

Foster, Denise

From: Alexander B. Aikman [abaikman@earthlink.net]
Sent: Wednesday, December 12, 2012 1:20 PM
To: Foster, Denise
Subject: Comment on the proposed GR31.1

Dear Ms. Foster:

Please accept the comments below on GR 31.1 and post them for review. Thank you very much.
Alex Aikman

Dear Chief Justice Madsen:

I am writing to comment on proposed GR 31.1(L)(2). I recognize that the proposal is the result of substantial work by many people. They are to be commended for the time and thought they have put into the effort. Having reviewed the comments of Thomas T. Goldsmith, however, I urge the Court to step back one more time, study carefully the alternative proposal Mr. Goldsmith offers and ask staff to determine the answers to the questions he raises before it acts on the proposal now before it.

As I have not worked in or with Washington's courts for some time and therefore it is likely that you and the other justices do not know me, allow me to introduce myself. I started in court administration with the National Center for State Courts almost 40 years ago. I was a vice president of the National Center for over nine years. Both at the National Center and on my own I have been a consultant to trial and appellate courts and administrative offices of the court throughout the nation. I have been a trial court Executive Officer in California (El Dorado County) and a deputy state court administrator in Oregon. For the past two Springs I have taught the "Court Management" course in the California State University, Sacramento's judicial administration certificate program. I also have authored the leading general book on court administration. I share this background so you will have some context for assessing the thoughts offered here.

Providing and increasing transparency has been a goal of judiciaries across the nation for a number of years. Courts are exploring and adopting new ways to reach out to the public regarding the adjudication of cases and, to a much-more limited degree, administration of the branch. All of these efforts are very positive; I understand that Washington's courts have embraced this movement. As just implied, however, courts generally are not being as forthcoming regarding their administrative activities and administrative decision-making as they are the adjudication process.

As I understand the situation regarding GR 31.1, the Supreme Court has asked the Certified Professional Guardian Board (CPGB) to review the provisions regarding guardian complaints and discipline to inject more transparency into the process. The proposal now under consideration is the result and recommendation of the CPGB.

The CPGB seems to have adopted the thinking behind and the process for the discipline of judges and attorneys. Mr. Goldsmith points the Court to an alternative working model used for decades for many Washington professionals. The existence of this alternative, apparently successful model and the absence of clear reasons why guardians are more like judges than doctors, nurses, and psychologists when it comes to the openness of the disciplinary process shifts the burden back to the CPGB and other supporters to explain why the existing model for so many Washington professionals in sensitive positions is not appropriate. The question should not be whether the proposed rule change is better and more transparent than current procedures, but whether there are substantive reasons why guardians require treatment and confidentiality that is unavailable to doctors,

psychologists, and many other professionals in Washington working daily in sensitive positions. And, incidentally, whose livelihood also is affected by complaints of professional misconduct. Further, the thoughtful and balanced questions raised by Mr. Goldsmith about the alternative model and its consequences suggest the need for further review by the Court and, quite possibly, further amendments to the proposed rule.

Courts throughout the country are making significant strides toward more transparency, but unless and until they extend the sunlight to a greater degree to the administrative processes within the branch—including in Washington the CPGB and the guardians it oversees—courts will continue to be less-than-fully understood as institutions deserving greater public support and cynics will continue to see a government branch that talks about but really is afraid of transparency. Judges understand the need for and value of transparency regarding both courtroom proceedings and records regarding those proceedings. It has been harder to extend that understanding to the administrative side of the branch. The effort to revisit GR31.1 offers the Court an opportunity to do so while also enhancing protection both for the vast majority of guardians who do their jobs conscientiously and well and for the wards and their families so dependent on those guardians.

I hope the Court will consider Mr. Goldsmith's suggestions and questions and respond affirmatively.

Thank you very much for this opportunity to provide these comments.

/s/ Alexander B. Aikman

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