Foster, Denise

From:	Christopher Hupy [amakirkland@hotmail.com]
Sent:	Saturday, December 29, 2012 7:41 PM
To:	Foster, Denise; Johnson, Justice Charles W.; Owens, Justice Susan; Madsen, Justice Barbara A.; Wiggins, Justice Charles; Fairhurst, Justice Mary; Gonzalez, Justice Steve; Chambers, Justice Tom
Cc:	Judge Craig Matheson / SCJA President BCSC; Judge Sara Derr / Spokane District Court DMCJA
Subject:	Public Comment on Supreme Court General Rule GR31.1
Attachments:	12-29-12 GR31_1 Chief Justice Barbara Madsen Comment 1.pdf

Chief Justice Barbara Madsen,

I offer this comment for public distribution concerning proposed rule GR31.1. I support some previously submitted comments and some unaddressed issues, I feel personally involved in many of these comments on GR31.1.

1. I agree with comments made by PCSC Judge Chushoff and DMCJA Judge Durr, the decision to deny a request for records is an invitation for CJC complaints based on Bad Faith, in addition if the records denied contained violations of Judicial Cannons then it would set in motion an entirely new series of complaint investigations, alleging the denial of records was an attempt to conceal Cannon Violations to any bad faith denial complaint could cause 100's of additional investigative hours.

2. The determination outlined in 31.1(k)(1)(i)(ii)(iii) of the DMCJA and what I assume the Court meant "The Association of the Superior Court Judges of the State of Washington" (TASCJSW) mistakenly referred to as SCJA that these associations are "Judicial Branch Agencies" is a power not granted to the Judiciary. The Superior Court Association legislation was required because the Judges had failed to manage the needs of the citizen resulting in emergency legislation.

Legislative Session Laws 1933 Chapter 58

An Act providing for the relief of congested superior court calendars; providing for the organization and government and duties and powers of "The Association of the Superior Court Judges of the State of Washington" and the officers thereof; and declaring an emergency.

The Legislature did not create a new agency nor did it empower the Supreme Court Governance over this creation. Arguably the dire situation which existed in 1933 has passed but the Association has grown to such size it resembles little of what was intended.

The Separation of powers doctrine, according to Article 2 § 1 Washington Constitution "Legislative authority of the State of Washington shall be vested in the Legislature..." it does not afford any authority to the Judiciary.

The DMCJA owes their corporate creation to the Washington Secretary of State this entity is NOT subject to the Judicial Branch but instead the Executive and the Legislative branch.

Taxation, both the DMCJA and "The Association of the Superior Court Judges of the State of Washington" (or by any other name used proper or otherwise) have been collecting monies from all 39 Counties. If these associations are agencies no authority exists granting the power of Taxation to the Judicial Branch. For the Supreme Court in a sua suponte fashion bestow such authority likely would expose the Judicial Branch and/or these "associations" to litigation.

3. GR31.1(k)(6) Imposes an exemption to other Branches of Government with respect to so called "Judicial records" this has all likelihood of creating a huge mess, as the PRA makes no exception or allowance for maintenance of "secret records" such a action Could be brought under the PRA against the agency in possession of these records in Superior Court. Even the Court who denied the release, and who would represent the Actors of the Court? This could and would be a massive expense to the local government, in King County 54 Judges so 54 sets of interrogatories, depositions, admissions, production of documents, could be low to mid six figures in cost to defend. Not to mention the Internet based email providers like Blackberry or Hotmail many Judges use for official business does GR31.1 presume to have authority via court rule over private companies? What if the companies are located in another state? Another Country?

4. GR31.1(c)(6) Extraordinary Requests Limited by Resource Constraints - This section implies that volume would be somehow a determinate factor, volume does not always equal financial impact, for example every night server data is backed up onto a DLT (Digital Library Tape) this back up process is automated and while it may take several hours to complete it represents many Terabytes (1000's of Gigabytes) of data. This provision fails to give credit to the requestor who may have more knowledge of Mass Storage than the Judge who would be denying the request, a request for 1000's of pages may only represent 10 minutes of agency employee time. Any review process of denials would have to include IT professionals or the opinion of the Judge tasked with such denials would be required to be a computer expert.

There also exists the problem of temporally deleted documents, for example a email was deleted by the user will be saved on the mass storage device for a certain number of days and then could delete from the Mass Storage device but would still exist on at least three DLT tapes (assuming the Grandfather, Father, Son IT Backup Principle), there exists no means for a record to be deleted without the physical destruction of the back-up media. Any alteration or recopying of these back up media, say for disaster recovery plan, would result in the creation of a new document subjecting it to disclosure.

5. If a Judge denied records inconstant with existing Law or this Proposed Court Rule the Judge would be subject to personal litigation, while I for one do not think this is a terrible thing I do think from a fiscal responsibility standpoint it lacks appropriate thought and consideration.

6. GR31.1(c)(7) "Records request that involve Harassment..." The Actors of the Court will not know the intended use of records requested prior to production, it may be possible in some extreme cases like a PD from DOC Inmate Alan Parmalee that assumption could be made the intended use would not serve the greater good of society, but these type of extreme cases are rare. If a denial was issued for production of records the requestor could simply state in a sworn declaration that the record request was not intended to be Harassing in design and/or a well written CJC complaint would result in a misconduct finding for doing nothing but being predisposed of an opinion of the requestor.

7. GR31.1(m) Chamber Records- Records which would otherwise be disclosable could be co-mingled with by the addition of some slight mention of a case or litigant and would fall outside of the disclosure requirement, this loophole could be used to the detriment of the public. Examples of such behaviors by lawyers are plentiful, simply add a lawyer to the cc line and all of a sudden it becomes attorney-client. Not to say Judges are predisposed to behave like Lawyers but they are lawyers.

8. The Inclusion of the Judges' Associations create yet another problem, if the denial of a request was made by two or Judges (each being a association member) would by implication involve the "Association" into any possible legal action for bad faith denials. Commission on Judicial Conduct members of said Associations would have to conflict themselves OFF any CJC investigations involving their brethren.

9. GR31.1 Algebra question-

One requestor makes a request every three months to 35 Courts, carefully drafting requests for records likely to be denied three quarters of the time, how many denials per year for this requestor?

1 x 4 x 35 x .75 = 105 denials per year

Number of Judges involved per denial is two (Original Judge and Presiding Judge)

105 x 2 = 210 Judges involved

Presumption of the validity of each denied request which would constitute a valid complaint by the CJC would be 100% as there is no question of law on this because of the language of GR31.1

Number of complaints the CJC would be REQUIRED to investigate per year for this SINGLE requestor-

210 CJC Complaints

Even if 5% of this requestor's complaints are founded they could possibly bring 10 civil actions per year against Judges.

No stretch of the "reasonable imagination" could this requestor be deemed "vexatious" with only one request every 90 days, if so deemed then groups like the WACADV would also have to be deemed Vexatious or the Court would run the risk of unequal application (See PRA distinguishing between requestor's) of GR31.1.

The CJC received 311 new complaints, of which about 2/3's were disposed of quickly for various reasons (Lack of Jurisdiction, Unsubstantiated, etc) leaving about 100 investigations to be conducted by CJC. Because GR31.1 complaints would be presumed to be valid and one single requestor could reasonably submit 210 complaints the Commission would be swamped.

Previous Judicial Findings that a person was "Vexatious" would only apply to the PRA, these same persons would have to be deemed "Vexatious GR31.1 Requestor" in addition and what would that process look like? What venue would hear this matter? Potential for large groups of judges becoming conflicted could effectively deny path's of redress.

Until such time as the Court realizes concealment is more expensive than transparency and its rules reflect such it will be stuck in the "Hamster Wheel" of ineffectiveness. Justices' please take a real stand on public records and open them up.

GR31.1 is Fatally Flawed as written, it's a bear trap waiting for the judicial branch to walk into.

With all respect due,

Christopher Hupy
Edmonds, Washington
503-931-4991

AMAKIRKLAND@HOTMAIL.COM