May 28, 2020

TO: JISC Data Dissemination Committee

FROM: Kevin Cottingham, AOC Data Dissemination Administrator

RE: When a Washington non-juvenile Superior Court case is sealed, should the corresponding judgment case be sealed in the absence of a specific order instructing so?

In SCOMIS, Superior Court cases and their corresponding judgments were treated as separate cases and assigned different case numbers. Case type 9 was reserved for judgment cases specifically. Because the cases were separate, sealing the underlying case did not affect the judgment case.

Currently, most Superior Courts in the state use Odyssey, which by default groups judgments as part of the case. In order to maintain compatibility with existing business processes, AOC implemented a system wherein the Odyssey database is copied into SCOMIS on a daily basis. Although judgments in Odyssey are generally[1] part of the underlying case, judgments are assigned a unique document number, and SCOMIS separates the judgment out and assigns a new case number as part of this replication process. Just as before, judgments for sealed cases are public by default.

As AOC drafts requirements for applications that support Washington's various court level, a question arose regarding how a judgment case should be treated if the underlying criminal case is sealed and this legal opinion was requested. While the DDC has decided that courts *can* specifically seal a judgment record and that juvenile judgments should be open by default, no general rule pertaining to non-juvenile Superior Court cases has been decided.

AOC concludes that judgment cases for non-juvenile Superior Court cases should not be sealed automatically, due to interests laid out earlier regarding juvenile cases and in GR 15.

Authorities Governing Sealing & Judgments

Legal authority for sealing cases comes from GR 15. Courts are empowered to seal cases based on receipt of a request from a list of petitioners if a court finds that sealing is "justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record", and lists a few reasons:

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

[1] Some courts specifically enter judgments in Odyssey as separate cases

(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 conviction has been vacated; or
(D) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or
(E) The redaction includes only restricted personal identifiers contained in the court record; or
(F) Another identified compelling circumstance exists that requires the sealing or redaction.[2]

The legislature has over the years passed statutes pertaining to record sealing, but ultimate authority regarding sealing lies with the courts, as sealing is wholly a procedural matter.[3]

Unlike sealing procedures, judgments were laid out pretty thoroughly in legislation, and statutes governing judgments can be found in numerous locations throughout the Revised Code of Washington. Civil judgments can be found in Title 4 RCW, which states that "The clerk shall enter all judgments in the execution docket, subject to the direction of the court and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action."[4] Criminal judgments are governed by Title 10 RCW, which states that "the clerk of the court shall make a final record of all the proceedings in a criminal prosecution within six months after the same shall have been decided, which shall contain a copy of the . . . judgment."[5] Finally, Title 36 RCW dictates how Superior Courts are to store the judgments, requiring county clerks to maintain:

(4) A record in which he or she shall record the daily proceedings of the court, and enter all verdicts, orders, judgments, and decisions thereof, which may, as provided by local court rule, be signed by the judge; but the court shall have full control of all entries in the record at any time during the session in which they were made;
(5) An execution docket and also one for a final record in which he or she shall make a full and perfect record of all criminal cases in which a final judgment is rendered, and all civil cases in which by any order or final judgment the title to real estate, or any interest therein, is in any way affected, and such other final judgments, orders, or decisions as the court may require;
(6) A record in which shall be entered all orders, decrees, and judgments made by the court and the minutes of the court in probate proceedings;[6]

Legal Analysis

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[2] Gen. R. 15
[3] *State v. Noel*, 101 Wash. App. 623, 628 (2000)
[4] RCW 4.64.030
[5] RCW 10.64.100
[6] RCW 36.23.030

The sealing of a judgment, specifically, is a wholly procedural matter under the rationale used by the Washington State Supreme Court in *State v. Noel*. Under *Noel*, sealing a case is a wholly procedural matter:

> No substantive rights of either the State, as prosecutor, or the defendant are affected. The ability of the State to use sealed convictions in future criminal proceedings is not impinged, as it is when records are destroyed. The sole effect of sealing is on the public's right of access to the files."[7]

Although *Noel* was a criminal case, the same logic holds true for both civil cases and judgments: a sealed judgment is still enforceable and no rights of the prevailing party have been abridged, only the right of the public to have access to the information. The DDC has come to the same conclusion when it decided in April 2007 that courts have the authority to seal judgments when specifically ordered.[8]

While it is not under dispute that courts *can* seal judgments when they specifically order, the question presented is whether the judgment *should* be sealed in the absence of a specific order. Washington's court rules force the conclusion that judgments should remain open if the underlying case is sealed, unless a specific order to seal the judgment is entered by the court.

First, non-juvenile judgments should be public because juvenile judgments are public, as the DDC decided in 2018. As the Washington State Supreme Court laid out in State v. S.J.C.:

> The legislature has always treated juvenile court records as distinctive and as deserving of more confidentiality than other types of records. This court has always given effect to the legislature's judgment in the unique setting of juvenile court records. Our approach has been consistent with the approaches of other states and Supreme Court jurisprudence historically, and remains so today.

If juvenile judgments are kept open by default, sealing non-juvenile judgments by default would be contrary to the interests laid out in the Data Dissemination Policy, which specifically grants juvenile records extra protection over non-juvenile records. Juvenile birthdates are treated as confidential information, and may not be disclosed without a specific exemption granted by the Data Dissemination Committee. Section V. of the Data Dissemination Policy removes juvenile cases from bulk distributions disseminated by AOC, absent other factors, and bars AOC from displaying juvenile case information on publicly-accessible websites.

Second, overall goals spelled out by state laws dictate keeping judgments open. The Washington State Constitution mandates that "Justice in all cases shall be administered openly, and without unnecessary delay," and the Supreme Court passed GR 31, which states that access to court records shall be facilitated in line with this

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[7] *Noel*, at 628 (2000).
[8] Data Dissemination Committee, April 27, 2007, Minutes, *available at* http://www.courts.wa.gov/committee/?fa=committee.display&item_id=792&committee_id=75.

mandate. While records can be sealed, the wording of GR 15 makes the court's goal of openness clear: "Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records" and that "*sufficient* privacy or safety concerns" (emphasis added) must be weighed against the public interest.

Here specifically, the public interest is served by keeping judgments open. Judgments can be attached to real property as liens, and any potential purchaser of that property should know if a lien is attached. Here, the distinction between the judgment and the underlying case is clear—the purchaser has no interest in the proceedings of a sealed case, but the judgment has real-world implications on the transaction relating to that property. Balancing the sufficient privacy concerns of a court case against public interest might lead a court to seal a case, but the increased public interest in the presence of a judgment should tip the scales in favor of open judgments. This is not to say that all judgments should be public, however—courts may find specific "sufficient privacy or safety concerns" in an individual judgment that mandate sealing that judgment specifically.