1. February 12, 2013 Meeting Minutes

JISC DATA DISSEMINATION COMMITTEE
February 12, 2013
12:00 - 1:00 p.m.
Teleconference

DRAFT - MEETING MINUTES

Members Present
Judge Thomas J. Wynne, Chair
Judge J. Robert Leach
Ms. Barbara Miner
Judge Steven Rosen

Members Absent
Judge Jeanette Dalton
Judge James R. Heller
Mr. William Holmes

Guests Present
Mr. Brandon Reed
Ms. Jean McElroy, WSBA
Mr. Jason Murphy, Data Driven Safety
Mr. Mike Katell, Access to Justice Tech Committee (Present for the discussion of the Data Driven Safety matter only)

AOC Staff Present
Lynne Alfasso, AOC Data Dissemination Administrator

Judge Wynne called the meeting to order and the following items of business were discussed:

1. Brandon Reed – Request for Information

Mr. Reed announced that he would tape record the teleconference.

The Committee members discussed the Request for Information dated January 3, 2013, filed by Mr. Reed, requesting the following information from the Judicial Information System (JIS):

> The name, WSBA number, mailing address, telephone number, e-mail address, fax number, WSBA membership status (both current and historical), date(s) of admission, and WSBA committee membership, practice area, and languages spoken of all attorneys licensed to practice in Washington State as disclosed by the WSBA to the Supreme Court according to APR 13(B) and (C) by the WSBA.

Mr. Reed said that he felt the information he was requesting was public information to which he should have access, and that he intended to use the information for noncommercial purposes.

It was noted that the attorney information is provided by the WSBA (Washington State Bar Association) and entered into the JIS pursuant to court rule, for use for court purposes, and that the use of the data in JIS is restricted to the purpose for which it is provided.

It was also noted that, while the JIS Data Dissemination Policy references the state Public Records Act which is now found in RCW Chapter 42.56 but was formerly part of RCW Chapter 42.17, that reference in the Data Dissemination Policy is only for the purpose of

incorporating certain definitions from the Public Records Act into the Policy. Under Washington case law, the state Public Records Act is not applicable to court or JIS records.

The WSBA has its own policy setting forth the conditions under which it will disseminate its members' contact information. Ms. McElroy, the WSBA representative, stated the following:

- Mr. Reed's request is for all WSBA members, active and inactive;
- The WSBA sells the member information for law-related purposes;
- Each sale of the information is for a one-time use by the customer;
- The attorney information is available for free on the WSBA website, in the lawyer directory;
- Some attorneys have been allowed to make their contact information private, under either WSBA rules or other statutes;
- The WSBA is not required to provide the information in the spreadsheet format requested by Mr. Reed;
- The WSBA is not subject to the state Public Records Act;
- That whether or not the WSBA is a "state agency" is a matter of dispute;
- That the WSBA is subject to the rules adopted by the Supreme Court.

The Committee members suggested that Mr. Reed request the attorney contact information directly from the WSBA. It was also suggested that Mr. Reed request a waiver or reduction in the fee the WSBA charges for such information. This Committee has no authority over the WSBA's fees and no information on how the WSBA arrives at its fees.

A motion was made and seconded to deny Mr. Reed's request for the compiled attorney contact information in the JIS, which is provided by the WSBA pursuant to court rule. The motion was approved unanimously by the Committee members.

2. Request for Information – Data Driven Safety

The Committee considered the Request for Information from Data Driven Safety (DDS) dated December 3, 2012. DDS has requested traffic infraction case information from traffic infraction cases disposed of within the last three years. The data elements requested by DDS are:

- Case number
- Law enforcement agency code
- Law enforcement agency name
- Name of individual
- Date of birth
- Gender
- Case type
- Jurisdiction code
- Jurisdiction description
- Violation date
- Case filing date
- Case disposition code
- Case disposition description
- Case disposition date,

- Driver's license state of issuance,
- Charge information.

Mr. Jason Murphy, from DDS, explained his company's request to the Committee members. Although traffic infraction case information is available to JIS-Link subscribers on a case-by-case basis, DDS is concerned that it would be very costly to obtain the information that way and, therefore, prefers to have AOC prepare a single custom data report with the information. The cost to the requestor for such a single "bulk" report would be AOC's actual programming and administrative time to obtain the data from the JIS and prepare a report. Mr. Murphy explained that DDS aggregates traffic case information from sources throughout the country and resells the information in various formats to interested third parties. Mr. Murphy stated that his company would be willing to include in its data contract with AOC such provisions as limits on how long DDS would retain any data it received from AOC pursuant to this request, a promise to comply with all state and federal laws relating to the data, and maintenance of liability insurance with AOC as an additional insured.

It was noted that the retention period in JIS for traffic infraction cases is only three years after date of disposition (and seven years if the penalty is deferred). There does not appear to be documentation at AOC on why this period was chosen; however, three years is also the length of time covered by the abstract of a person's driving record that the state Department of Licensing may release to an insurance company. It was noted that once court case records are released to third parties, it is difficult to control how those records are used or how long they are retained.

The Committee discussed the Data Dissemination Policy, section III.A.4, which states that privacy protections accorded by the Legislature for records held by other state agencies are to be applied to requests for computerized information from court records, so that court computer records are not used to circumvent such protections. The legislature has adopted restrictions on the dissemination of the abstract of a driver's record held by the Department of Licensing, as set forth in RCW 46.52.130. Those abstracts are not available to the public, but are available to various categories of requestors. For example, insurance companies are permitted to get abstracts on insureds or applicants, but the abstract may only cover a three-year period. The committee also discussed the Driver's Privacy Protection Act, 18 U.S.C. §§ 2721-2725, which restricts the dissemination by state licensing authorities of drivers' personal information, as defined in the Act, except for the purposes enumerated in the Act.

Due to the Committee members' questions about the implications of state and federal law on the DDS request for the release of the traffic infraction case information, it was moved and seconded that the Committee ask the State Court Administrator to request an informal letter opinion from the Attorney General on this issue. The motion passed unanimously.

After the Attorney General's opinion is received, this matter will be put back on the Committee's Agenda for further action. Mr. Murphy asked if he could work with AOC staff to prepare a proposed contract which would then be available for review by the Committee in the event the Committee decided to grant the DDS request; the Committee had no objection to this proposal.

3. JIS Data Dissemination Committee Meeting on April 12, 2013

This Committee will hold an in-person meeting on April 12, 2013, at the Snohomish County Superior Court, starting at 1:30 p.m., to discuss whether to propose revisions to GR 15 to the Supreme Court, because of recent case law on the issue of sealed records. Judge Wynne is preparing a draft of proposed revisions for the Committee's review. More information on this meeting will be forthcoming.

4. Information Only – ITG 152—Sealed Juvenile Case Information on the DCH Screen

Staff reported on the status of ITG 152, which was a request from this Committee to AOC to create a new version of the Defendant Case History (DCH) screen which does not include any information on sealed juvenile cases. Courts will be able to print out this new version of the DCH for the subject of the record or the subject's designee. This request received final approval earlier this month from the ITG Multi-Court Level User Group (MCLUG). The MCLUG also gave ITG 152 a "High" priority rating, as compared to other requests.

5. Interim Committee Staff

John Bell, the AOC Contracts Manager, will be acting as staff for the Committee on an interim basis until a new Data Dissemination Administrator is hired by AOC.

6. Recording Policy

It was suggested that this Committee adopt a uniform policy regarding the electronic recording of meetings. Staff was asked to put this matter on the Committee's agenda at a later date.

There being no other business to come before the Committee, the meeting was adjourned.

2. May 31, 2013
Meeting Minutes

JISC DATA DISSEMINATION COMMITTEE
May 31, 2013
1:00 - 4:30 p.m.
Administrative Office of the Courts
SeaTac Office Building
18000 International Blvd. Suite 1106
SeaTac, WA 98188

DRAFT-MEETING MINUTES

Members Present
Judge Thomas J. Wynne, Chair
Judge Jeanette Dalton
Judge James R. Heller
Mr. William Holmes
Judge J. Robert Leach
Ms. Barbara Miner
Judge Steven Rosen

Guests Present
Ms. Kim Ambrose, UW
Ms. Vanessa Hernandez, ACLU
Mr. Mike Katell, Access to Justice Tech Committee (Present via phone)
Ms. Marna Miller, WSIPP
Mr. Rowland Thompson, Seattle Times

AOC Staff Present
John Bell, AOC Interim Data Dissemination Administrator
Stephanie Happold, AOC Data Dissemination Administrator
Kate Kruller, AOC IT Project Manager, ISD
Vicky Marin, AOC Business Liaison, ISD
Mellani McAleenan, Associate Director, Board of Judicial Administration

Judge Wynne called the meeting to order and the following items of business were discussed:

1. **Introductions**
   Stephanie Happold, the new Data Dissemination Administrator, was introduced to the Committee.

2. **GR 15 Draft**
   A draft copy of GR 15 that included the latest edits from Judge Leach and Judge Wynne was presented to the Committee. Members provided edits and comments for each section and unanimously approved a working copy of the GR 15 draft. The Committee then directed staff to send out the draft to interested parties for review and comments.

3. **WSIPP Request**
   The Committee moved the May 22, 2013, Washington State Institute for Public Policy (WSIPP) Request for Information to the next agenda item as Ms. Miller was present. WSIPP requested access to SCOMIS type 7 child dependency and termination records for research. WSIPP is interested in updating its estimate of the taxpayer costs for interventions that reduce the occurrence of child abuse and neglect and the monetary value of changes in out-of-home placement in the child welfare system. In preparation for this study, WSIPP also filed an application with the Washington State Institutional Review Board

describing the plan for using DSHS information matched with SCOMIS records for dependency and termination cases.

Staff informed the Committee that a contract shall be entered into between WSIPP and AOC for this data as it is confidential. Ms. Miller stated that WSIPP fully understood the security issues and does not object to a research agreement.

Barbara Miner asked Ms. Miller about the issue of names and hearing cause numbers not always matching. Ms. Miller responded that information on parents and the children would be sought to resolve that issue. Barbara Miner also asked about hearings that involve multiple children in the family and how WSIPP would work with that data. Ms. Miller responded that WSIPP would find a way to link up the hearing numbers with all the children so that if there is one hearing for one family with four children, time would be divided and recorded for each child.

Chair Wynne then asked for a vote. The WSIPP request was passed unanimously.

4. Juvenile Offender Records in JIS

The Committee considered this agenda item next as members of the public were in attendance to participate in the discussion. Mellani McAleenan provided background information about proposed legislative bills making juvenile offender records not available to the public. Chair Wynne presented the proposed new section of the Data Dissemination Policy that would make juvenile offender court records maintained in JIS not available on the AOC publically accessible website and in the public indexes AOC provides subscribers. The juvenile offender records would still be available via JIS-Link subscription and at the court clerk's office. Kim Ambrose from University of Washington, Mike Katell of Access to Justice Tech Committee, and Ms. Hernandez from the ACLU voiced comments that this amendment was a step in the right direction. Rowland Thompson stated that people would get around this limitation by going to clerks' offices and taking up court clerk time by looking up all the individual cases.

Judge Leach asked how much money the new amendment would cost to implement and what unforeseen consequences would result, such as increased use of the JIS-Link crashing the system. The Committee asked that the AOC Information Services Division be contacted to provide information on possible issues with enacting this amendment.

Barbara Miner raised the issue about third parties still having the information from the public indexes that would no longer be updated, thereby possibly providing incorrect data based on old information from prior public indexes' data. Even if AOC no longer updated the data in the indexes, this would not stop third parties from providing the old data.

The Committee provided edits to the proposed amendment and requested that staff send the amendment draft out to interested parties for comment.

5. ITG 41 Discussion

Kate Kruller presented the ITG 41 project and updated the Committee on its progress. Ms. Kruller and Vicky Marin answered Committee member questions about the project and status. The Committee then reviewed and provided edits to the proposed amendment to the

Data Dissemination Policy regarding retention of court records by Courts of Limited Jurisdiction. The Committee then unanimously approved the proposed amendment and approved adding the ITG 41 retention schedule as an appendix to the policy. Staff was requested to send out finalized copies of the proposed amendment to interested parties for comments. The proposed amendment will go before the JISC for final approval.

6. Review of GR 31 and Proposed Amendment GR 31(l)

The Committee reviewed the proposed amendment to GR 31 that was submitted by the DMCJA. Chair Wynne expressed his concern with the amendment as it may not be constitutional or legal under current case law that was provided to the Committee prior to the meeting. The Committee agreed to table the conversation for a later date.

7. Request for Information – Data Driven Safety

This Request for Information is a discussion topic that was continued from prior DDC meetings and stems from the original December 3, 2012 DDS request. The Committee attempted to call Mr. Jason Murphy from Data Driven Safety (DDS), but he did not answer his phone as the time was later than previously agreed upon between staff and Mr. Murphy.

Prior to the meeting, Committee members read former Data Dissemination Administrator Lynne Alfasso's memo on previously raised questions regarding the DDS request. The memo addressed whether the release of the traffic infraction case information from cases disposed of within the last three years violated any state or federal law and if the terms and conditions in the standard agreement approved by the JISC pursuant to GR 31 for the bulk distribution of court record information should adequately provide for the security and allowable use of the data with modifications reflecting that this was a one-time distribution of information and not an ongoing subscription to the data. Ms. Alfasso's memo provided legal analysis as to why the release of information would not violate state or federal law and also provided a draft mark-up of the agreement that could be used for this one-time distribution to DDS.

It was explained to the Committee members that prior to the meeting, Chair Wynne had withdrawn his request for an informal AAG opinion on the matter based on Ms. Alfasso's thorough legal analysis and the AAG's agreement with her conclusions. Therefore, the AAG did not provide an informal opinion or more detailed attorney-client advice on the matter.

The Committee members agreed with Ms. Alfasso's legal analysis and unanimously approved the DDS request for information pursuant to an agreement being entered into between DDS and AOC. Staff was directed to call Mr. Murphy to let him know the decision.

There being no other business to come before the Committee, the meeting was adjourned.

3. GR 15 DRAFT

GENERAL RULE 15 As Of 07052013

Draft Amendment

DESTRUCTION, SEALING, AND REDACTION OF COURT RECORDS

(a) Purpose and Scope of the Rule. This rule sets forth a uniform procedure for the destruction, sealing, and redaction of court records. This rule applies to all court 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.

(b) Definitions.

(1) "Court file" means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated cause number(s).

(2) "Court record" is defined in GR 31(c)(4).

(3) "Destroy". ~~To destroy~~ means to obliterate a court record or file in such a way as to make it permanently irretrievable. A motion or order to expunge shall be treated as a motion or order to destroy.

(4) ~~Dismissal.~~ "Dismissal" means dismissal of an adult criminal charge or juvenile offense by a court for any reason, other than a dismissal pursuant to RCW 9.95.240, ~~or~~ RCW 10.05.120, RCW 3.50.320, or RCW 3.66.067.

(5) ~~(4) Seal. To s~~"Seal" means to protect from examination by the public and unauthorized court personnel. A motion or order to delete, purge, remove, excise, or erase, or redact shall be treated as a motion or order to seal.

(6) ~~(5) Redact. To r~~"Redact" means to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.

(7) ~~(6)~~ "Restricted Personal Identifiers" are defined in GR 22(b)(6).

~~(8) (7) Strike. A motion or order to strike is not a motion or order to seal or destroy.~~

Comment [SUH1]: Definition not used in rule.

~~(9)~~ (8) ~~Vacate. To v~~"Vacate" means to nullify or cancel.

(c) Sealing or Redacting Court Records.

(1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceedings, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal

case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile. No such notice is required for motions to seal documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).

(2) ~~After~~ At the hearing, the court ~~may order the court files an and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record.Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:~~ shall consider the applicable factors and enter specific findings on the record to justify any sealing or redaction.

(A) For any court record that has become part of the court's decision-making process, the court must consider the following factors:

(i) Has the proponent of sealing or redaction established a compelling interest that gives rise to sealing or redaction, and if it is based upon an interest or right other than an accused's right to a fair trial, a serious and imminent threat to that interest or right; and

(ii) Has anyone present at the hearing objected to the relief requested; and

(iii) What is the least restrictive means available for curtailing open public access to the record; and

(iv) Whether the competing privacy interest of the proponent seeking sealing or redaction outweighs the public's interest in the open administration of justice; and

(v) Will the sealing or redaction be no broader in its application or duration than necessary to serve its purpose.

COMMENT

The applicable factors the court shall consider in a Motion to Seal or Redact incorporate current Washington caselaw including:

Federated Publications v. Kurtz, 94 Wn.2d 254 (1980)

Seattle Times v. Ishikawa, 97 Wn.2d 30 (1982)

Allied Daily Newspapers v. Eikenberry, 121 Wn.2d 205 (1993)

State v. Boneclub, 128 Wn.2d 254 (1995)
Rufer v. Abbot Laboratories, 154 Wn.2d 530 (2005)
Dreiling v. Jain, 151 Wn.2d 900 (2004)
State v. Waldon, 148 Wn. App. 952 (2009)
State v. Coleman, 151 Wn. App. 614, at FN 13 (2009)
Tacoma News v. Cayce, 172 Wn.2d 58 (2011)

(B) For any court record that was not a part of the court's decision-making process, the court must consider the following:

(i) Has the proponent of the sealing or redaction established good cause; and

(ii) Has any nonparty with an interest in nondisclosure been provided notice and an opportunity to be heard.

COMMENT

In Bennett et al v. Smith Bunday Berman Britton, PS, 176 Wn.2d. 303 (2013), the State Supreme Court held that documents obtained through discovery that are filed with a court in support of a motion that is never decided are not part of the administration of justice and therefore may be sealed under a good cause standard.

(3) Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records.

(4) Sufficient privacy or safety concerns that may be weighed on a case by case basis against the public interest in the open administration of justice include findings that:

(A) The sealing or redaction is permitted by statute; or

(B) The sealing or redaction furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or

(C) A criminal conviction or an adjudication or deferred disposition for a juvenile offense has been vacated; or

(D) A criminal charge or juvenile offense has been dismissed, and:

(i) The charge has not been dismissed due to an acquittal by reason of insanity or incompetency to stand trial; or

(ii) A guilty finding does not exist on another count arising from the same incident or within the same cause of action; or

(iii) Restitution has not been ordered paid on the charge in another cause number as part of a plea agreement.

or

(E) A defendant or juvenile respondent has been acquitted, other than an acquittal by reason of insanity or due to incompetency to stand trial; or

(F) A pardon has been granted to a defendant or juvenile respondent; ~~by the Governor. pursuant to law~~; or

(G)~~(D)~~ The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or

(H) The sealing or redaction is of a court record of a preliminary appearance, pursuant to CrR 3.2.1, CrRLJ 3.2.1, or JUCR 7.3 or a probable cause hearing, where charges were not filed; or

(I)~~(E)~~ The redaction includes only restricted personal identifiers contained in the court record; or

(J)~~(F)~~ Another identified compelling circumstance exists that requires the sealing or redaction.

COMMENT

Additional privacy or safety concerns that may be weighed against the public interest are included based upon the deliberations at the Joint Legislative Court Records Privacy Workgroup in 2012. In Allied Daily Newspapers v. Eikenberry, 121 Wn.2d 205 (1993), the court held that the presumptive right of public access to the courts ***is not absolute and may be outweighed by some competing interest as determined by the trial court on a case by case by basis, according to the Ishikawa guidelines.***

(5) Every order sealing or redacting material in the court file, except for sealed juvenile offenses, shall specify a time period, after which, the order shall expire. The proponent of sealing or redaction has the burden of coming back before the court and justifying any continued sealing or redaction beyond the initial specified time period. Any request for public access to a sealed or redacted court record received by the custodian of the record after the expiration of the Order to Seal or Redact shall be granted as if the record were not sealed, without further notice. Thereafter, the record will remain unsealed. The Court, in its discretion, may order a court record sealed indefinitely if the court finds that the circumstances and reasons for the sealing will not change over time.

COMMENT

Requiring a time period, after which the order sealing or redacting expires, implements the factor that the order must be no broader in its duration than necessary to serve its purpose. The critical distinction between the adult criminal system and the juvenile offender system lies in the policy of the 1977 Juvenile Justice Act's policy of responding to the needs of juvenile offenders. ~~Our Supreme Court has found s~~Such a policy has been found to be ***rehabilitative*** *in nature, whereas the criminal system is punitive. State v. Rice, 98 Wn.2d 384 (1982); State v. Schaaf, 109 Wn.2d 1,4; Monroe v. Soliz, 132 Wn.2d 414, 420 (1997); State v. Bennett, 92 Wn. App. 637 (1998). Legacy JIS systems do not have the functionality to automatically unseal or unredact a court record upon the expiration of an Order to Seal or Redact.*

(6) The name of a party to a case may not be redacted, or otherwise changed or hidden, from an index maintained by the Judicial Information System or by a court. The existence of a court file containing a redacted court record is available for viewing by the public on court indices, unless protected by statute.

COMMENT

~~*In Hundtofte v. Encarnacion, 169 Wn. App. 498 (2012), review granted 176 Wn.2d 1019 (2013), the Court of Appeals reversed a trial court order redacting the name of a party from the court index. Redacting a name from the index would effectively mask the existence of a case from the public.*~~ *Existence of a case can no longer be determined for the purpose of public access and viewing, if the case cannot be found by an index search. Redacting the name of a party in the index would prevent the public from moving for access to a redacted record under section (f). The policy set forth in this section is consistent with existing policy when the entire file is ordered sealed, as reflected in section (c) (9).*

(7)~~(4)~~No court record shall be sealed under this rule when redaction will adequately protect the interests of the proponent.

(8) Motions to Seal/Redact when Submitted Contemporaneously with Document Proposed to be Sealed or Redacted – Not to be Filed.

(A) The document sought to be sealed or redacted shall not be filed prior to a court decision on the motion. The moving party shall provide the following documents directly to the court that is hearing the motion to seal or redact:

(i) The original unredacted document(s) the party seeks to file under seal shall be delivered in a sealed envelope for in camera review.

(ii) A proposed redacted copy of the subject document(s), if applicable.

(iii) A proposed order granting the motion to seal or redact, with specific proposed written findings and conclusions that establish the basis for the sealing and redacting and are consistent with the five factors set forth in subsection (2)(a).

(B) If the court denies, in whole or in part, the motion to seal, the court will return the original unredacted document(s) and the proposed redacted document(s) to the submitting party and will file the order denying the motion. At this point, the proponent may choose to file or not to file the original unredacted document.

(C) If the court grants the motion to seal, the court shall file the sealed document(s) contemporaneously with a separate order and findings and conclusions granting the motion. If the court grants the motion by allowing redaction, the judge shall write the words "SEALED PER COURT ORDER DATED [insert date]" in the caption of the unredacted document before filing.

COMMENT

The procedure established by State v. McEnroe, 174 Wn.2d 795 (2012) for withdrawal of documents filed contemporaneously with a Motion to Seal or Redact is incorporated in the rule.

(9)~~(4)~~Sealing of Entire Court File. When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. Except for sealed juvenile offenses, the existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices. The information on the court indices is limited to the case number, names of the parties, the notation "case sealed," the case type and cause of action in civil cases and the cause of action or charge in criminal cases, except where the conviction in a criminal case has been vacated, the charge has been dismissed, the defendant has been acquitted, the governor has granted a pardon, or the order is to seal a court record of a preliminary appearance or probable cause hearing; then section (d)shall apply. Except for sealed juvenile offenses, the order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.

(10)~~(5)~~Sealing of Specified Court Records. When the clerk receives a court order to seal specified court records the clerk shall:

(A) On the docket, preserve the docket code, document title, document or subdocument number and date of the original court records; and

(B) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the court record ordered sealed exists in a microfilm, microfiche or other storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and

(C) File the order to seal and the written findings supporting the order to seal. Except for sealed juvenile offenses, both shall be accessible to the public; and

Comment [SUH2]: DDC requested further review and discussion regarding (9) and asked for comments from interested parties.

Comment [SUH3]: Possible comment added after subsection discussing financial restraints/computer system upgrades.

(D) Before a court file is made available for examination, the clerk shall prevent access to the sealed court records.

(11)~~(6)~~Procedures for Redacted Court Records. When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original unredacted court record shall be sealed following the procedures set forth in (c)(5).

(d) Procedures for Vacated Criminal Convictions, Dismissals and Acquittals, Pardons and Preliminary Appearance Records.

(1) In cases where a criminal conviction has been vacated and an order to seal entered, the information in the public court indices shall be limited to the case number, case type ~~with the notification "DV" if the case involved domestic violence~~, the ~~adult's~~ defendant's ~~or juvenile's~~ name, and the notation "vacated."

(2) In cases where a defendant has been acquitted, a charge has been dismissed, ~~the governor has granted a pardon~~ pardon has been granted, or the subject of a motion to seal or redact is a court record of a preliminary appearance, pursuant to CrR 3.2.1 or CrRLJ 3.2.1, or a probable cause hearing, where charges were not filed, and an order to seal entered, the information in the public indices shall be limited to the case number, case type ~~with the notification "DV" if the case involved domestic violence~~, the ~~adult's~~ defendant's ~~or juvenile's~~ name, and the notation "non conviction."

(e) Procedures for Sealed Juvenile Offender Adjudications, Deferred Dispositions, and Diversion Referral Cases. In cases where an adjudication for a juvenile offense, a juvenile diversion referral, or a juvenile deferred disposition has been sealed pursuant to the provisions of RCW 13.50.050 (11) and (12), the existence of the sealed juvenile offender case shall not be accessible to the public.

COMMENT

RCW 13.40.130 sets forth procedures for the adjudication and disposition of juvenile offenses. Juvenile offenses which may be referred to diversion are described in RCW 13.40.070. RCW 13.50.050 (11) provides that when an information has been filed or a complaint has been filed with the prosecutor and referred for diversion, "the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and subject to subsection (23) of this section, order the sealing of the official juvenile court file, the social file, and records of the court and any other agency in the case." RCW 13.40.127 prescribes the eligibility requirements and procedure for entry of a deferred disposition in juvenile offender cases, and the process for subsequent dismissal, and vacation of juvenile conviction. This provision provides for sealing of vacated deferred dispositions pursuant to RCW 13.50.050 and subsection (10) (a) (ii) provides for administrative sealing of vacated deferred disposition in certain circumstances. RCW 13.50.050 (14) (a) provides that:

Comment [SUH4]: DDC requested further review of the Comment.

"Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual."
This remedial statutory provision is a clear expression of legislative intent that the existence of juvenile offender records which have been vacated pursuant to the provisions of RCW 13.50.050 (11) and (12) and ordered sealed by the court not be made available to the public. Records sealed pursuant to RCW 13.40.127 have the same legal status as records sealed under RCW 13.50.050. RCW 13.40.127 (10) (c). The statutory language of 13.50.050 (14) (a), included above, is distinguishable from statutory provisions governing vacation of adult criminal convictions found in RCW 9.94A.640, RCW 9.95.240, and RCW 9.96.060.

~~(c)~~**(f) Grounds and Procedure for Requesting the Unsealing of Sealed Court Records or the Unredaction of Redacted Court Records.**

(1) Order Required. Sealed or redacted court records may be examined by the public only after the court records have been ordered unsealed or unredacted pursuant to this section ~~or~~, after entry of a court order allowing access to a sealed court record or redacted portion of a court record, or after an order to seal or redact the record has expired. Compelling circumstances for unsealing or unredaction exist when the proponent of the continued sealing or redaction fails to overcome the presumption of openness under the factors in section (c)(2). The court shall enter specific findings on the record supporting its decision.

(2) Criminal Cases. A sealed or redacted portion of a court record in a criminal case shall be ordered unsealed or unredacted only upon proof of compelling circumstances, unless otherwise provided by statute, and only upon motion and written notice to the persons entitled to notice under subsection (c)(1) of this rule except:

(A) If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecuting attorney the court shall nullify the sealing order in the prior sealed case(s).

(B) If a petition is filed alleging that a person is a sexually violent predator, upon application of the prosecuting attorney the court shall nullify the sealing order as to all prior criminal records of that individual.

(C) If the time period specified in the Order to Seal or Redact has expired, the sealed or redacted court records shall be unsealed or unredacted without further order of the court~~, unless the proponent of sealing or redacting has noted a motion for continued sealing for hearing,~~ in accordance with this rule.

Comment [SUH5]: DDC requested further review as it relates to the *Bennett* case.

Comment [SUH6]: DDC requested further time to review this subsection.

~~Compelling circumstances for unsealing exist when the proponent of continued sealing fails to overcome the presumption of openness under the factors in section (c)(2).~~

(3) Civil Cases. A sealed or redacted portion of a court record in a civil case shall be ordered unsealed or unredacted only upon stipulation of all parties or upon motion and written notice to all parties and proof that identified compelling circumstances for continued sealing or redaction no longer exist, or pursuant to ~~RCW~~ chapter 4.24 RCW or CR 26(j). ~~Compelling circumstances for unsealing exist when the proponent of continued sealing fails to overcome the presumption of openness under the factors in section (c)(2).~~ If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

COMMENT

In State v. Richardson, Wn. 2d (2013). ~~T~~There was a motion in the trial court to unseal. The State Supreme Court remanded to the trial court for further proceedings a 1993 criminal conviction, which was vacated and later sealed in 2002 was remanded to the trial court for further proceedings. There was no record of the trial court considering the Ishikawa factors. A previous version of GR 15 was in effect in 2002. The Supreme Court found that "compelling circumstances" for unsealing exist under GR 15 (e) when the proponent of sealing fails to overcome the presumption of openness under the five factor Ishikawa analysis. In either case, the trial court must apply the factors.

(4) Juvenile Proceedings. Inspection of a sealed juvenile court record is permitted only by order of the court upon motion made by the person who is the subject of the record, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(23). Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order, pursuant to RCW 13.50.050(16). Unredaction of the redacted portion of a juvenile court record shall be ordered only upon the same basis set forth in section (2), above.

~~(f)~~**(g) Maintenance of Sealed Court Records.** Sealed court records are subject to the provisions of RCW 36.23.065 and can be maintained in mediums other than paper.

~~(g)~~**(h) Use of Sealed Records on Appeal.** A court record, or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.

~~(h)~~**(i) Destruction of Court Records.**

(1) The court shall not order the destruction of any court record unless expressly permitted by statute. The court shall enter written findings that cite the statutory authority for the destruction of the court record.

(2) In a civil case, the court or any party may request a hearing to destroy court records only if there is express statutory authority permitting the destruction of the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to destroy the court records only if there is express statutory authority permitting the destruction of the court records. Reasonable notice of the hearing to destroy must be given to all parties in the case. In a criminal case, reasonable notice of the hearing must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile.

(3) When the clerk receives a court order to destroy the entire court file the clerk shall:

(A) Remove all references to the court records from any applicable information systems maintained for or by the clerk except for accounting records, the order to destroy, and the written findings. The order to destroy and the supporting written findings shall be filed and available for viewing by the public.

(B) The accounting records shall be sealed.

(4) When the clerk receives a court order to destroy specified court records the clerk shall:

(A) On the automated docket, destroy any docket code information except any document or sub-document number previously assigned to the court record destroyed, and enter "Order Destroyed" for the docket entry; and

(B) Destroy the appropriate court records, substituting, when applicable, a printed or other reference to the order to destroy, including the date, location, and document number of the order to destroy; and

(C) File the order to destroy and the written findings supporting the order to destroy. Both the order and the findings shall be publicly accessible.

(5) Destr~~uction~~oying ~~of~~ Records.

(A) This subsection shall not prevent the routine destruction of court records pursuant to applicable preservation and retention schedules.

(B) Trial Exhibits. Notwithstanding any other provision of this rule, trial exhibits may be destroyed or returned to the parties if all parties so stipulate in writing ~~and~~ or the court so orders.

(j) Effect on Other Statutes. Nothing in this rule is intended to restrict or to expand the authority of clerks under existing statutes, nor is anything in this rule intended to restrict or expand the authority of any public auditor in the exercise of duties conferred by statute.

GR 15 Comments from Barb Miner

Gr 15 (b) (8) – would actually be very helpful to have GR 15 deal with "strike." This issue/language comes up often and differing meanings of the word are intended. Or is "strike" covered in statute or other places in the rules?

GR 15©(4)(H) – The language "where charges were not filed" is potentially problematic. Linking the records on preliminary appearance to an actual filing of charges is not easy. In many courts there is no way to link these things as PA records are in district court and filings may be in Superior, district or municipal. In addition, the time period between prelim appearance and charges being filed is not defined, presenting the issue of the request for sealing being presented while charging decisions are still pending.

(i)(B) Really appreciate this edit. And request one other: "…….returned to the parties if ~~all~~ parties so stipulate…." The all language can cause problems when a party who did not submit exhibits is not interested in signing a stip.

4. Juvenile Offender Records Amendment

JUDICIAL INFORMATION SYSTEM
DATA DISSEMINATION POLICY

(New) VI. LIMITATION ON DISSEMINATION OF JUVENILE OFFENDER COURT RECORDS

The dissemination of juvenile offender court records maintained in the Judicial Information System shall be limited as follows:

1. Juvenile offender court records shall be excluded from any bulk distribution of JIS records by the Administrative Office of the Courts otherwise authorized by GR 31 (g), except for research purposes as permitted by statute or court rule.
2. The Administrative Office of the Courts shall not display any information from an official juvenile offender court record on a publicly-accessible website that is a statewide index of court cases.

COMMENT

Juvenile offender court records shall remain publicly accessible on JIS Link notwithstanding any provision of this section.

RECEIVED STAKEHOLDER COMMENTS FOR GR 15 DRAFT AND JUVENILE OFFENDER COURT RECORDS DD POLICY AMENDMENT

From:	Travis Stearns
To:	Happold, Stephanie
Cc:	Christie Hedman
Subject:	WDA Comments to New JIS Policy and Proposed Changes to GR 15
Date:	Tuesday, July 16, 2013 11:26:38 AM
Attachments:	WDA Comments to GR 15 Proposed Amendments.pdf

Stephanie, I understand that you are the right person to send our comments to. Please let me know if I am wrong.

I have attached a letter stating our position. We are in accord with the Juvenile Law Section of the WSBA, supporting the new policy statement and asking that GR 15 include language that "the sealing of juvenile offenses shall be governed by RCW 13.50.050."

Thank you for your attention on this matter.

t.

Travis Stearns
Deputy Director
Washington Defender Association
(206) 623-4321

Washington Defender Association
110 Prefontaine Place South, Suite 610
Seattle, Washington 98104

Christie Hedman, Executive Director
Michael Kawamura, President

Telephone: (206) 623-4321
Fax: (206) 623-5420

July 15, 2013

RE: Proposed Amendments to GR 15 and Policy to Limit Bulk Distribution of JIS Juvenile Records

Dear Members of the JIS-Data Dissemination Committee:

Please accept these comments on behalf of the Washington Defender Association, which is in accord with the comments submitted by the WSBA Juvenile Law Section. WDA supports the new JIS Policy (VI.), which limits the bulk distribution of juvenile records. WDA asks that the changes to GR 15 not be adopted. Instead, WDA would agree with the WSBA Juvenile Law Section that a provision stating that "The sealing of juvenile offense records shall be governed by RCW 13.50.050" should instead be added to GR 15.

New JIS Policy (VI.) Limitation on Dissemination of Juvenile Offender Court Records

WDA supports the JIS's new proposed policy to limit the bulk distribution of juvenile records. While not a perfect solution, it provides a fix to the timeliness of the records that are distributed by private consumer reporting agencies and supports the removal of juvenile's names and offense information from public websites.

Proposed Changes to GR 15

WDA believes that there the legislature created a clear process for sealing juvenile court records and that the procedures for sealing under GR 15 should reflect this. Like the WSBA Juvenile Law Section, WDA proposes that GR 15 include a provision that states *"The sealing of juvenile offense records shall be governed by RCW 13.50.050*."

WDA agrees that the proposed amendments to GR 15 make the process for sealing juvenile records almost identical to the process for sealing adult records and would ask that these amendments not be considered. In addition to the clear process already established by the legislature under RCW 13.50.050, WDA would ask you to consider the fact that the courts and our legislature have recognized that youth are different and that rules need to be crafted with those differences in mind.

WDA believes that the proposed amendments go beyond those found in RCW 13.50.050 or any court decision. They create an additional and unnecessary barrier for youth who have been rehabilitated and are seeking to move past their criminal history. Instead of recognizing as

the U.S. Supreme Court has done in every major juvenile decision since 2005 that there are fundamental differences between youth and adults, these amendments would treat youth seeking to seal their records in much the same way that adults are now treated.

WDA would ask you to support the new JIS Policy but to reject the proposed changes to GR 15. Instead, we would ask you to adopt the language proposed by the WBSA Juvenile Law Section and include the provision that "The sealing of juvenile records shall be governed by RCW 13.50.050."

Sincerely,

Travis Stearns, Deputy Director

SARAH DUNNE
LEGAL DIRECTOR

LA ROND BAKER
NANCY TALNER
STAFF ATTORNEYS

MARGARET CHEN
FLOYD AND DELORES JONES FAMILY FELLOW

VANESSA TORRES HERNANDEZ
EQUAL JUSTICE WORKS FELLOW

July 17, 2013

Data Dissemination Committee
c/o The Honorable Thomas J. Wynne
Snohomish County Superior Court
3000 Rockefeller Ave
M/S 502
Everett, WA 98201

Re: Comments to Proposed General Rule 15 and Data Dissemination Policy

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JEAN ROBINSON
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

Dear Members of the Data Dissemination Committee,

The ACLU of Washington (ACLU) thanks the committee for the opportunity to comment upon the proposed changes to General Rule 15, governing access to and sealing of court records. The ACLU is a nonprofit nonpartisan group of over 20,000 members dedicated to advancing civil rights and civil liberties. The ACLU is strongly committed to the open administration of justice and the public's ability to oversee the courts. It is also seeks to protect individual privacy, particularly in the digital age. In light of these values, we offer the following comments.

I. GR 15 should be amended to protect individual privacy in non-conviction records.

As stated in our letter dated April 11, 2013, the ACLU supports proposed GR 15(c)(4)(D) and GR 15(d)(2), which would protect the privacy rights of individuals with non-conviction records. The rules would permit sealing of non-conviction records in individual cases based upon the *Ishikawa* factors, and would protect against the unjustified loss of employment, housing, or other opportunities based upon a non-conviction record. These rules strike the balance between protecting individual privacy and preserving the public's right to the open administration of justice and should be adopted.

II. GR 15 should permit redaction of names from the court indices

We respectfully suggest that the Committee reconsider GR 15(c)(6) which states that "the name of a party to a case may not be redacted, or otherwise changed or hidden, from an index maintained by the Judicial Information System or by a court." This language appears to preclude any change, for any reason, to the original party names. But there are many legitimate reasons for changing a party name. For example, one ACLU client had a case filed against her, when her niece was the actual perpetrator. Once the deception was discovered, the case name was changed to reflect the actual

defendant. The words "otherwise changed" would prevent such necessary changes and should be deleted.

Further, redacting a name after full consideration of the *Ishikawa* factors may be necessary to protect individual interests and consistent with the public's right to the open administration of justice. Indeed, redaction of a minor party's name to protect individual privacy is a common practice in both the appellate and federal courts. *See* RAP 3.4; Fed. R. Civ. Pro. 5.2(a)(3). Cases may still be located by case number, by initials, or by the name of the other party. A case with a redacted party name is no more hidden than a case filed under the name "John Doe".

We continue to believe that the Committee should wait for the Supreme Court's guidance in *Hundtofte v. Encarnacion*, No. 88036-1. As the committee knows, the Supreme Court heard oral argument in *Encarnacion* on June 13th. One of the primary issues before the court is whether redaction of a party name actually amounts to destruction or hiding of a court record, and whether such redaction is permitted by the constitution. We recommend that the committee delete GR 15(c)(6) and revisit the issue after *Encarnacion* is decided.

III. .Juvenile records should be removed from the statewide index and juvenile sealing should be permitted according to statute.

The ACLU also supports the proposed change to the data dissemination policy that would exclude juvenile records from bulk distributions and the Washington Courts website. These changes will ensure that publicly-available juvenile records are complete, up-to-date and accurate. It will prevent people from misusing the Washington Courts website to conduct background checks including juvenile records, even though the website is not a complete record of the case. The change could deter background check companies from relying on outdated bulk distribution records and reporting juvenile cases that have been sealed. Because the records will be fully available in JIS-Link and at the courthouse, the public's right of access will be protected.

We echo the Washington State Bar Association Juvenile Law Section's comments about the extension of *Ishikawa* to juvenile records. No appellate court has held that the juvenile sealing statute must be read in conjunction with *Ishikawa* before sealing juvenile records. We encourage the committee to remove all references to juvenile records in the proposed GR 15, and clarify that juvenile sealing motions must be brought in accordance with RCW 13.50.050.[1]

<u>Conclusion</u>

[1] Alternatively, the Committee should wait for the Court of Appeal's guidance in *State v. S.J.C.* No. 691564, which squarely presents the question of whether motions to seal juvenile records must satisfy both the statutory requirements and the *Ishikawa* analysis.

We thank the Committee for the opportunity to comment. Please do not hesitate to contact me if you have any questions.

Sincerely,

Vanessa Torres Hernandez
vhernandez@aclu-wa.org.
ACLU-WA Second Chances Project

From: Tammie Freshley
To: Happold, Stephanie
Subject: Comments to draft amendment to the Data Dissemination Policy
Date: Tuesday, July 16, 2013 7:21:20 PM

Stephanie,

In follow-up to your conversation with Chuck Jones of our office, below are comments to the draft amendment to the Data Dissemination Policy regarding juvenile offender records. We would appreciate your passing these on to the Data Dissemination Committee on our behalf.

Thank you and please let us know if there is updated dial-in information for the Data Dissemination Committee meeting on July 29th.

Regards,

Tammie

COMMENTS TO DATA DISSEMINATION COMMITTEE:

1. *OPENonline strongly opposes the imposition of restrictions on information contained in public records, such as the exclusion of juvenile offender records in the bulk distribution of JIS records by the Administrative Office of the Courts.*
2. *Is the intent of the proposed policy to remove all juvenile records, including serious and violent offenses or records of repeat offenders? Will there be any exceptions, i.e., cases of a particularly violent crime or a crime that would be considered a felony if committed by an adult?*
3. *In the event the amendment is passed, given that section 1 of the proposed policy states "Juvenile offender court records shall be excluded from any bulk distribution…", it is clear that we will no longer receive juvenile records in our bulk data updates. However, section 2 states "The Administrative Office of the Courts shall not display any information from an official juvenile offender court record on a publicly-accessible website that is a statewide index of court cases." We are not the "Administrative Office of the Courts" nor is our site a "publicly-accessible website", given that only vetted customers have access. As such, can we continue to use the historical records we currently have?*

TeamChild Advocacy for Youth

July 16, 2013

Stephanie Happold
Data Dissemination Administrator
Administrative Office of the Courts
PO Box 41170
Olympia, WA 98504-1170

RE: Comments on the Proposed Amendments to GR 15 and Policy to Limit Bulk Distribution of JIS juvenile records

Dear Members of the JIS-Data Dissemination Committee:

The WSBA Juvenile Law Section includes attorneys throughout Washington State who specialize in juvenile law, including juvenile defense attorneys, juvenile prosecutors, dependency attorneys, assistant attorneys general, civil legal aid attorneys and private practitioners. In addition, the section includes judges and non-attorney professionals who are concerned about how children and youth interact with the legal system. On behalf of the section, the Executive Committee submits the following comments regarding the new policy on dissemination of juvenile offender court records and proposed changes to GR 15.

New JIS Policy (VI.) Limitation on Dissemination of Juvenile Offender Court Records

The section supports the JIS's new proposed policy to limit the bulk distribution of juvenile records. This is a good step toward protecting juvenile records that have already been sealed from continued dissemination. While it is not a perfect solution to the problem of juvenile records being available without restriction forever, regardless of sealing, it seems to provide some fix to the timeliness of the records that are distributed by private consumer reporting agencies. In addition, the section supports the removal of juvenile's names and offense information from the public website.

Proposed Changes to GR 15

The section's primary concern is that **the proposed amendments to GR 15 make the process for sealing juvenile records almost identical to the process for sealing adult records** despite a clear process already established by the legislature under RCW 13.50.050.

Juveniles are different from adults. Since 2005, the U.S. Supreme Court has held on 4 different occasions that juveniles are constitutionally different than adults. *See Roper v. Simmons,* 543 U.S. 551 (2005);

Graham v. Florida, 560 U.S. __ (2010); *J.D.B. v. North Carolina,* 564 U.S. __ (2011); *Miller v. Alabama,* 567 U.S. __ (2012). Justice Kagan summarized the differences in the *Miller* case:

> Our decisions rested not only on common sense—on what "any parent knows"—but on science and social science as well. *Id.,* at 569, 125 S.Ct. 1183. In *Roper,* we cited studies showing that " '[o]nly a relatively small proportion of adolescents' " who engage in illegal activity " 'develop entrenched patterns of problem behavior.' " *Id.,* at 570, 125 S.Ct. 1183 (quoting Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003)). And in *Graham*, we noted that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds"—for example, in "parts of the brain involved in behavior control." 560 U.S., at ——, 130 S.Ct., at 2026.[5] We reasoned that those findings— of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child's "moral culpability" and enhanced the prospect that, as the years go by and neurological development occurs, his " 'deficiencies will be reformed.' " *Id.,* at ——, 130 S.Ct., at 2027 (quoting *Roper,* 543 U.S., at 570, 125 S.Ct. 1183).

The Washington State legislature has also acknowledged the differences between juveniles and adults, specifically in the area of the maintenance and availability of juvenile records. The legislature has specified how juvenile records should be maintained in order to effectuate the intent of Washington's juvenile justice, child welfare and status offender systems, which are responsible for protecting children, treating youth who offend and holding youth accountable. Juvenile dependency court records are confidential and not available to the public. RCW 13.50.100. Since 1977, however, juvenile offender court records are public unless and until they are sealed by court order pursuant to RCW 13.50.050. This statute allows individuals who have satisfied their restitution obligations and have remained offense free for a certain period of time (5 years for Class A felonies and 2 years for Class B and C felonies and misdemeanors) to request the court to seal their juvenile records.[1] Once sealed,

> the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

RCW 13.50.050(14). In other words, juveniles who get into trouble and are brought before the juvenile court have the opportunity, by demonstrating that they have paid their financial obligations and stayed out of trouble, to have a clean slate. Given what we know about adolescent development it makes sense that youth should be allowed to move past their childhood mistakes and should be given the supports they need to obtain education, employment, and stability. By establishing a clear sealing process for

[1] Some of the most serious juvenile sex offenses cannot be sealed; others require that the additional requirement of obtaining relief from registration be obtained prior to eligibility for sealing.

juvenile records, the legislature has recognized that a criminal history record that continues forever runs counter to the rehabilitative goals of the juvenile justice system.

Unfortunately, many youth with juvenile records are still unable to take advantage of this process because they lack the resources to hire counsel to assist them in drafting and filing a legal motion, setting a hearing, serving parties and obtaining a signed court order. In addition, the internet age has brought with it challenges to the sealing process since court records that exist in the digital world are often difficult to erase. Hence, there have been continuing efforts in the legislature to reduce barriers for young people with juvenile records. *See, e.g.* HB 1651 *An Act Relating to Access to Juvenile Records.*[2]

The proposed amendments to GR 15 treat juvenile records similar to adult records and impose requirements on sealing juvenile records that go beyond those found in RCW 13.50.050 or any appellate decision. These requirements create confusion as well as additional barriers for youth who are given notice of their sealing rights at the time of disposition pursuant to RCW 13.50.050(20). The requirement goes in the opposite direction of where the legislature and courts have been heading in acknowledging the differences between adolescents and adults, particularly as to their culpability and capacity to change. It appears that the proponents of the changes to GR 15 assume that the requirements set forth in *Seattle Times v. Ishikawa, 97 Wn.2d 30 (1982)* are applicable to the sealing of juvenile court records pursuant to RCW 13.50.050. The *Ishikawa* case involved a newspaper's challenge to the trial court's sealing of the record of a pre-trial motion to dismiss in an adult murder case. No appellate court has found that an individual moving to seal her juvenile record after satisfying the requirements of RCW 13.50.050 must also satisfy the "*Ishikawa*" factors. The proposed Court Rule goes beyond and, in our view, contrary to the current law on sealing juvenile records.

The clarity of GR 15 is useful for adults moving to seal their criminal history – because there is no statute that sets forth the requirements for sealing adult criminal history and appellate courts have interpreted *Ishikawa* to apply to adult criminal history records. For juvenile offense history, however, the legislature has created a framework that balances the privacy rights of children against the public's interest in open administration of justice and the rehabilitation of juvenile offenders. RCW 13.50.050 sets forth explicit requirements for both adjudication (conviction) and non-adjudication (non-conviction) information. It addresses diversions, deferred dispositions, the social file and other agency records. It specifies notice requirements and what the effect of the sealing order has on the juvenile's offense information held by various agencies. Sealing orders pursuant to RCW 13.50.050 serve to seal not only court records, but records held by juvenile court probation departments, police departments, the Washington State Patrol and the Juvenile Rehabilitation Administration.

The simple solution is to exclude language that brings juvenile offender records from GR 15 and simply include a provision that states:

"The sealing of juvenile offense records shall be governed by RCW 13.50.050."

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[2] SHB 1651 was introduced in the 2013 session and proposed making a majority of juvenile offender records confidential. The bill passed out of the House unanimously and was significantly amended and passed out of the Senate before dying in the Rules Committee.

Thank you for your attention to these important matters.

Sincerely,

Paul Alig
WSBA Juvenile Law Section
Co-Chair

Cc: Chori Folkman, WSBA JLS Co-Chair
Juvenile Law Section Executive Committee

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July 17, 2013

Data Dissemination Committee
Administrative Office of the Courts
PO Box 41170
Olympia, WA 98504-1170

Attn: Ms. Stephanie Happold
Data Dissemination Administrator
Stephanie.Happold@courts.wa.gov

Dear Committee Members:

I am writing on behalf of Allied Daily Newspapers of Washington ("ADN"), the Washington Newspaper Publishers Association ("WNPA") and the Washington Coalition for Open Government ("WCOG") to address the proposed changes to GR 15 under consideration by the Data Dissemination Committee.

ADN is a Washington not-for-profit association that represents 24 daily newspapers serving Washington and the Washington bureaus of the Associated Press. WNPA represents 105 community newspapers throughout the state. WCOG is a nonpartisan organization that represents a cross-section of the Washington public, press, and government and that is dedicated to defending the public's right to know in matters of public interest. Together, these organizations and their members play a crucial role in assuring the public remains informed about the operations of the judicial branch, and in giving practical effect to the state's constitutional requirement that "[j]ustice in all cases shall be administered openly[.]" CONST. Art. 1 sec. 10.

ADN, WNPA and WCOG oppose the proposed changes to GR 15, because they would undermine this constitutional commitment to open justice and would lead to sealing, without justification, of a substantial volume of court records that have long been accessible to the press and public.

Court records in Washington are presumptively open, and any party that wants to file a record under seal, or keep a record sealed, must give a compelling reason and explain why that reason outweighs the public's interest in open access. The mandate established in *Seattle Times v. Ishikawa*, 97 Wn.2d 30 (1982) has been reaffirmed countless times and currently is administered through GR 15. The current rule works, and is well understood by litigants, judges, clerks and

court administrators. No persuasive reason has been offered for the proposed radical overhaul of GR 15, or for permitting greater secrecy in court records.

The specific concerns of ADN, WNPA and WCOG fall into two categories:

1. The GR 15 revisions seek to codify an unduly restrictive interpretation of a very recent state supreme court decision, *Bennett v. Smith Bunday Berman Britton, PS*, 176 Wn.2d. 303 (2013).

Section (c)(2) of the proposed GR 15 revision incorporates dicta from the lead opinion in *Bennett*, which was signed by only four of the nine justices. New GR 15(c)(2)(B) would bifurcate the sealing standard, permitting any record to be sealed on a lesser showing of "good cause" (rather than the constitutionally mandated "compelling interest" showing) if the record is not "part of the court's decision-making process." The four justices in *Bennett* did not define what it means for records to become "part" of the judicial "decision-making process." In light of the constitutional presumption favoring disclosure, and the clear weight of authority mandating openness of court files, *Bennett* can and should be read narrowly, and limited to the specific (and rather unusual) facts presented in that case.

Bennett is a new decision without progeny; its significance is debatable, and its meaning should be left to further interpretation by judges deciding future cases. The rush to codify the most access-restrictive reading of the lead opinion would cut that process short. The proposed rule is also unnecessary, as it adds no clarity to the key phrase "part of the court's decision-making process." Thus, like the lead *Bennett* opinion itself, the proposed new rule rests on vague criteria. As Justice Madsen noted in *Bennett*, "without a legal and factual basis for an analysis of what should happen should the need arise, trial courts and litigants in future cases must make guesses about the meaning, force, and value of the court's dicta. The prudent course for the lead opinion is to avoid discussing how the *Ishikawa* factors might apply in circumstances not before the court." 176 Wn.2d at 318.

Additionally, proposed new GR 15(c)(2)(B)(ii) incorporates dicta from *Bennett* – wholly unnecessary for the disposition of that case – suggesting it would be good practice for courts to provide notice to nonparties "with an interest in nondisclosure." The lead opinion in *Bennett* based this suggestion on the Public Record Act's third-party notice provision (RCW 42.56.540), but it failed to note that the PRA procedure is *optional*. Requiring third-party notice in court sealing matters could result in unnecessary costs and unwarranted delay, particularly in cases where there are large numbers of potentially interested third-parties; where it is facially apparent that no colorable basis exists to seal the records; or where one of the parties already is advocating for sealing. Moreover, if third-party notice is to be required in sealing and unsealing matters, no possible justification exists for limiting it to parties "with an interest in nondisclosure." Logic, fairness and the constitutional presumption of access suggest that if a third-party notification

provision is to be added to GR 15, courts must be required to provide equal notice to any party with an interest in *disclosure* of the record at issue.

2. The revisions dramatically expand the grounds for sealing records in criminal cases.

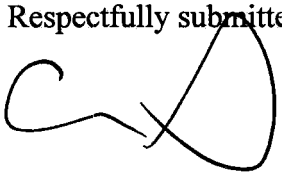
Currently, GR 15(c)(4) contains a narrow list of specific privacy concerns that may be considered sufficiently compelling to warrant weighing against the public interest in access when a motion to seal is proposed. In the criminal context, the only such "*per se*" privacy interest identified in current GR 15 is a conviction that has been vacated. The proposed changes seek to add a number of new, previously unrecognized criminal privacy interests. Under new GR 15(c)(4), a sufficient privacy interest would exist to justify sealing with respect to most acquittals; most cases where charges are dismissed; any case where the governor has issued a pardon; and any preliminary appearance where charges have not yet been filed.

These revisions have no support in any case law. The sole authority cited for this portion of the GR 15 revision is "the Joint Legislative Court Records Privacy Workgroup in 2012" – a body with no legislative or judicial mandate that has offered no justification for its radically expansive conception of the privacy rights of criminal defendants. More important, the proposed changes to GR 15(c)(4) would deprive the public of its ability to evaluate and hold its criminal justice system accountable. The additional non-conviction circumstances are wholly unlike vacated convictions. A defendant whose conviction is vacated has satisfied the strict criteria, determined by the Legislature, for treating a conviction as if it has never happened. In contrast, an acquittal "does not prove that the defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt." *U.S. v. Watts*, 519 U.S. 148, 155 (1997). The proposed revisions would prevent the public from learning, for example, about repeat offenders who manage to evade charges or conviction. Prosecutors and judges would not be held to account. Voters would be unable to evaluate the governor's exercise of the power to pardon.

The proposed changes, in sum, would invite routine sealing requests in criminal cases and would impair the ability of the press and public to understand and scrutinize the criminal justice system.

ADN, WNPA and WCOG urge the committee to table this far-reaching and unnecessary reformation of GR 15. Representatives of the organizations will be present at the Committee's next meeting and would be happy to further address their objections to this proposal.

Respectfully submitted,



Eric M. Stahl
Counsel for Allied Daily Newspapers of Washington,
Washington Newspaper Publishers Association and
Washington Coalition for Open Government

cc: Rowland Thompson
Bill Will
Toby Nixon
Sarah K. Duran

SCHOOL OF LAW
UNIVERSITY of WASHINGTON
Clinical Law Program

July 16, 2013

JIS Data Dissemination Committee
c/o Stephanie Happold
Data Dissemination Administrator
Administrative Office of the Courts

RE: Comments on the Proposed Policy to Limit Bulk Distribution of JIS juvenile records and Amendments to GR 15

Dear Members of the JIS-Data Dissemination Committee:

Thank you for the opportunity to comment on the proposed amendments to JIS policy and GR 15. As one of the co-founders of the King County Juvenile Records Sealing Clinic, author of *Beyond Juvenile Court: Long Term Impact of a Juvenile Record*, and a member of the 2011 Joint Legislative Task Force on Juvenile Records, I have spent many years dedicated to assisting young people overcome the barriers created by having a juvenile record in Washington State. I appreciate the work your committee has done and is doing to move toward assuring accuracy and fairness in the dissemination of these records by the Judicial Information System.

Proposed JIS Policy: **(New) VI. LIMITATION ON DISSEMINATION OF JUVENILE OFFENDER COURT RECORDS**

The proposed amendment to JIS policy (1) limiting the bulk distribution of juvenile records to private data aggregating companies and (2) removing juvenile cause numbers from the statewide index on the Washington State Courts website is a step in the right direction. Thank you for addressing some of the concerns raised during your last meeting – specifically in the second section concerning the public website. Although young people from Washington will continue to be at a great disadvantage compared to youth from the 42 states that do not disseminate juvenile criminal history information to private companies, the policy may ensure that consumer reporting agencies sell only up to date juvenile criminal history information by utilizing a JIS-link account. This should prevent these companies from distributing juvenile record information that may have been sealed during the time period between quarterly updates. I say "may" and "should" because questions remain about how this will work, specifically:

1. What happens to the juvenile criminal history data that has already been distributed through the bulk distribution contracts before this policy goes into effect? Will the new contracts result in or require removing the previously transferred juvenile criminal history from their databases? If it does not, what happens to juvenile records that have been transferred pursuant to the old

contracts but are sealed after this policy goes into effect? Will the companies be distributing sealed juvenile records?

2. Similarly, the same companies who subscribe to bulk data distribution also have JIS-Link accounts. Assuming this policy goes into effect and they have to use the JIS- Link accounts to access juvenile information, is there anything that keeps these companies from storing the information and continuing to distribute it forever regardless of a subsequent sealing order?
3. How will the large data aggregators respond to this new policy? Will they run a separate JIS-Link search for each background check they provide to their customers if they wish to obtain the juvenile record information? Will that resolve the issue of sealed records if they store the records and distribute them?

It would be helpful to have some of these questions answered before adopting the policy. The subjects of the juvenile records, particularly those who are able obtain sealing orders, should be able to know what risks remain for dissemination. I understand that all questions probably can't be answered for all of the companies who use this data. Nevertheless, because these records have the potential to destroy livelihoods, the issues presented deserve a careful look.

Proposed Amendments to GR 15

The proposed amendments provide needed clarity regarding sealing adult criminal history records. However, as I have consistently asserted before this committee – **juvenile criminal history records should be treated differently from adult criminal history records.** While the proposed amendments do make some provision for differences between juvenile and adult records, for example not including the juvenile's name in the court indices after a sealing order is entered, the proposed rule would treat juvenile records identical to adult records by requiring proponents of sealing to satisfy the *Ishikawa* factors. This is unnecessary and not required by law. To date, appellate courts in Washington have not addressed whether the *Ishikawa* factors must be considered when individuals move to seal juvenile records pursuant to RCW 13.50.050.

RCW 13.50.050 Provides Clear Guidance for Sealing Juvenile Records

The legislature set out clearly in RCW 13.50.050 the method for sealing juvenile records; consistent with the Juvenile Justice Act and as an integral part of the system that Washington has established to provide both accountability and rehabilitation for juveniles who are accused of crimes. The language of RCW 13.50.050 broadly covers both conviction and non-conviction data (or more precisely adjudication and non-adjudication data):

> (11) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (23) of this section, order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

The statute goes on to specify eligibility, notice and other requirements juveniles must meet to obtain a sealing order from the juvenile court. The statute provides for the sealing not only of the official juvenile court file, but also all records held by police, probation and other agencies pertaining to the juvenile offense.[1] The intent of the legislature is clear: juveniles should be allowed a clean slate once they meet the statutorily set forth criteria. The legislature balanced the interest of the public, victims and juveniles in creating this scheme and this committee should not recommend imposing additional requirements upon juveniles which are not required by law and which are counter to the rehabilitative purposes of the Juvenile Justice Act.

I will not repeat here the many ways in which adolescents and adults are different and why our response to their misbehavior should be different. The U.S. Supreme Court has set forth the constitutional differences between children and adults in *Roper v. Simmons,* 543 U.S. 551 (2005); *Graham v. Florida,* 560 U.S. __ (2010); *J.D.B. v. North Carolina,* 564 U.S. __ (2011) and, most recently *Miller v. Alabama,* 567 U.S. __ (2012). The Washington State Supreme Court has yet to consider whether juveniles should suffer from the stigma of a publically disseminated juvenile record in the same manner as adults – but when and if it does consider this issue, it will have the benefit of the large body of social and neurological science available to it, as did the U.S. Supreme Court in its most recent decisions.

A simple solution: refer to RCW 13.50.050 in the body of GR 15 as the sole mechanism for sealing juvenile records and remove language including juvenile adjudication records from the sections that govern sealing adult criminal history records. This suggestion has been proposed by the WSBA Juvenile Law Section and agreed to by the Washington Defender Association. It makes sense.

[1] In practice, juvenile courts issue one sealing order sealing both the court record and the juvenile social file and other records. The proposed amendments to GR 15 would complicate matters by creating a higher standard that could end up being applied to non-court records eligible for sealing under RCW 13.50.050.

Washington is already an outlier in its broad dissemination of juvenile court records – one of only 8 states that release these records without restriction. The sealing process is not perfect nor is it easily accessible to the thousands of young people who are adjudicated in juvenile courts throughout the state. But for now, it offers the only hope for young people with juvenile records who seek employment, housing and an education. We should do everything possible to reduce barriers to this sealing process – not make it more difficult.

Thank you, again, for your work as committee members to create clear and sensible rules in this increasingly complicated age of digital records. Please feel free to contact me if I can provide any additional information to assist you in your work.

Sincerely,

Kimberly Ambrose
Senior Lecturer

WASHINGTON STATE
ASSOCIATION OF
COUNTY CLERKS

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July 17, 2013

The Honorable Tom Wynne, Chair
Data Dissemination Committee
C/O Stephanie Happold
Administrative Office of the Courts
1206 South Quince
Olympia, WA 98504

---SENT VIA EMAIL----

RE: WSACC Comments on Proposed Change to Juvenile Offender Data Dissemination Policy

Dear Judge Wynne:

I write on behalf of the Washington State Association of County Clerks (WSACC) to comment on the proposed change to the Data Dissemination Policy limiting access to juvenile offender records. County Clerks are opposed to this change on two fronts. First, the proposed change is a version of two tier access, with the intent of making open publicly available court records difficult to access or semi-sealed, utilizing a form of practical obscurity. This is contrary to GR 31, which states:

This rule applies to all court 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.

And

The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.

This proposed policy change proposes to dictate that accessibility of the record is limited to certain ways, excluding the publicly available website, and bulk distribution, but allowing the JIS link users and the regular SCOMIS users to continue to have access. This conflicts with GR 31 (b).

In addition, as dictated by GR 31, a restriction to access court records should be done as a law change, a rule change, a court order or case law, not in a policy change. This violates GR 31(d)(1).

The impact of these ill-advised changes is also of concern to clerks. With these restricted access methods, many more tax payers will need to come to local clerk's offices to access the index to these records. This is of consequence to clerks, as we struggle now to staff appropriately to meet the needs of our customers. Inappropriately obscuring access to juvenile records which forces in-person visits to Clerk's offices is not a policy decision we can support.

Thank you for this opportunity to comment on this proposed policy. Please contact Barbara Miner, King County Clerk and Data Dissemination member from the WSACC, should you have questions or need more information.

Sincerely,

Sonya Kraski
President

cc: James McMahan, Executive Director, Washington Association of Counties

GRAHAM & DUNN PC

JUDITH A. ENDEJAN
(206) 340-9694
jendejan@grahamdunn.com

July 17, 2013

Data Dissemination Committee
Administrative Office of the Courts
P.O. Box 41170
Olympia, WA 98504-1170

Attn: Ms. Stephanie Happold
Data Dissemination Administrator
Stephanie.Happold@courts.wa.gov

Dear Committee Members:

I am writing on behalf of Allied Daily Newspapers of Washington ("ADN"), the Washington Newspaper Publishers Association ("WNPA") and the Washington Coalition for Open Government ("WCOG") to address the proposed changes to GR 15 under consideration by the Data Dissemination Committee.

ADN is a Washington not-for-profit association that represents 24 daily newspapers serving Washington and the Washington bureaus of the Associated Press. WNPA represents 105 community newspapers throughout the state. WCOG is a nonpartisan organization that represents a cross-section of the Washington public, press and government and that is dedicated to defending the public's right to know in matters of public interest. Together, these organizations and their members play a crucial role in assuring the public remains informed about the operations of the judicial branch, and in giving practical effect to the state's constitution requirement that "[j]ustice in all cases shall be administered openly[.]" CONST. Art. 1 sec. 10.

ADN, WNPA and WCOG oppose the proposed changes to CR 15, because they would undermine this constitutional commitment to open justice and would lead to denying, without justification, of a substantial volume of court records that have long been accessible to the press and public.

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grahamdunn.com

We have attached a white paper that analyzes the legal and constitutional infirmities with the proposed changes.

Sincerely,

GRAHAM & DUNN PC

Judith A. Endejan
JAE/ema

cc: Rowland Thompson
Bill Will
Toby Nixon
Vanessa Wheeler

THE LEGAL AND CONSTITUTIONAL INFIRMITIES WITH THE PROPOSED Information System Dissemination Policy Amendment

GRAHAM& DUNN
2801 Alaskan Way – Suite 300
Seattle, Washington 98121-1128

Judith A. Endejan
Vanessa Wheeler
July 17, 2013

I. BACKGROUND

A new Judicial Information System Data Dissemination Policy Amendment has been proposed that would limit the disclosure of juvenile court records. The policy seeks to obscure the existence of juvenile court records by deleting them from the statewide index of court records. The exclusion of juvenile court records from court case indexes would obscure the existence of these juvenile court records, rendering it almost impossible for the public or the press to find and access them. Even if a member of the public or press was somehow able to discover independently the existence of a particular juvenile court record, the only way to attain any such record would be to subscribe to JIS Link and pay a fee. It is unclear, however, the process by which a juvenile court records request would have to be made under this system and what resources would be available to aid requesters seeking such records. Additionally, the subscription fee for the JIS service is fairly expensive, particularly for individuals, single legal practitioners, or small law firms.

This memorandum explains why this new policy amendment could violate the right of the public and the press to the open administration of justice under the Washington Constitution. As set forth below, the proposed policy amendment would violate the constitutional rights of the public and the press and offer little protection to the reputations of the juveniles meant to be the policy's beneficiaries. Consequently, the policy amendment should not be adopted, and the current system for disclosing juvenile court records should remain in place.

II. REASONS TO REJECT POLICY AMENDMENT

A. A records policy that restricts access to juvenile court records violates the constitutional right of the public and the press to the openness of judicial proceedings and records.

Under the constitution of the State of Washington, the public is guaranteed the open administration of justice. *See* Wash.Const.Art. 1, § 10. The open administration of justice assures the public and the press a constitutional right to access court records and proceedings in civil and criminal cases. *See Hundtofte v. Encarnacion*, 169 Wn.App. 498, 280 P.2d 513, 518 (2012) (*rev. granted* 176 Wn..2d 1019); *State v. DeLauro*, 163 Wn..App. 290, 258 P.3d 696, 699 (2011). Openness in judicial proceedings and documents is necessary in order to maintain public faith in the "fairness and honesty" of the court. *Allied Daily Newspapers of Washington v. Eikenberry*, 121 Wn.2d 205, 848 P.2d 1258, 1261 (1993). Any limitation on the openness of judicial proceedings or records requires careful consideration and justification. *See Dreiling v. Jain*, 151 Wn.2d 900, 93 P.3d 861, 864 (2004).

Washington courts have made it clear that any limitation on the public and press's right to access court records is an infringement on that right. By this amendment, the proposed limitation on the visibility and dissemination of juvenile court records is in clear violation of the right to open judicial administration. The present policy allows free, meaningful public access to the statewide court case index, which currently includes juvenile records in the court files. The proposed policy amendment, in completely removing reference to juvenile court cases in the statewide case index, would substantially impair the ability of the public and the press to even identify what juvenile court records might exist. Although the new policy amendment will still allow access to juvenile court records, such access would no doubt require court or administrative intervention in order to determine if a juvenile record exists in the first place. Once a juvenile court record had been identified and requested, access would only be available through a service that requires the payment of a significant fee. Under these circumstances the removal of juvenile records from the court case indexes available to the public, and the

imposition of a fee in order to access juvenile court records once their existence is known, is a limitation on the openness of judicial records, in violation of the constitutional rights of the public and press to open access.

B. The privacy interests of juveniles as a class do not outweigh the constitutional right of the public and the press to access court records and proceedings nor the mandate to assess court record restrictions on a case-by-case basis.

The constitutional right to open administration is not absolute, but courts must begin with the presumption of openness. *See State v. McEnroe*, 174 Wn.2d 795, 279 P.3d 861, 863 (2012). In order to restrict access to court records or proceedings, a court must conduct a case-specific assessment as to whether there exists a fundamental interest significant enough to override the public's constitutional right to the open administration of justice. *See Hundtofte*, 280 P.2d 513 at 519. In the course of this analysis, the court must follow five steps: 1) the proponent of restriction must make a showing of need for such restriction; 2) individuals present when the motion for the restriction is made must be given an opportunity to object; 3) a determination must be made as to whether the suggested method of restriction would be both the least restrictive means possible and effective in protecting the threatened interests; 4) the court must weigh the conflicting interests of the defendant and the public and press and consider any possible alternatives; and 5) the order to restrict court records or proceedings must be no broader than necessary. *See Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716, 720-21(. 1982). A statute that restricts the disclosure of information about juveniles involved in court proceedings violates the constitutional right of the public and the press to open judicial administration if it does not provide for individualized assessment of whether restrictions are necessary in each case. *Allied Daily Newspapers of Washington v. Eikenberry*, 121 Wn.2d 205, 848 P.2d 1258, 1260 (. 1993) (striking down a statute that prohibited disclosure of the names and

other information about child sexual assault victims, despite the compelling interests of protecting "child victims from further trauma and harm" and ensuring their privacy).

In order for a restriction on the dissemination of juvenile court records and the omission of reference to those records in the court case index to be considered constitutional, the privacy interests of the *individual* juveniles involved would need to outweigh the right of the public and press to openly access court records. Additionally, the compelling nature of those interests would need to be subjected to the individualized analytic process established in *Seattle Times Co. v. Ishikawa*. The privacy interest of juveniles as a class is unlikely to be able to overcome either the right of the public and the press or the *Ishikawa* guidelines after the ruling in *Allied Daily Newspapers of Washington v. Eikenberry*.

First, though the privacy rights of the class of juveniles may be significant, they cannot rationally be greater than those of child victims of sexual assault.[1] Yet, in *Eikenberry* the court did not find a sufficient compelling interest to uphold a statute restricting the disclosure of their information where privacy interests as well as the health and well-being of the children victimized were implicated. In contrast the proposed policy amendment is premised upon protecting the reputational interests of juveniles. Clearly if the interests of those child victims failed as a valid justification for a broad statute prohibiting disclosure of child victims' information without individualized consideration, the interests of the juvenile defendants must fail in the instant situation as well. Though the privacy, reputational interests of a particular juvenile may be compelling enough to overcome the constitutional right of the public and the press to the open administration of justice, that determination must be made on a case-by-case basis according to the *Ishikawa* guidelines in order to be constitutional. This individualized

[1] In fact, the Governor of Washington vetoed a section of the statute at issue in *Allied Daily* that would have extended the same privacy-driven restrictions to juvenile offender proceedings s as it did to child victims.

process, which takes into account the specific needs of each child in the particular circumstance of his or her case, is considered appropriate to protect the very compelling interests of child victims of sexual assault and should adequately protect the privacy interests of juveniles.

Second, even if one initially ignored the mandate for individualized analysis, the proposed policy itself would fail under the *Ishikawa* guidelines, specifically the third guideline, as it is not the least restrictive effective means to protect the interests in question. For one, the means chosen is not the most effective method of protecting the reputations of the juveniles involved. Unlike the system used for limiting access to information about child victims, which completely restricts access to court records involving individual children for whom that is deemed necessary, the proposed policy amendment would still allow access to all juvenile records to those who know what records they are looking for and who are willing to pay. Furthermore, the method chosen is not the least restrictive on the constitutional rights of the press and public either, as it creates a broad limitation on discovery of and access to all juvenile court records, regardless of whether such limitation is necessary in individual cases. The new policy amendment would not only make it more difficult to access juvenile court records, by imposing a significant subscription fee to obtain them, but more importantly it would shield those records by obscurity. The public and the press simply would have no starting place to search for juvenile court records, which would no longer be referenced in any statewide case index. Unlike with most other court records, the existence of juvenile court records would be erased from the public view, accessible only through specific requests by those to whom their existence is already known.

A far more effective, and less restrictive, measure for protecting the privacy of juvenile offenders who need such protection would be to use the process currently available under GR 15, that of closing and sealing court procedures and records on a showing of necessity. In that way,

those individual juveniles who have privacy concerns may have their privacy completely protected, rather than available for a fee, and the public and press will still have reasonable and free access to the court records to which they are constitutionally entitled. Courts know how to handle access to their records, free of legislative constraints, because they are not subject to the state Public Records Act, RCW ch. 42.56. *City of Federal Way v. Koenig,* 167 Wn. 2d 341, 271 P. 3d 1172. Such a substantial change to the management and accessibility of court records should not be initiated in a data dissemination policy. The openness of the judicial process is far too fundamental to the integrity of the court system to implement a change to public access to court records through such an inappropriate forum.

Finally, such a substantial a change, that affects such a meaningful right of the public and the press, should only be approved and instituted by a General Rule.

From: Toby Nixon
To: Happold, Stephanie
Cc: anewspaper@aol.com; "Bill Will"; president@washingtoncog.org
Subject: Comments on proposed changes to Data Dissemination Policy
Date: Wednesday, July 17, 2013 6:03:58 PM

July 17, 2013

Data Dissemination Subcommittee
c/o Stephanie Happold
Administrative Office of the Courts
P.O. Box 41170
Olympia, WA 98504-1170

Dear Committee Members:

On behalf of Washington Coalition for Open Government (WCOG), Allied Daily Newspapers of Washington (ADN), and Washington Newspaper Publishers Association (WNPA), thank you for the opportunity to comment on the proposed new Section VI. LIMITATION ON DISSEMINATION OF JUVENILE OFFENDER COURT RECORDS in the JUDICIAL INFORMATION SYSTEM DATA DISSEMINATION POLICY.

As you are already well aware from our numerous discussions with you over the last two-and-a-half decades, we have numerous concerns with the concept and execution of a two-tiered access policy to court records of any kind. It is an issue that we thought had been put to bed so many times over the years that it was finally truly asleep.

The last major public hearing on this issue was in November 1999 when Justice Talmadge was chair of JISC and Judge Gross was chair of the data dissemination subcommittee. JISC rejected two-tiered access then, and has continued to reject requests for two-tiered access by the proponents of this closure on a cycle of about every twenty-four months since then. At no time in any of those discussions has this subcommittee entertained the notion that is proposed here, and this subcommittee and the larger JISC have repeatedly soundly rejected this idea as being antithetical to Washington's adherence to the constitutional principle of open courts and open court records.

The impetus for this proposal appears to be the introduction of bills into the Washington State Legislature during the past few sessions to close access to juvenile court records almost in their entirety. None of these bills have been successful in being enacted into law, and in our view would suffer from a number of constitutional and separation of power problems in their implementation. The fact that these bills have repeatedly failed is an indication that the policy espoused is not supported.

Another impetus cited in the proposed GR 15 rule change also being cited by this subcommittee in their authorities for the change is outgoing Senator Debbie Regala's 2012 one-legislator task force referred to as the "Joint Legislative Court Records Privacy Workgroup". Nothing of substance resulted from that series of meetings in the legislative arena, and it is odd to see it being used as a driver for this current effort in the judicial branch since only one member of the judiciary participated in those meetings: Judge Wynne, chair of this sub-committee. We thank Judge Wynne for allowing us to participate in the public hearing held on this policy change and GR 15 proposal in Everett two months ago and for his continued dialogue with us on these proposals; we could ask for nothing more from him as a sub-committee chair than for full hearing of our concerns. We are distressed by his initiative here.

In separate correspondence to you, our legal counsel has more fully laid out the legal arguments against the proposed changes. We would now like to comment on the very practical aspects that may be associated with implementing the proposed changes. Here are questions that come to mind:

1. If there is no *statewide* online index of these case files, will there be *local* indexes of these case files through which a requestor could determine the existence of the case the requestor might seek?

2. If there is no electronic or online index of cases available to the public, would requestors need to query the clerks and administrators of local jurisdictions for the information sought? or would they query AOC staff for those searches? Is there any liability associated with an insufficient search?

3. What would constitute a "bulk distribution" from the JIS? Would that be more than a single case or cases about an individual? Or would it be all of the cases filed in a jurisdiction or entered into JIS in a day or an hour?

4. If neither an online index or bulk distribution is available, would individual case records still be available online, if the case number is known? If so, has JIS considered the impact on servers of renewed "screen scrapping" of the data from individual case records, since this was the reason the bulk distribution system was created in the first place?

5. If no online access is available at either the state or local level, how will court staff deal with requests for case records, since there will likely be a significant increase in verbal or written requests once the index is not viewable without staff involvement? Will requestors be sent to local jurisdictions, or will AOC staff resources be committed to aid requestors who email or call for information on juvenile criminal cases that they cannot view or request electronically?

6. Will responses to staff-filled requests be emailed or mailed? How will the costs associated with these filling these requests be accounted for?

7. Will any AOC funds be directed to local courts to help defray the costs associated with dealing with emailed, telephoned and in-person requests? Have local courts been prepared to begin handling the volume of requests that may devolve back onto them as a result of this proposed change, and the staff and other costs? How will court clerks seek offsetting funds from AOC for the costs that this change will engender?

8. Will attorneys have access to the index? Will their offices? Will law enforcement? Will other federal, state and local government agencies? Will non-governmental agencies tasked with dealing with families, foster children, youth services, or other social services? Will the clinics who work with persons seeking to seal their juvenile records? Will schools? Will the military? Eliminating general access to a statewide online index will likely reveal many other frequent users of these records, who are legally required to have access to the records for mandatory background checks, legal research, and other purposes.

It is important that the subcommittee consider these and other very practical impacts of the proposed changes, and the significant impact on both state and local court budgets and workload, in addition to the legal arguments we have raised separately.

Thank you for your consideration of these comments.

Respectfully Submitted,

WASHINGTON COALITION FOR OPEN GOVERNMENT
Toby Nixon, President

ALLIED DAILY NEWSPAPERS OF WASHINGTON
Rowland Thompson, Executive Director

WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION
Bill Will, Executive Director

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July 24, 2013

Judge Thomas J. Wynne
Chair, Data Dissemination Committee
Judicial Information System
Snohomish County Superior Courthouse
3000 Rockefeller Avenue
Dept. 9, Floor 5
Everett, WA 98201

Re: Proposed Amendments to GR 15, 31

Dear Judge Wynne:

I am writing to you on behalf of the Rental Housing Association ("RHA") to express its concerns regarding the proposed amendments to GR 15, 31.

As you know, JIS's Data Dissemination Committee is considering extensive amendments to GR 15, the courts' rule addressing the sealing and redaction of court records, and GR 31, relating to access to court records.

RHA shares the Committee's belief that it is entirely appropriate for the Committee to establish appropriate *procedural* standards by which the public seeks to seal, redact, unseal, or access public records, with a major caveat to be expressed below. However, on the public policy as to which court records may be accessed, *substantive* access policy, RHA strongly believes that this is a matter for legislative policymaking where the broader opportunities for public participation can come into play.

The starting place for any discussion of access to court records should be the policy of *transparency*. The people themselves articulated this policy when they enacted Initiative 276:

> The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is

> good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.

It is no different for court records, as GR 31(a) itself has acknowledged, particularly where article I, § 10 of our Constitution is also implicated.

As noted above, RHA supports clear procedural rules in GR 15 and 31. However, the proposed comments to GR 15 make reference to specific court decisions and statutes. Plainly, court decisions and statutes may change. It may not be wise to tie the procedural rules for access, sealing, redacting, and unsealing records to specific decisions or statutes, except as may be absolutely necessary.

More critically, from RHA's perspective, is any effort by amendments to GR 15 and 31 to enact substantive changes on access to court records. This Committee should know that *numerous* bills were offered in the 2013 legislative session purporting to restrict access to court records, records that have been used to make employment and housing decisions. *See* attached. RHA is concerned that the proponents of these bills, having failed to enact them in the Legislature, are turning to this Committee as an alternate forum in which to secure relief that they could not obtain in the Legislature.[1]

RHA *opposes* any changes in GR 15 or 31 that affect substantive policy on access to court records. The policy of access announced in GR 31(a) should remain intact and this Committee should not be a forum for enacting substantive changes that detract from a policy of public access to court records. The Legislature, with its broader opportunities for public participation, is the more appropriate forum for such efforts.

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[1] For example, in California, legislation was enacted limiting access to unlawful detainer information. The California Supreme Court invalidated such legislation. *U.D. Registry, Inc. v. State*, 40 Cal. Rptr.2d 228 (Cal. App. 1995), *review denied* (Aug. 17, 1995), *cert. denied, sub. nom. Cisneros v. U.D. Registry, Inc.*, 516 U.S. 1074 (1996) (statute prohibiting consumer credit report from containing unlawful detainer information violated First Amendment).

I will be participating in the Committee's July 29 teleconference. If I can provide additional information to you and the Committee on RHA's behalf, please do not hesitate to let me know.

Very truly yours,

Philip Talmadge

Philip A. Talmadge

cc: Bill Hinkle

5. Retention of CLJ Records Amendment Status Update

Data Dissemination Policy

I. AUTHORITY AND SCOPE

A. These policies govern the release of information in the Judicial Information System (JIS) and are promulgated by the JIS Committee, pursuant to JISCR 12 and 15(d). They apply to all requests for computer-based court information subject to JISCR 15.

1. These policies are to be administered in the context of the requirement of Article I, § 10 of the Constitution of the State of Washington that "Justice in all cases shall be administered openly, and without unnecessary delay," as well as the privacy protections of Article I, § 7.
2. These policies do not apply to requests initiated by or with the consent of the Administrator for the Courts for the purpose of answering a request vital to the internal business of the courts. See JISCR 15(a).

II. DEFINITIONS

A. Records

1. "**JIS record**" is an electronic representation (bits/bytes) of information either stored within, derived from, or accessed from the OAC. *(Amended February 27, 1998.)*
2. "**JIS legal record**" is a JIS record that is the electronic duplication of the journal of proceedings or other case-related information which it is the duty of the court clerk to keep, and which is programmed to be available in human readable and retrievable form. Case information reflecting the official legal file and displayed by JIS programs are JIS legal records.

B. JIS Reports

1. "**JIS reports**" are the results of special programs written to retrieve and manipulate JIS records into a human readable form, other than the JIS legal record.
2. "**Compiled reports**" are based on information related to more than one case or more than one court. As used in this policy, "compiled reports" do not include index reports.

C. Data Dissemination Management

1. "**Data dissemination**" is the reporting or other release of information derived from JIS records.
2. The "**data dissemination manager**" is the individual designated within the Office of the Administrator for the Courts and within each individual court and assigned the responsibility for administration of

data dissemination, including responding to requests of the public, other governmental agencies, or other participants in the judicial information system. The name and title of the current data dissemination manager for each court and the Office of the Administrator for the Courts shall be kept on file with the Office of the Administrator for the Courts.

D. **Electronic Data Dissemination Contract**

The **"electronic data dissemination contract"** is an agreement between the Office of the Administrator for the Courts and any entity, except a Washington State court (Supreme Court, court of appeals, superior court, district court, or municipal court), that is provided information contained in the JIS in an electronic format. The data dissemination contract shall specify terms and conditions, as approved by the Judicial Information System Committee, concerning the data including but not limited to restrictions, obligations, and cost recovery agreements. Any such contract shall at a minimum include the language contained in Exhibit A – Electronic Data Dissemination Contract. *(Amended February 27, 1998.)*

III. ACCESS TO JIS LEGAL RECORDS

A. **Open Records Policy**. The following principles apply to the interpretation of procedural rules or guidelines set forth in this policy.

1. Information related to the conduct of the courts' business, including statistical information and information related to the performance of courts and judicial officers, is to be disclosed as fully as resources will permit.
2. In order to effectuate the policies protecting individual privacy which are incorporated in statutes, case law, and policy guidelines, direct downloading of the database is prohibited except for the index items identified in Section III.B.6. Such downloads shall be subject to conditions contained in the electronic data dissemination contract. *(Amended February 27, 1998.)*
3. Dissemination of compiled reports on an individual, including information from more than one case, is to be limited to those items contained in a case index, as defined in Section III.B.6.
4. Privacy protections accorded by the Legislature to records held by other state agencies are to be applied to requests for computerized information from court records, unless admitted in the record of a judicial proceeding, or otherwise made a part of a file in such a proceeding, so that court computer records will not be used to circumvent such protections.
5. **Contact Lists**: Access to JIS information will not be granted when to do so would have the effect of providing access to lists of individuals for commercial purposes, defined as set forth in RCW 42.17.260(6) and WAC 390-13-010, i.e., that in connection with access to a list of individuals, the person requesting the record intends that the list will be used to communicate with the individuals named in the record for the purpose of facilitating profit expecting activity.
6. Except to the extent that dissemination is restricted by Section IV.B, or is subject to provisions in the electronic data dissemination contract, electronic records representing court documents are to be made available on a case-by-case and court-by-court basis as fully as they are in hard copy form. *(Amended February 27, 1998.)*

B. All access to JIS information is subject to the requirements of the criteria for release of data specified in JISCR 15(f): availability of data, specificity of the request, potential for infringement of personal privacy created by release of the information requested, and potential disruption to the internal ongoing business of the courts. JIS information provided in electronic format shall be subject to provisions contained in the electronic data dissemination contract. *(Amended February 27, 1998.)*

1. Court data dissemination managers will restrict the dissemination of JIS reports to data related to the manager's particular court, or court operations subject to the supervision of that court, except where the court has access to JIS statewide indices.
2. Routine summary reports will be made available to the public upon request, subject to the payment of an established fee and so long as such request can be met without unduly disrupting the on-going business of the courts.
3. Access to JIS legal records, in the form of case-specific records, will be permitted to the extent that such records in other forms are open to inspection by statute, case law and court rule, and unless restricted by the privacy and confidentiality policies below.
4. Individuals, personally or through their designees, may obtain access to compiled legal records pertaining to themselves upon written request, accompanied by a signed waiver of privacy.
5. No compiled reports will be disseminated containing information which permits a person, other than a judicial officer or an attorney engaged in the conduct of court business, to be identified as an individual, except that data dissemination managers may disseminate the following:
    a. Public agency requested reports. Reports requested by public agencies which perform, as a principal function, activities directly related to the prosecution, adjudication, detention, or rehabilitation of criminal offenders, or to the investigation, adjudication, or enforcement of orders related to the violation of professional standards of conduct, specifically including criminal justice agencies certified to receive criminal history record information pursuant to RCW 10.97.030(5)(b).
    b. Personal reports, on the request or signed waiver of the subject of the report.
    c. On court order.
6. An index report, containing some or all of the following information, may be disseminated: *(Amended February 27, 1998.)*
    a. filing date;
    b. case caption;
    c. party name and relationship to case (e.g., plaintiff, defendant);
    d. cause of action or charge;
    e. case number or designation;
    f. case outcome;
    g. disposition date.

    (III.B.6.f. and III.B.6.g. added December 5, 1997.)

    An index report provided in electronic format shall be subject to the provisions contained in the electronic data dissemination contract. *(Amended February 27, 1998.)*

7. A report sorted by case resolution and resolution type, giving index criteria except individual names, may be compiled and released. *(Section added June 21, 1996.)*

IV. JIS PRIVACY AND CONFIDENTIALITY POLICIES

A. Information in JIS records which is sealed, exempted, or otherwise restricted by law or court rule, whether or not directly applicable to the courts, may not be released except by specific court order.

B. Confidential information regarding individual litigants, witnesses, or jurors that has been collected for the internal administrative operations of the courts will not be disseminated. This information includes, but is not limited to, credit card and P.I.N. numbers, and social security numbers. Identifying information (including, but not limited to, residential addresses and residential phone numbers) regarding individual litigants, witnesses, or jurors will not be disseminated, except that the residential addresses of litigants will be available to the extent otherwise permitted by law. *(Section amended September 20, 1996; June 26, 1998.)*

C. A data dissemination manager may provide data for a research report when the identification of specific individuals is ancillary to the purpose of the research, the data will not be sold or otherwise distributed to third parties, and the requester agrees to maintain the confidentiality required by these policies. In such instances, the requester shall complete a research agreement in a form prescribed by the Office of the Administrator for the Courts. The research agreement shall 1) require the requester to explain provisions for the secure protection of any data that is confidential, using physical locks, computer passwords and/or encryption; 2) prohibit the disclosure of data in any form which identifies an individual; 3) prohibit the copying or duplication of information or data provided other than for the stated research, evaluative, or statistical purpose. *(Amended June 6, 1997.)*

V. RETENTION OF COURT RECORDS BY COURTS OF LIMITED JURISDICTION*

A. Courts of Limited Jurisdiction in the State of Washington, utilizing or providing data to JIS, shall retain court records, as defined by GR 31, in accordance with this policy. Courts of Limited Jurisdiction:

1. Are not required by law to maintain all court records in perpetuity.

2. Shall not archive electronic court records in the Judicial Information System.

3. The Judicial Information System shall destroy specified court records in accordance with the attached retention schedule.

B. Destruction of court records maintained in electronic form in the JIS system shall be automated based upon the attached retention schedule.

C. AOC ISD shall provide a monthly Destruction of Records Report to Limited Jurisdiction Courts. The Destruction of Records Report shall be utilized by Limited Jurisdiction Courts as a records management tool to assist in timely destruction of court records maintained in paper form as set forth in the attached retention schedule.

D. A judge may order that a specific record shall not be purged. The court shall enter specific findings on the record supporting its decision.

* This section does not apply to JIS records of non-JIS courts (i.e. Seattle Municipal Court).

~~V.~~VI. PROCEDURES

A. Uniform procedures for requesting JIS information, and for the appeal of decisions of data dissemination managers, shall be as set forth in policies issued by the Office of the Administrator for the Courts pursuant to JISCR 15(d).

B. In any case where a report is provided, the report must be accompanied by a suitable disclaimer noting that the court can make no representation regarding the identity of any persons whose names appear in the report, and that the court makes no representation as to the accuracy and completeness of the data except for court purposes.

~~VI.~~VII. ACCESS TO AND USE OF DATA BY COURTS

Courts and their employees may access and use JIS records only for the purpose of conducting official court business. Such access and use shall be governed by appropriate security policies and procedures.

~~VII.~~VIII. ACCESS TO AND USE OF DATA BY CRIMINAL JUSTICE AGENCIES

A. "Criminal justice agencies" as defined in RCW Chapter 10.97 shall have additional access to JIS records beyond that which is permitted the public.

B. The JIS Committee shall approve the access level and permitted use(s) for classes of criminal justice agencies including, but not limited to, law enforcement, prosecutors, and corrections. An agency that is not covered by a class may request access.

C. Agencies requesting access under this provision shall identify the information requested and the proposed use(s).

D. Access by criminal justice agencies shall be governed by an electronic data dissemination contract with each such agency. The contract shall:

1. Specify the data to which access is granted.
2. Specify the uses which the agency may make of the data.
3. Include the agency's agreement that its employees will access the data only for the uses specified.

~~VIII.~~IX. ACCESS TO AND USE OF DATA BY PUBLIC PURPOSE AGENCIES

A. "Public purpose agency" includes 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.

B. Upon approval by the JIS Committee, public purpose agencies may be granted additional access to JIS records beyond that which is permitted the public.

C. Agencies requesting additional access under this provision shall identify the information requested and the proposed use(s). In reviewing such requests, the JISC will consider such criteria as:

1. The extent to which access will result in efficiencies in the operation of a court or courts.
2. The extent to which access will enable the fulfillment of a legislative mandate.
3. The extent to which access will result in efficiencies in other parts of the criminal justice system.
4. The risks created by permitting such access.

D. Access by public purpose agencies shall be governed by an electronic data dissemination contract with each such agency. The contract shall:

1. Specify the data to which access is granted.
2. Specify the uses which the agency may make of the data.

3. Include the agency's agreement that its employees will access the data only for the uses specified.

~~IX.~~X. E-MAIL

The JIS provides e-mail for official court business use only. Access to judicial officers' and court employees' e-mail is restricted. Access to a judicial officer's e-mail files shall only be granted with the permission of the judicial officer involved. Request for access to a court employee's e-mail or to logs containing records on an employee's e-mail shall be subject to the review and approval of the county clerk if the employee is employed in the clerk's office, or the presiding judge or court administrator if the employee is employed by the court. Nothing in this policy shall be used as a reason to withhold records which are the subject of a subpoena or otherwise available to the public.

~~X.~~XI. VERSION HISTORY

These policies shall take effect 30 days from the date of their adoption by the Judicial Information Systems Committee,
May 19, 1995.

- Adopted May 19, 1995
- Amended June 21, 1996
- Amended September 20, 1996
- Amended June 6, 1997
- Amended December 5, 1997
- Amended February 27, 1998
- Amended June 26, 1998

APPENDIX A RETENTION SCHEDULE

Retention of Records Summary

Casetype = CV, SC, or PR
The system will determine retention based on overall casetype & cause code

Casetype	Cause Code	Retention
CV-Civil	DVP, HAR, SXP	Never Purge
CV-Civil	Any other	10 years & 4 months
SC-Small Claims **PR - Parking (VRV)**	Any	3 years

Notes:

- **All retention periods begin after case is closed**
- **Case is retained based on the longest retention period for any charge on the case**
- **See Plea / Sentencing codes at Inside Courts website for code descriptions**

Casetype = IT, IN, CT, CN, PC, CF
The system will determine retention based on casetype and disposition of each charge

Finding / Judgment Types	Casetype of Charge			Finding / Judgment Codes Included
	CT, CN	PC, CF	IT, IN	
Guilty / Committed	Never purged	Never purged	3 yrs	AS, BF, C, P, G, GO, GS, GV, GR, PI, RP, GY, GZ
Not Guilty / Not Committed	10 yrs	10 yrs	3 yrs	NG, NC
46.63.070 Deferred Finding (IT only)	NA	NA	7 yrs	CD, DD
Dismissed - Incompetency, or Not Guilty - Insanity	Never purged	Never purged	3 yrs	D, DO, DW with reason code of IC; or NS
10.05 Deferred Prosecution	Never purged	Never purged	3 yrs	GO, GD; or D, DO, DW with dismissal reason code of DP
Dismissed for all other reasons	10 yrs	3 yrs	3 yrs	D, DO, DW, or OD, with a dismissal reason code of blank or anything other than IC, DP, or FD
Vacated	Never purged	Never purged	N/A	V
Case Transferred	3 yrs	3 yrs	3 yrs	BO, CV; or D with a reason of FD
Amended	Retention not based on AM finding Retention is based solely on issues with findings other than AM			AM

Destruction of Records Report (DORR) Criteria

A Destruction of Records Report will be provided monthly to each court. The report will include cases in that court which meet the following criteria:

1. The case is a CLJ JIS case with an overall casetype of CV, SC, PR, IN, IT, CT, CN, PC, CF (This does not include Seattle Municipal Court Cases)
   - The case disposition date is at least three years in the past;
   - The last case update was at least 3 months in the past.
2. For each case, the report will indicate the following status:
   - The case met the selection criteria but is not being deleted from JIS now (reported)
   - The case was previously reported and is now being deleted from JIS (deleted)
   - The case met the selection criteria and has been deleted from JIS at the same time (both)
3. The following information will be included in the report
   - Defendant Name / Case Title - For non-civil cases the name of the defendant. For civil and small claims cases the case title is derived from the last name of the first plaintiff/petitioner/old participant vs the last name of the first defendant/respondent/new participant.
   - Case Number - The number assigned by the court to this case followed by the case type.
   - LEA - The code for the law enforcement agency that filed the citation or complaint. This field will be blank for Civil (CV) and Small Claims (SC) cases.
   - Case Type - The overall case type
   - Cause - The Cause Code recorded on the filing screen for Civil (CV) and Small Claims (SC) cases.
   - Filing Method – Electronic or Manual
   - Status - Reported, Deleted, or Both