Governors is responsible to the lawyers of Washington in general, and influenced by further application of initiative, referendum and recall procedures in the WSBA By-Laws. The Supreme Court should not disturb the decisions made by the WSBA regarding public records and access, absent compelling reasons. If the WSBA was making access to public records too restrictive, or review of public records decisions too ineffective, then the Supreme Court would be justified in intervening. Instead, in proposing GR 12.4, the Supreme Court wishes to greatly narrow the access of public records of the WSBA to considerably less than what Washington attorneys have already decided through WSBA democratic processes, and moreover, the Supreme Court wishes to basically emasculate review of the WSBA Executive Director's decisions on public records, by entirely eliminating review the WSBA Board of Governors (the body elected by Washington attorneys), foreclosing any review of a WSBA decision in a normal adversary proceeding in superior court, and instead substituting a novel, mysterious, arbitrary, and constitutionally defective (for many reasons) process conducted by the Chief Justice alone.

Third, the exemption in proposed GR 31A(c)(4) for the Certified Professional Guardian Board should be eliminated. There is nothing of either substance or procedure in existing GR 23 that defines either the public records maintained by the Certified Professional Guardian Board, the procedures to obtain access to these, or the procedures to review public records decisions. There is no logical reason why the policies and procedures generally applicable in proposed GR 31A should not cover the Certified Professional Guardian Board as well.

Sincerely,

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