October 8, 2013

MEMORANDUM TO: Judicial Information System Committee (JISC)

RE: Proposed amendments to GR 15

LEGAL BASIS

JISCR 11 provides that modifications, deletions, and additions from the established rules related to privacy and confidentiality of court records must be reviewed by JISC and approved by the Supreme Court. Article 7, Section 2, of the JISC bylaws provides the Data Dissemination Committee the power and responsibility to recommend to the JIS Committee changes to statutes and court rules regarding access to court records. GR 22, GR 30, GR 31, and GR amendments to GR 15 were all adopted by the Washington Supreme Court after a recommendation from JISC. The Supreme Court last amended GR 15 in 2006, upon the recommendations of JISC.

In considering a Motion to seal or redact court records, GR 15, alone, does not currently give trial courts the necessary guidance and must be considered together with the case law to meet Washington Constitution, Article I. Section 10 standards. Dreiling v. Jain, 151 Wn.2d 900, at 912 (2004), State v. Waldon, 148 Wn. App. 952, 202 P.3d 352 (2009). Given the substantial body of case law which must now be considered by trial courts and litigants, in addition to the specific provisions of GR 15, this is an appropriate point in time to propose comprehensive amendments to GR 15 to close the gap between the case law and the provisions of the court rule, and resolve other issues not specifically addressed by the current rule.

GOALS

The primary goals of the amendments proposed by the Data Dissemination Committee are:

1) Embedding current significant case law on sealing and redacting court records within the provisions of GR 15 (We did not include the *Hundthofte* Court of Appeals decision, as it is pending decision in the Supreme Court); and

2) Rendering provisions of GR 15 dealing with juvenile offender records consistent with practices which have in effect at AOC for at least the last 9-10 years, due to statutory language in Title 13.50 RCW; and

3) Providing a basis for sealing non-conviction adult and juvenile court records, subject to application of the Ishikawa factors, in the same manner currently existing for sealing vacated convictions; and

4) Clearly providing that the name of a party may not be redacted, consistent with the principal that, except for juvenile offender cases, the existence of a sealed or redacted case will always be available to the public; and

5) Effectuating the 5th Ishikawa factor by providing that Orders to Seal or Redact shall contain an expiration date, except for sealed Juvenile records; and

6) Improving and clarifying the language of GR 15, where indicated; and

7) The addition of comments to clarify the intent of certain sections and the case law establishing the basis of particular provisions.

The proposed amendments are agnostic as to whether the Ishikawa factors apply to juvenile offender records sealed under the provisions of RCW 13.50.050, as there is no caselaw to guide us. The proposed amendments should result in no change to the way juvenile records are sealed or the availability of sealed juvenile records for public inspection (none).

CASELAW

The following specific case law is embedded within the proposed GR 15 amendments:

- **Seattle Times v. Ishikawa**, 97 Wn.2d 30 (_1982), and the subsequent line of cases, including **State v. Sublett,** 176 Wn.2d 58, at Fn 8 and **State v. Coleman,** 151 Wn. App 614, at Fn. 13. The five factors are set forth in Section (c) (2) (A).
- **Allied Daily Newspapers v. Eikenberry**, 121 Wn.2d 205 (1993) is included within Section (c) (4) containing the *case by case basis* language.
- **Bennett et al v. Smith Bunday Berman Britton, PS**, 176 Wn.2d 303 (2013) good cause standard provisions for discovery material are set out in Section (c) (2) (B).
- **State v. McEnroe**, 174 Wn.2d 795 (2012) provisions for sealing/redacting when a document is submitted contemporaneously with the Motion to Seal are in Section (c) (8). This is the procedure already used in King County
- **State v. Richardson**, 177 Wn.2d 351 (2013) factors to be considered in unsealing or unredaction are contained in Section (f).

PROCESS and RECOMMENDATION

The initial draft of proposed amendments to GR 15 was prepared by Judges Leach and Wynne. Notice was provided to stakeholders and a public hearing was held on April 12 in Everett by the Data Dissemination Committee. Written and oral comments were received and a transcript of oral comments and interchange with the DD Committee was prepared. The DD Committee has continued to consider public comments and to continue drafting of GR 15 amendments to date with full participation from all DD Committee members in that process. A current draft of proposed GR 15 amendments was again circulated to stakeholders for comment, in September.

The Data Dissemination Committee requests that JISC recommend adoption of the proposed GR 15 amendments by the Washington State Supreme Court, on an expedited basis.

Thomas J. Wynne
Superior Court Judge
Chair
Data Dissemination Committee