April 25, 2008

TO: Justice Mary Fairhurst, Chair
Judicial Information Systems Committee

FROM: Judge Jim Heller, Chair, CLJ Records Retention Workgroup
Member – JISC Data Dissemination Committee

RE: Retention Schedule

At the request of former Justice Bobbe Bridge, former chair of the JISC, and Judge Grosse the Courts of Limited Jurisdiction Retention Work Group was formed to address a number of issues that have arisen with regard to retention of certain criminal court records in courts of limited jurisdiction that are readily accessible by the public. As you know, the Supreme Court has issued a number of holdings that require court records to be open and accessible to the public. Also, the adoption of GR 31 and the amendments to GR 15 support this open and accessible policy.

Currently, courts of limited jurisdiction follow retention guidelines promulgated by the Secretary of State, although there is some limited oversight by the Records Management Advisory Committee (RMAC). While there has always been a question whether the courts are bound by these guidelines, the courts have followed the Secretary of State's guidelines for years so the retention work group, which I chaired, used the guidelines as a model when drafting a retention policy.

There are certain court records that are "essential" and cannot be removed from JIS. For example, all criminal judgments and sentences should remain in the system. CrRLJ 7.2(e)(3) says:

> 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.

There are other court records that are recognized for public policy and safety reasons to be "essential" records. These involve domestic violence and anti-harassment case files. We agree that these records should never be destroyed or placed on a retention schedule.

The workgroup concluded, however, that there are other court records that may not have been intended to be open to the public for long periods of time, especially now with remote accessibility of electronic court records. For example, the work group raised issues regarding the retention of non-conviction information for long periods of time. Such court records can be misleading, especially when it is on AOC's name/case search "public view" website, which provides very limited and specific information. Extended

retention of these records serves no public purpose and may be a disservice to the public and the subject of the records.

I have attached the workgroup's recommended retention schedule which is based on AOC's current guidelines for retention, archiving and destruction. This retention schedule was unanimously approved by the Data Dissemination Committee at our last meeting on February 22, 2008. In case you are unfamiliar with the case type abbreviations in this attachment, they mean the following:

PR -- Parking
PC -- Probable Cause
IN -- Civil Infraction
IT -- Traffic Infraction
CF -- Criminal Felony
CN -- Criminal Non- Traffic
CT -- Criminal Traffic
CV -- Civil
SC -- Small Claims

Proposed changes:

1. **Remove Archiving Requirement**

   The clerks have requested that the archiving requirement be removed. A number of clerks have complained that they spend a great amount of time unarchiving records for the public. A simple way to avoid this is to simply not archive the court records, but remove them from the records at the same time the records are listed for destruction.

2. **Computer Purge of Probable Cause Hearing after Three Years**

   Currently, records of probable cause hearings remain on court records indefinitely. Any subsequent charge or filing of information is recorded under different case numbers. The record of probable cause hearing serves no purpose after a period of time. Either the case was filed and the record of this filing and subsequent actions remain on the record or no action was ever taken. The fact that there was a probable cause hearing loses its value after a period of time has passed. The work group chose a retention period of three years.

3. **Computer Purge of Criminal Felony after Three Years**

   Similar, to probable cause hearings, records of criminal felonies in courts of limited jurisdictions lose their value after a period of time. The cases are either bound over to Superior Court for filing or dismissed and filed as a misdemeanor in the court of limited jurisdiction. The history of the case is maintained in a subsequent filing, not

in the current filing of felony. The record of a criminal felony in courts of limited jurisdiction serves no purpose after a period of time and simply causes confusion.

4. Computer Purge of traffic and non-traffic criminal cases if case is either dismissed or vacated.

Most complaints from the public come from people who had their case dismissed or vacated, but the record of the case still remains available. While it is important to keep a record of these cases for a long period of time in order to have a clear picture of how a particular court is handling a specific case or certain types of cases (e.g. DUIs), the importance of maintaining these records diminishes over time and after a certain period of time becomes a disservice to the subject of the records. Several people have claimed that they have been turned down for better jobs or worse, remain unemployable, because an arrest record where no conviction resulted remained publicly accessible. The removal of these records would be consistent with the legislative intent and supported by the reasoning set forth in *State v. Breazeale*, 144 Wn.2d 829, 31 P.3d 1155 (2001).[1] The workgroup chose a retention period of 10 years.

[1] The legislature has recognized that law enforcement records that contain unproven allegations ("non-conviction data") can be "deleted" under RCW 10.97.060.