Superior Court of the State of Washington for Snohomish County

THOMAS J. WYNNE
JUDGE

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October 22, 2013

Justice Mary Fairhurst
Washington State Supreme Court
Chair, JISC
P.O. Box 40929
Olympia, WA 09504

RE: DMCJA Comments to DD Committee proposed GR 15 amendments

Dear Justice Fairhurst:

About 4:00 yesterday I received a copy from AOC of a letter addressed to you by Judge David Svaren, President of the DMCJA. The Data Dissemination Committee has been drafting proposed amendments to GR 15 since February 2013. We held a public hearing in Everett on April 12. The DMCJA and SCJA have been well aware of these efforts. In mid September a DD Committee final draft was distributed to stakeholders by AOC, including Judicial Associations, for a final round of comments before submission to the JISC. Our process has been highly transparent. We have welcomed comments, as others may see issues DD Committee members may have missed or not considered. The announced cutoff for comments by the Data Dissemination Committee was October 4. Several amendments were made by the DD Committee at our October 8 meeting as a result of comments received.

It appears that the DMCJA has chosen to bypass the Data Dissemination Committee by forwarding comments to you directly, only 4 days before the JISC meeting at which GR 15 amendments are being considered. I spoke to Judge Heller at the end of the day yesterday, and he had no knowledge of Judge Svaren's letter or DMCJA Board comments. The DD Committee has been given no opportunity to address the 75 comments submitted by the DMCJA. Many of the DMCJA comments are irrelevant , as they address sections of GR 15 not included by the DD Committee in the proposed amendments. I will address those comments, individually, as DD Committee chair, by attachment to this letter. The rest of the DD

committee has not participated in drafting my responsive comments. There are two comments I will mention in this letter, as they are addressed in the DMCJA Memorandum attached to Judge Svaren's letter.

The first is the use of the *Bennett* decision by the DD Committee. The lead opinion in *Bennett* was by a 4 justice plurality. The CJ, in a concurring opinion, agreed that documents obtained through discovery that are filed with a court in support of a motion that is never decided are not part of the administration of justice and may remain sealed under the good cause standard of CR 26(c). Therefore the DD Committee included that portion of the Bennett decision in the rule. The lead opinion in Bennett also contained a requirement for a document log to accompany a Motion to Seal. That requirement did not make it's way into the proposed GR 15 amendments, as it was not supported by a 5th Justice in a concurring opinion.

The second issue is the requirement of (c) (6) that the name of a party may not be redacted, or otherwise changed or hidden from an index. The DD Committee understands that the Supreme Court accepted review of the *Hundtofte* case and a decision is pending. We originally included specific language form the court of Appeals *Huntofte* decision, but deleted it. A decision from the Supreme Court is not necessary for the rule proposal to go forward. Issues in Hundtofte are whether GR 15 allows redaction of names of parties, as currently written, and whether the tenants (petitioners) have met Constitutional standards, as set forth in the caselaw to allow sealing. GR 15 does not currently specifically prohibit redaction of a name from the index.

If name of a party is sealed, the case becomes invisible to the public, and can't be found for the public to move for unsealing. (c) (6) is consistent with (c) (9), which provides that if entire file is sealed, the existence of the case is available for public viewing. Redacting the name defeats (c) (9). The same standard applies for a redaction as for sealing the record. If names of parties can be redacted from the index, (c) (9) will have no effect. Eventually all sealed court records will have the name of the party redacted from the index and will be invisible to the public.

I see no basis for delay of the JISC consideration of Data Dissemination Committee recommendations, based upon the DMCJA comments. I will offer two additional amendments to the DD Recommendations, as a result of DMCJA comments. I recommend that JISC go forward with DD Committee recommendations on GR 15 amendments , per the agenda, at the

JISC meeting on October 25. I have communicated with 3 other DD members today and they concur with that recommendation.

Very Truly Yours,

Thomas J. Wynne
Chair, Data Dissemination Committee

ATTACHMENT: Response to DMCJA Comments

CC: DD Committee members
Stephanie Happold
Vicky Cullinane
Pam Payne