SPOKANE COUNTY COURT HOUSE

SPOKANE COUNTY SUPERIOR COURT
Department No. 12

ELLEN KALAMA CLARK
Judge

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SPOKANE COUNTY COURTHOUSE
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December 31, 2012

Clerk Ronald R. Carpenter
Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Delivered via email to denise.foster@courts.wa.gov

Re: Proposed GR 31.1

Dear Mr. Carpenter:

The Spokane County Superior Court would like to offer some formal comments with respect to proposed GR 31.1. We appreciate the opportunity to comment on a proposal which has been subject to a great deal of study and revision over the last few years.

Generally speaking, the proposed rule offers some good ideas on how to deal with formal record requests that are made of Washington courts. The Spokane County Superior Court is committed to transparency in how it conducts its business and is committed to responding to record requests that are made of the court.

There are some parts of proposed GR 31.1 that are of particular concern, and we would like to highlight them in the hope they can be improved.

DEFINITIONS

Definitions are currently at section (i). We suggest that the Definitions appear at the beginning of the rule, making it consistent with other rules and statutes.

Additionally, there needs to be a clear distinction made between requests for *records* and requests for *information.* This is a common misperception of requestors. While it is obvious to those in the legal system, the rule should clearly state that it does NOT pertain to requests for information.

PROCEDURES FOR ADMINISTRATIVE RECORDS

- (c)(3)- Initial response. The five day time period as the "normal" time for a response is far too short. Records may need to be located and the court may need some time to identify areas that may not be open to disclosure.

- (c)(5)- Substantive Response- This provision is vague, encourages piecemeal responses and makes some unwarranted assumptions about locating records that may be archived or under the control of other parties.

- (c)(6) Extraordinary Requests Limited by Resource Constraints. This provision speaks in terms of trying to negotiate with a requester to narrow the request to "a more manageable scope" or a different time frame for response. However, it creates absolutely no incentive whatsoever for a requester to negotiate with a court to come up with a manageable response.

- (c)(7) Record Requests That Involve Harassment, Intimidation, Threats to Security or Criminal Activity. This section is unrealistic. Unlike other branches and agencies of government, the courts deal with a broad range of the population that have been involved in the system as criminal defendants, mental health proceedings, family law cases and other sensitive matters. The proposed rule, as currently written, puts the burden on the court to seek an injunction to protect members of the court, their staff and families from a release of information that could compromise their safety. Among many other problems, this makes the court a litigant. It also assumes that the courts readily have access to legal representation to enable the seeking of an injunction. This not a wise method to address this issue. The burden should be on the requester to seek legal action to require the release of "security-related" information.

- The time for an internal review in (d)(3) should be at least 30 days, not five days.

- (f) Bad Faith Decisions. "Bad faith" is a vague term. This section states that sanctions may be imposed on judicial officers and staff members. There are no other provisions of statute or court rule that explicitly state that judges will be subject to disciplinary action, and it is quite unnecessary here.

APPLICATION OF RULE FOR ADMINISTRATIVE RECORDS

- (l) Exemptions. It is noted that communications between judges are not specifically listed as exempt. There are many instances where judges informally discuss issues and solicit opinions from their colleagues. There should be an exemption that covers this.
- We strongly urge the automatic exemption of correspondence with court employees by a judicial officer regarding a specific case or cause of action, whether or not it has been filed with the court. All Court Administrator's Office staff, not just departmental employees, is privy to email and other correspondence from judges regarding individuals, cases and/or prospective cases. These are not covered under the definition of "chambers records". We believe that communication with our "at will" employees should be exempt from disclosure. Those individuals are serving the case adjudication needs to the judicial officer when they receive or send information on an individual litigant or case. This communication should be exempt from disclosure.

IMPLEMENTATION AND EFFECTIVE DATE

We strongly recommend that the effective date of the rule FOLLOW the development of "best practices" prescribed in (c)(1) and extensive statewide training on those best practices.

We hope that these comments will be helpful to the Supreme Court as it considers Proposed GR 31.1 and we appreciate the opportunity to provide our input.

Very truly yours,

ELLEN KALAMA CLARK
Superior Court Presiding Judge