



**King County  
District Court  
Office of the Presiding Judge**

W1034 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
Telephone: (206) 205-2820  
Fax: (206) 296-0596

**The Honorable Barbara Linde  
Chief Presiding Judge**

**Tricia Crozier  
Chief Administrative Officer**

November 29, 2011

Honorable Charles W. Johnson, Chair  
Supreme Court Rules Committee  
Washington State Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929

Re: Proposed Adoption General Court Rule 31A -- Access to Administrative Records;  
Proposed Amendments to GR 31, Court Records

Dear Justice Johnson:

On behalf of the Judges of the King County District Court I am writing to express support for the comments to proposed General Rule 31 and 31A, submitted by Judge Gregory J. Tripp, President of the District and Municipal Court Judges' Association in his letter dated November 9, 2011. I also write to submit the enclosed comments of the King County District Court regarding proposed GR 31A. In our comments we request the proposed rule be modified to expressly account for certain records generated by district court misdemeanor probation staff. We also identify areas where we believe the proposed rule could be clarified.

The King County District Court acknowledges and appreciates the work of the Board for Judicial Administration in the development of the proposed rules. We appreciate the opportunity to provide our comments and hope that they are clear and helpful. Please do not hesitate to contact me with any questions or concerns regarding these comments. Thank you for your consideration.

Sincerely,

Judge Barbara Linde  
Presiding Judge, King County District Court

## ATTACHMENT

### KING COUNTY DISTRICT COURT COMMENTS TO PROPOSED GR 31A

#### A. Misdemeanant Probation Records.

Administrative Rule for Courts of Limited Jurisdiction (ARLJ) Rule 11 authorizes a district court to establish a misdemeanor probation department to "provide services designed to assist the court in the management of criminal justice" matters that come before it. ARLJ 11.1. These services are not unlike the services that juvenile probation officers provide the juvenile court division of a superior court.

As proposed, Rule 31A (e)(11) creates an exemption from disclosure for juvenile court probation social files. We request that consideration also be given to similar records generated or maintained by misdemeanor probation officers. We believe this should be accomplished in two ways:

First, the definition of "chambers staff" in Rule 31A (d)(4)(A) should be revised to read as follows:

"Chambers staff" means a judicial officer's law clerk and any other staff, including but not limited to misdemeanor probation staff, when providing support directly to the judicial officer at chambers.

We also suggest the above appear in the rule as a separate definition. It is currently an internal definition contained within the definition of "chambers record".

Second, a new and additional exemption should be added after Rule 31A (e)(1)(B)(11) to read as follows:

(B) In addition to exemptions referred to in paragraph (A) above, the following categories of administrative records are exempt from public access:

...  
(12) Misdemeanant court probation social files.

We believe these changes would avoid the premature dissemination of probation treatment evaluation records, log notes and other data that have not yet acquired the status of "court record" under GR 31(c)(4) or "public record" under ARLJ Rule 9 (disclosure of "public records").

**B. Other Suggested Clarifications and Modifications.**

1. Subsection (d)(4)(B). This subsection states:

Chambers records are not public records. Court records and administrative records do not become chambers records merely because they are in the possession or custody of a judicial officer or chambers staff.

Although located in the definitional section of the proposed rule, the above text is not a definition *per se*. Rather, it appears to complement the exemption for chambers records in (e)(2) and may be better located if moved from its current position to that part of the rule.

2. Subsection (e)(1)(A). We would suggest the heading and first sentence to read as follows:

Administrative Records -- Right of Access

(A) ~~The public has a right of access to court~~ Court and judicial agency administrative records shall be subject to disclosure unless access is exempted or prohibited under this rule...

The source of the "right" referenced in the rule is not clear. Is it the constitution, *see e.g.*, GR 31 (a) (citing Wash. const. article I, section 10) or the common law, or GR 31A itself? The suggested change would still make disclosure mandatory (unless exempt) but remove a general term --"right"-- that ordinarily has a special meaning in the law.

3. Subsection (e)(B)(3). This subsection exempts from disclosure:

Minutes of meetings held by judges within a court and staff products prepared for judicial discussion or decision-making during the meeting[.]

The Comment to this subsection states:

Minutes of the deliberations at judges' meetings are exempt. Records produced by staff for consideration in judges' meetings and identified in the minutes would be exempt under this section. *The preliminary recommendations continue to be protected under the next subsection, after final decision. However, final decisions on administrative matters and the documents embodying them are not exempt from disclosure.*

(Italics added).

The exemption in subsection (3) and the last two sentences of the Comment appear to be in conflict. If the minutes of meetings held by judges are exempt, as subsection (3) provides, then it should not matter if, within those minutes, there is a reference to final decisions on administrative matters. In other words, the scope of the exception for final

decisions discussed in the Comment is not supported by any corresponding text in the exemption. We would suggest that either the exemption be clarified to be consistent with the comment (e.g., "Minutes of meetings held by judges within a court, except to the extent they reflect final decisions, ... are exempt"), or that the last two sentences of the Comment be stricken to be consistent with the scope of the exemption as currently proposed.

4. Subsection (e)(3)(B)(2). This subsection states as follows:

TIMELINE FOR SEEKING REVIEW. The timelines set forth in section (e)(3)(A) shall apply likewise to requests for review of the public records officer's response.

First, it appears the internal reference should be corrected to read "(e)(3)(A)(3)" as that is the only subsection in which a timeline is prescribed. Going further, we suggest that the rule would be clearer if the intended timeline(s) for seeking review were restated in full rather than provided by referring the reader back to an earlier section of the rule. This will offer clarity because the two subsections address different issues: (e)(3)(A)(3) discusses the public records officer's timeline for providing an initial response, (e)(3)(B)(2) covers the requestor's timeline for seeking review of the initial response.

5. Subsection (e)(3)(B)(3). The subsection reads in part:

The court or judicial agency may also establish intermediate levels of review. The court or judicial agency shall make publicly available the applicable forms. The review proceeding is informal and summary. The review proceeding shall be held within five working days. If that is not reasonably possible, then within five working days the review shall be scheduled for the earliest practical date.

Again, we suggest that the timelines under the rule could be more clearly stated, such as in the following:

The court or judicial agency may also establish intermediate levels of review. The court or judicial agency shall make publicly available the applicable forms. The review proceeding is informal and summary. The requestor shall have five working days to notify the court in writing that the requestor seeks intermediate review. The review proceeding shall be held within five working days after receiving the requestor's written notice. If that is not reasonably possible, then within five working days the review shall be scheduled for the earliest practical date.

6. Subsection (g). Because the subject of GR 31A is access to administrative records, we suggest substituting the word "administrative" for "judicial" in subsection (g) so that the rule would read in part:

**(g) Judicial Administrative Records -- Charging of Fees.**

...

(2) A fee may be charged for the photocopying or scanning of judicial administrative records...