

## MEMORANDUM

**TO: Justice Debra Stephens, Chair  
Bench-Bar-Press Committee**

**FROM: Judge Richard Okrent  
Fire Brigade Chief, Bench-Bar-Press Committee**

**DATE: January 2025**

**RE: Fire Brigade Annual Report, 2024**

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In 2024, several Superior and District Courts inquired this year about recording in the court by media and non-media personnel. This became an issue as political activists upset by recent arrests sought to record arraignments and subsequent motions. Trial courts can exclude photography and other forms of recording in the courtroom. In response to these requests, the Fire Brigade, together with AOC's Trial Court Legal Services section, created a [bench card](#) that is available on the AOC website.

As a rule, open courts are presumed. However, there are limits to recording in the courtroom. Judges have the inherent power to control their courtrooms, including the authority to manage their calendars, proceedings, and parties. This includes the authority to order the public to shut off all electronic devices in their courtrooms.

It is advisable that your jurisdiction create either a local rule or a written advisement regarding courtroom recording and make it available to the public. (GR 16). Here are some general guidelines:

1. A judge can place restrictions on “speech” (in this case, the taking of access is presumed; limitations on access must be supported by reasons that are sufficiently compelling to outweigh that presumption.)
2. Open access is presumed; limitations on access must be supported by reasons that are sufficiently compelling to outweigh that presumption.
3. Prior to imposing any limitations on courtroom photography or recording, the judge shall, upon request, hear from any party and from any other person or entity deemed appropriate by the judge.
4. Any reasons found sufficient to support limitations on courtroom photography or recording shall relate to the specific circumstances of the case before the court rather than reflecting merely generalized views. **There must be both a written and oral record of the limitations imposed. The standard for overturning limitations on the media is abuse of discretion. Judges are advised to proceed with caution on all issues regarding free speech.**
  - GR 16 only applies when the rights of the “news media” are implicated, but the meaning of “news media” for purposes of GR 16 has not been judicially analyzed.
  - The rule and scant case law provide little guidance regarding whether today’s YouTube streamer or social media poster is a member of the “news media.”
  - If a person claims that they are a member of the news media under GR 16, the court may need to conduct an analysis to see if they are eligible for the heightened protections of GR 16 and case law pertaining to court closures.

In King County, Fire Brigade member Judge Kristin Richardson dealt with several issues, *including*:

- 2/1/24 – Law 360 request, proposal, and counterproposal regarding King County’s lack of a centralized civil motion calendar (so they know what is newsworthy in advance).
- 3/19/24 – Seattle Times question regarding media order that prohibited photography in the courthouse hallway.
- 3/19/24 – Question re: defense request that no defendant or juror be contacted by the media until after the verdict.
- 4/16/24 – Spoke to delegation from North Macedonia, visiting the U.S. to evaluate our court practices involving the media.
- 5/20/24 – Co-training with PIO for KSCS on media orders and media relations.
- 5/23/24 – Question regarding photography by the media in courthouse hallways.

Skagit County inquired whether a judge can issue a gag order in a criminal case. The Fire Brigade’s response was that Gag orders should rarely, if ever, be granted. Two Washington cases on this issue are In re Dependency of T.L.G. 139 Wash.App. a Division 1 (2007), Where our State's Department of Social and Health Services (DSHS) filed dependency petitions regarding two children. On remand following reversal of order terminating the parents' parental rights, 126 Wash.App. 181, 108 P.3d 156, the Superior Court, Snohomish County, Michael T. Downes, J., continued to suspend parents' visitation with the children. Mother and father appealed, and father also appealed gag orders issued by the juvenile court.

The Court of Appeals held that “no justification existed for gag orders prohibiting father from disseminating any documents, reports and orders without permission of the court and notice to

DSHS and the children's volunteer guardian ad litem and State v. Bassett, 128 Wn.2d 612, 911 P.2d 385 (1996)

In July 2024, in Snohomish County KOMO TV sought to unseal the records of a highly published juvenile murder case by using a show cause procedure without notice to the parties or the victim's family. The procedure for unsealing these records under GR 15c (1) and 15 e favors open courts but only allows for these records to be unsealed after notice to all parties. The court, after a full hearing to unseal the files, must balance the needs of the litigants and the rights of the victim in determining whether to unseal the records. See *Seattle Times vs Benton County* 99, Wash 2d 251 (1983).

June 2024, Spokane Superior court inquired as to whether or not Judges' meeting records should be released to the media. The Fire Brigade responded that "GR 31.1 is the controlling rule. We also agree that providing weekly minutes would be burdensome and could have a chilling effect. The rule is clear that the court can redact any information deemed sensitive, confidential, or protected.

We agree that a blanket request is not appropriate. Rather, requests should be specific, and then each request can be considered. Also, we discussed going into an "executive" session when discussing anything sensitive to make it easier to redact. Perhaps the minutes could be formatted to eliminate the need to go line by line by using an executive session in each meeting's minutes."

The Fire Brigade is always ready to help our colleagues and members of the media navigate any issues that arise. You can read past Fire Brigade Reports [here](#).