THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF THE	)	**ORDER**
	)	
AMENDMENTS TO GR 15; CrRLJ 7.2 and 7.3	)	NO. 25700-A- 601
	)	
	)	

The Court Management Council having recommended the adoption of the proposed amendments to GR 15; CrRLJ 7.2 and 7.3, and the Court having determined that the proposed amendments will aid in the prompt and orderly administration of justice and further determined that an emergency exists which necessitates an early adoption;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments as attached hereto are adopted.

(b) That pursuant to the emergency provisions of GR 9(i), the amendments will be published expeditiously and become effective upon publication.

FILED
SUPREME COURT
STATE OF WASHINGTON
97 MAY 12 PM 3:3
BY C. J. MERRITT
CLERK

DATED at Olympia, Washington this 12th day of May, 1997.

B Durham

Dolliver, J.

Barbara Madsen

Smith, J.

Alexander, J.

Guy, J.

Talmadge, J.

Johnson, J.

Sanders, J.

3/5/21

GR 15. DESTRUCTION AND~~OR~~ SEALING OF COURT RECORDS

(a) **Purpose and Scope of the Rule.** This rule sets forth a uniform procedure for the destruction and ~~or~~ sealing of court files, cases, records, or specified documents or material in a court file or record at all court levels. This rule shall apply to court files, cases, records, documents, or materials in any form or format, including but not limited to hard copy, microfilm, microfiche, and automated information system format.~~Except as provided by this rule and by RCW 36.23.065, t~~The clerk shall maintain all documents and materials filed with the court, and shall make ~~them~~ available for public examination all files, cases, records, documents, or materials which have not been ordered destroyed or sealed.

(b) **Definition and Construction of Terms.**

(1) *Seal.* To seal means to protect from examination by the public or nonauthorized court personnel. Sealing of a hard copy, microfilm, or microfiche is accomplished by enclosing with a fastening which must be broken before access can be obtained. Sealing of an automated information system file or record is accomplished by restricting access to authorized court personnel only. The existence of a sealed file is available for viewing by the public on court indices, but is limited to the case number, names of the parties, the notation "case sealed", the case type in civil cases and the cause of action or charge in criminal cases. The contents of sealed documents or records within a case are not available for viewing by the public. Sealed files, documents or records may be examined by the public only after the files, documents or records have been ordered unsealed pursuant to section (d) of this rule. A motion or order to ~~expunge,~~ delete, purge, remove, excise, or erase shall be treated as a motion or order to seal.

(2) *Destroy.* To destroy means to ~~remove and physically~~ obliterate a court file, case, document, or material in such a way as to make it permanently irretrievable.~~unavailable for examination or for use in any court or other proceeding.~~ A motion or order to expunge shall be treated as a motion or order to destroy.

(3) *Strike.* A motion or order to strike is not a motion or order to seal or destroy.

(c) **Grounds and Procedure for Requesting the Sealing or Destruction of Court Records.**

(1) *Criminal Cases or Juvenile Proceedings.*

(A) Destruction of Files or Records. On motion of any interested person in a criminal case or juvenile proceeding, or on the court's own motion, and after a hearing, the court may order the files and records in the proceeding, or any part thereof, to be destroyed if the court finds that such action is expressly permitted by statute. Reasonable notice of the hearing shall be given to: (1) the prosecuting authority of the city or county; (2) the affected adult or juvenile defendant; (3) the victim, if ascertainable; and (4) the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile defendant.

(B) Sealing of Files and Records. Subject to the provisions of RCW 4.24 and CR 26(j), on motion of any interested person in a criminal case or juvenile proceeding, or on the court's own motion, and after a hearing, the court may order the files and records in the proceeding, or any part thereof, to be sealed if the court finds that such action is expressly permitted by statute or that there are compelling circumstances requiring such action. Reasonable notice of the hearing shall be given by the moving party to: (1) the

prosecuting authority of the city or county; (2) the affected adult or juvenile defendant; (3) the victim, if ascertainable; and (4) the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile defendant.

(2) *Civil Cases.*

(A) Destruction of Files or Records. After entry of final judgment, no civil case file or any part thereof may be destroyed, except after files have been microfilmed as provided in RCW 36.23.065. Before entry of final judgment, civil case files or parts thereof may be destroyed only if the destruction is expressly permitted by statute.

(B) Sealing of Files or Records. On motion of any party to a civil proceeding, or on the court's own motion, and after reasonable notice to the nonmoving party and a hearing, the court may order the sealing of any files and records in the proceeding (i) to further an order entered under CR 12(f) or a protective order entered under CR 26(c); or (ii) under compelling circumstances where justice so requires.

(d) Grounds and Procedure for Requesting the Unsealing ~~Opening~~ of Sealed Records.

(1) *Criminal Cases ~~or Juvenile Proceedings~~.* After the entry of an order to seal all or part of a court file in a criminal ~~or juvenile~~ proceeding, the records sealed shall be ordered unsealed ~~opened~~ 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.

(2) *Civil Cases.* After the entry of an order to seal all or part of a court file in a civil proceeding, the records ~~sealed~~ shall be ordered unsealed~~opened~~ only upon stipulation of all parties or upon motion and written notice to all parties and proof of compelling circumstances, or pursuant to RCW 4.24 or CR 26(j).

(3) *Juvenile Proceedings.* After the entry of an order to seal all or part of a court file in a juvenile proceeding, inspection of the files and records included in the order to seal may thereafter be 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 (24). 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(15).

(e) Clerk's Duties. ~~Upon the Filing of an Order to Destroy or Seal. Upon the receipt of an order to destroy or seal signed by the court, the clerk shall take the following action:~~

(1) *Destruction of Entire File.* Upon receipt of a court order ~~For~~ to destroy the ~~whole~~ entire file under the primary control of the clerk, the clerk shall:

(A) ~~Delete~~ Destroy all references to the file from ~~SCOMIS or other~~ any applicable automated information systems~~docket and all entries except the case number and substitute the words "File Destroyed"~~; and

(B) ~~Remove and d~~Destroy all documents in the ~~entire contents of the~~ file, in whatever media they may be stored, except for the order to destroy.

(2) *Sealing of Entire File.* Upon receipt of a court order ~~For orders~~ to seal the ~~whole~~ entire file under the primary control of the clerk, the clerk shall:

(A) ~~Delete all references to the file from SCOMIS or other applicable docket systems and delete all entries except the case number, the names of the parties, and the addresses of the parties or their attorneys, and substitute the words "File Sealed";~~Mark the automated file "Sealed".

(B) ~~Make a copy of all automated docket and other records and place them in the case file~~Mark the file "Sealed" and secure it and all subsequently filed documents from public access~~; and~~

~~(C) Seal the entire file, including but not limited to all pleadings, papers, depositions, exhibits, and court reporter's notes and minute entries,~~ except for the order to seal.

(3) *Destruction of Specified Documents.* ~~For orders~~ Upon receipt of a court order to destroy specified documents or materials within a file under the primary control of the clerk, the clerk shall:

(A) On the automated ~~or other~~ docket destroy any docket code information except any document or sub-document number previously assigned to the document destroyed and enter~~substitute~~ "Ordered Destroyed" for the docket entry~~, leaving only the date and number of the original documents or material~~;

(B) ~~Remove and d~~Destroy the appropriate documents or material in whatever media they may be stored ~~from the file~~, 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.

(4) *Sealing of Specified Documents.* ~~For orders~~ Upon receipt of a court order to seal specified documents or material within a file under the primary control of the clerk, the clerk shall:

(A) On the automated ~~or other~~ docket, preserve the docket code, document title, document or subdocument number and date ~~substitute "Ordered Sealed" for the docket entry, leaving only the date and number~~ of the original documents or material;

(B) Remove the documents or material from the file, seal them, and return them to the file under seal or store separately, substituting a filler sheet for the removed sealed document. In the event the document ordered sealed exists in a microfilm, microfiche or other storage medium, the clerk shall limit access to the alternate storage medium so as to prevent unauthorized viewing of the sealed document; and

(C) File the order to seal.

(D) If the file is made available for examination, the clerk shall prevent access to ~~remove~~ the sealed records ~~from the file~~ before the rest of the file is made available~~ and replace the sealed records immediately after the examination~~.

(f) Microfilming of Sealed Records. Sealed records may be microfilmed as provided in RCW 36.23.065 and such microfilm shall be maintained in accordance with this rule.

(g) 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 the court so orders.

(h) Use of Sealed Records on Appeal. A file, or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Cases sealed

in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.

(i) **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.

[Adopted effective September 22, 1989; amended effective September 1, 1995.]

Proposed Amendment

CrRLJ 7.2(d), (e)

(d) Record. A record of the sentencing proceedings shall be made. The sentencing and judgment records of the courts of limited jurisdiction shall be preserved in perpetuity, either in an electronic or hard copy format. "Hard copy format" may include microfilm, microfiche, or a paper copy. The record of the sentencing proceedings shall be prima facie evidence of a valid conviction in subsequent proceedings in courts of limited jurisdiction and in superior court.

(e) Judgment and Sentence.

(1) An electronic judgment and sentence shall be prescribed by the Administrator for the Courts in conjunction with the Judicial Information System Committee (JISC).

(2) A non-electronic judgment and sentence form shall be prescribed by the Administrator for the Courts in conjunction with the Supreme Court Pattern Forms Committee.

(3) Notwithstanding any other statute or rule to the contrary, each judgment and sentence form, either electronic or hard copy, shall be preserved by the court in perpetuity.

Proposed Amendment

CrRLJ 7.3 JUDGMENT

A judgment of conviction shall set forth whether the defendant was represented by a lawyer or waived representation by a lawyer, the plea, the verdict or findings, and the adjudication and sentence. The court may order that its sentence include special conditions or requirements, including a specified schedule for the payment of a fine, restitution, or other costs, or the performance of community service. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judge or clerk shall enter the judgment on the record. The judgment and record of the sentencing proceedings of the courts of limited jurisdiction shall be preserved in perpetuity, either in an electronic or hard copy format. "Hard copy format" may include microfilm, microfiche, or a paper copy. At a minimum, the judgment and record of the sentencing proceedings shall include:

(a) Defendant's name;

(b) Defendant's ID numbers;

(c) The charge, as well as any amendments to the original charge;

(d) Arraignment date;

(e) The plea, and date entered;

(f) Representation by or waiver of lawyer, as well as date of lawyer's appearance or waiver;

(g) The parties present, including but not limited to the judge, attorneys, prosecutor, defense counsel, witnesses;

(h) Verdict or findings, and the date entered;

(i) Adjudication and sentence, and the date entered;

(j) Conditions or requirements of the sentence, including but not limited to a specified schedule for the payment of a fine, restitution, or other costs, performance of community service, counseling or treatment;

(k) The outcomes of any hearings held on the case, including but not limited to noncompliance hearings, reviews.

The judgment and record of the sentencing proceedings shall be prima facie evidence of a valid conviction in subsequent proceedings in courts of limited jurisdiction and in superior court.

Holcomb's "Valid Assumptions" on Appellate Brief-writing

by **Byron Holcomb**

As To Preparation of Appellate Briefs:

#1: If a brief absolutely, positively, and without fail has to be mailed by 5 p.m. that day, your secretary calls in sick that morning.

#2: If that brief has to be mailed as indicated and there is one case for which you have argued for 40 pages of a 45-page brief why decision should be rendered in your favor, you find out with two hours to go that the case was overruled by a unanimous decision of an *en banc* panel yesterday.

#3: A corollary of VA #2 is: if you cannot find the Shepard's summary you did on that controlling case and have 12 minutes to get to a law library, the law library closes in 10 minutes; or with 12 minutes to get there and it takes 10, your car won't start; or, if your car starts, parking around the library has been cordoned off for blocks because of a bomb threat.

#4: With a four-line conclusion to be entered on a 45-page brief and two hours to go, electrical power fails (with a companion loss of all data).

#5: If it takes 50 pages of white paper to prepare all necessary copies and you have 51, two will get mangled in the copy machine and become unusable.

#6: With the original and all copies assembled and collated with 20 minutes to go, no one can find the box of staples specially purchased for the thickness of the brief; or the large stapler, which was there all day, cannot now be found anywhere. (All stores and nearby offices are also closed early due to a holiday.)

As to Filing of Appellate Briefs:

#7: With the original and the proper number of copies in the correct envelopes and with five minutes to spare at the U.S. Postal Service before closing, the postage is $25.05, and you have $25 and no checks.

#8: With the original and the proper number of copies safely in the hands of the overnight express person, and having ever in mind the stern warning of the appellate motions panel that the last extension has been granted, the worst snowstorm in history blankets the destination city, snarling traffic for hundreds of miles in every direction and preventing all airplanes from landing.

#9: If there is one copy which has been mis-assembled or improperly collated (this "VA" is especially true if there is a missing page of critical importance linking up all other arguments), the clerk of the court randomly selects and delivers that copy to the judge who is the strictest on form and precision; or to the judge who is most likely to vote against your position in the first place; or to the judge who chastised you from the bench during the last oral argument before him or her questioning your competence, thoroughness or brief-writing ability.

As to Review of Appellate Briefs:

10: After achieving success in overcoming all of the above "VAs" and after being emotionally drained and physically exhausted, you arrive back at your office the next morning only to find that the court *sua sponte* remanded the case because of a ruling in a companion case.

#11: After all of the above and at oral argument, the court is not interested in your brief, but desires further briefing and argument on a point not previously raised.

#12: After all of the above and at oral argument, you find that none of the panel has any interest in your brief and is only interested in the argument of your opponent.

Nothing, and I mean nothing — not pestilence, disease, mayhem or anguish, will ever again phase you after having to comply with federal court appellate rules as to brief assembly and service.

WORKERS' COMPENSATION

Industrial Injury and Occupational Disease

We welcome and appreciate your referrals in this specialized area.

Walthew, Warner, Costello, Thompson & Eagan

"Representing Injured Workers For Over 60 Years"

(206) 623-5311

Toll Free 1-800-824-6215

THE WALTHEW BUILDING
123 Third Avenue • Third South & South Washington
Seattle, Washington 98104