

Camilla Falk,

I recently read the proposed new rule, General Court Rule 31A, as created by the Board for Judicial Administration. The new rule would apparently allow some limited access to court administrative records.

While I applaud any effort after so many years without access to court administrative records, the results are less than inspirational.

In my opinion, the Board appears to be overreaching and has developed a proposal that will not work in making courts more open to the public. Moreover, if the court were to adopt this rule, then they would be going into a legislative role in creating some of the mechanisms to require and enforce access to court administrative records.

A far better option would be to consider common law and the Washington State Constitution in crafting a new rule or in the modification of an existing rule.

ARTICLE I, DECLARATION OF RIGHTS

SECTION 1 POLITICAL POWER. All political power is inherent in the people, and the governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

While the full and original intent of the framers cannot be determined from either contextual analysis or historical records, there is no apparent reason to restrict or limit the meaning of the term open courts to criminal and civil proceeding. The open courts doctrine should be applied to all aspects of the judicial system, inclusive of case records as well as records deemed to be court administrative in nature. Further, the Constitution should receive a liberal interpretation in favor of a citizen.

In broad terms, these two sections can be construed and interpreted as a requirement for an open judicial process. That would include by necessity; public access to court proceedings, both civil and criminal; public access to court case records, both civil and criminal; and public access to court administrative records. The court should address this in rules and then refer the larger matter of access to court records to the legislature.

The court should request that the legislature specifically include the courts and assert that all court records as subject to the Washington State Public Disclosure Act. This would alleviate constitutional concerns about the court exceeding their authority. It would also ensure a more realistic chance for the records to be available to the public. While the legislative open records act has significant problems, it is better than nothing; and as of yet, it is far better than what the court has put together.

The problem with establishing another court rule to require judges and courts to adhere to the principals of an open justice system is that all too often; judges treat the rules more as a suggestion or structure of loose guidelines rather than a mandate.

Addressing GR15 by example, judges still routinely ignore the stated requirements and seal records without even paying lip service to the rule. As I recall, the Seattle Times ran some articles on the issue a few years back. In my estimation and experience, nothing has changed.

At this point, we even have court clerks sealing files, or placing them in a "confidential" folder if they fall within a general category of record. For example, if the record is a victim impact statement or a sexual deviancy evaluation. All this is happening without a court order, and without repercussions.

The point is that Judges and courts do not always comply with court rules. Further, there are no realistic disincentives for this bad behavior. Instituting a new rule without penalties or a realistic chance of requesters being reimbursed for attorney fees is simply a prelude to a farce.

Why does the public need access to court administrative records?

- 1) I see it as a matter of open courts, and the public having oversight over an institution that we have created, and that we fund.
- 2) I also want to know why a municipal court closes their courtroom before addressing pre trial issues and basic arraignments for incarcerated persons.
- 3) I want to know why courts are charging a cash only "application" fee to indigents who are seeking the services of a court appointed attorney.
- 4) I want to see the contracts for court appointed attorneys who deal with defendants in bulk, and have no incentive to take a case to trial.
- 5) I want to know how public money is being spent.
- 6) I want to know if there are issues of mis, mal or nonfeasance within the court structure.
- 7) I want to know if there are issues of sexual harassment or discrimination within the court structure.
- 8) I want to be able to see all ex parte communications between a judge and litigants or third parties.
- 9) When I vote for a judicial candidate, I want it to be an informed vote.
- 10) These and thousands of other questions that I or others might have.

Additionally, I tend to think that it would be a good idea for the parent agency to have some degree of oversight over the structure that they have created, funded and have a significant liability for. By example, in the Morgan v. City of Federal Way case decided in 2009, the Supreme Court determined on narrow process grounds that the city had a right to release investigative records concerning the municipal court and Judge Michael Morgan. The Supreme Court determined that since Judge Morgan had agreed to an investigation sponsored by the city attorney's office, that he had essentially ceded control over the matter to the city. Then there was the matter of Federal Way v. Koenig in which the Supreme Court decided that court administrative records were not covered by the state public records act. The clear message these decisions sent to judges and courts across the state was that they should never cede control over investigations or internal issue to anyone outside the court and especially not their parent agency. This leaves the public in the dark. More significantly from the standpoint of an agency, there is a huge liability without any oversight or control.

In the Judge Morgan matter, there were serious allegations that might have led to an employee lawsuit(s). Under the current structure, the city will never see the results of a purely internal court investigation. Assertions by the city that they did not know will not absolve them of financial liability.

Now it is quite likely that the court will decide to go forward in developing this new rule. If they do, then I would suggest that prior to adopting the rule that the court should hold a public hearing on the matter and invite broad public comment.

Thank you for your time and consideration.

Sincerely,

David Koenig

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