Notes for Sealing & Expunging Seminar

Sealing:

There is a difference between sealing decisions made by your **court order vs. statutes** and court rules that protect records by category.

Statutes categorically protect: Dependency, Termination, Becca, ITA, Parentage, Adoption cases, which are case types 5, 6, and 7. Statutes specify who has access.

GR 22 categorically protects certain documents filed in Family Law and Guardianship cases. The rule dictates who has access to these documents.

Clear orders that don't necessitate discretion or interpretation on the part of court/county clerk staff is the most desirable situation.

GR 15 – Destruction, Sealing & Redaction of Court Records

Best Practices:

1) King County practice: per GR 15, a motion or order to delete, purge, remove, excise, or erase or redact shall be treated as a motion to seal.

2) Orders to Seal should not be included in any other order, they must be standalone orders, appropriately captioned "Order to Seal." Pursuant to the rule, orders to seal are public. The Clerk asks parties to avoid combining Motion and Order to Seal, unless it is intended for the motion to also be public.

3) The Clerk cannot seal partial documents. Orders to Seal "Attached Documents" are not compatible with the rule and lead to problems with the record – the order sealing cannot be sealed. Likely, the redaction process described in GR 15 will accomplish the intent.

4) If order is to seal documents, each document caption, date filed and document sub number should be included in the order.

5) If the Order to Seal is sealing "all documents listed on attached page," best practice is to please initial the separate page, so that we know it has been appropriately ordered

6) Per GR 15: "a court record shall not be sealed…when redaction will adequately resolve the issues…"
    a. The redacted copy shall be provided by the moving party.
    b. The original un-redacted court record shall be sealed & not returned to the parties.
    c. The redacted copy must be the entire original document, not selected pages.
    d. Documents in the file that are to be sealed due to a redacting order need to be clearly identified in the order by date filed, document title and sub number.
    e. Caption of the redacted version should include additional language of "Redacted copy pursuant to (date) order.

7) GR 15 dictates that index information is to remain for sealed documents/files. Avoid language that conflicts with this provision. The existence of the record is public.

a. *The existence of a court file sealed in its entirety, unless protected by statue, is available for viewing by the public on court indices. Information is limited to case number, names of the parties, the notation "Case Sealed," the case type and cause of action in civil cases and the charge in the criminal cases, except where the conviction has been vacated.*

8) Access to records: The Order to Seal should list, specifically, who gets access to the sealed document/file. Names to be used whenever possible; avoid using categories or groups. Otherwise, the Clerk will require an Order to Access.

9) When the Clerk's Office receives sealing orders for specific periods of time, a procedure is in place to track the expiration date and remove the seal.

GR 22 – Access to Family Law & Guardianship Court Records

Relative to Sealing:

1) Sealed cover sheet permitted only for financial source documents, personal health care records & confidential reports.
2) The Clerk's Office is not policing the cover sheet for use, except for wrong case type use.
3) Parties are to follow the rules and challenge the coversheet use in court, if inappropriate.
4) If parties file docs without the GR 22 coversheet, the document will not be sealed. If they pursue an order to seal docs covered by GR 22, likely the Court need not perform Ishikawa analysis.

GR 31 – Access to Court Records

Relative to the Sealing (SSN's, finance account & Driver's License #'s)

1) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Court or the Clerk will not review pleadings for compliance. If filed without redaction, the opposing party or identified person can move the Court for redaction.

Additional Notes:

Orders to Vacate: Per GR 15, orders to vacate do not automatically seal anything. If sealing is the desired outcome, two different orders should be presented and approved.

FTR Recordings: To seal the FTR record, the order must list the courtroom number, date and start/stop times of the recording to be sealed.

Local Court Rules: What do they say?

EXPUNGING

Orders to Destroy/Expunge: Per GR 15 **-** *The court shall not order the destruction of any court record unless expressly permitted by statute.* The only statute that currently exists is related to offender cases that are filed and then deferred, when no other case history exists.

Juvenile offender cases: Can be destroyed pursuant to RCW 13.50.270

Retention Schedule: CLJs have JIS retention schedule. Provide copy.

Law enforcement records: Law enforcement criminal records can be destroyed pursuant to RCW 10.97.060. Does not apply to court records. Show example of orders that are being signed.