

**Superior Court of the State of Washington  
for the County of King**

Richard F. McDermott  
Presiding Judge

King County Courthouse  
516 Third Avenue, C-203  
Seattle, Washington 98104-2381

December 13, 2012

Chief Justice Barbara Madsen  
Washington State Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929

Associate Chief Justice Charles W. Johnson  
Washington State Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929

RE: GR 31.1

Dear Justices Madsen and Johnson:

I am writing this letter to summarize the position of the King County Superior Court with regards to the most recent submission of GR 31.1. We sincerely appreciate the modifications the Court has made in response to our previous comments and the comments of judges and lawyers around the state. We believe that the current version of GR 31.1 is a vast improvement over the first proposal which was submitted to us for consideration.

Having said this, we still have a few concerns which we would like to summarize:

- *Section 1.3. Modification of deliberative process exemption.* GR 31.1(1)(3) as currently written does not include the modifier, "This exemption applies both before and after a final decision is made on the opinion or policy", and includes a comment that preliminary drafts and memorandums would be subject to disclosure once a final decision is made. This presents a problem with respect to budget negotiations as, of course, budget negotiations are never truly final. A trial court may be requested by the County Executive to identify cost-savings in preparation for adoption of the County's budget. The Executive may even specify a range of target figures i.e. identify cuts that would result in 1%, 2%, or 3% of the court's current budget as occurred in King County for the past two years. In preparation for negotiations staff may prepare a set of confidential materials that discuss various options such as laying off staff or eliminating programs, some of which may be rejected out of hand or reserved for later review if additional budget cuts become necessary. In better financial times, the Supreme Court might envision a multi-year initiative to obtain additional funding for staff positions. Even after the budget has been approved for a particular fiscal year, those memoranda may be relevant to budget negotiations in later years. It would be tremendously adverse to staff morale to have "lay off" options publically viewable. Even more importantly, making preliminary budget materials available to the executive and legislative branches would fundamentally weaken the ability of the judicial branch to negotiate and undermine the independence of the judiciary. At least with

respect to preliminary memoranda prepared for budget negotiations, the deliberative process exemption should apply both before and after a “final decision” is made.

- *Date of Birth.* Due to significant security concerns, birthdates should be exempt from disclosure for individuals involved in highly sensitive decision making, such as social workers, judicial officers, and probation staff. We suggest that at least with respect to these categories of individuals, that only the year of birth, rather than birth date, be disclosable.
- GR 31.1 should not cross-reference other statutes and rules. Because this rule is likely to be used by lay persons, the Rule should be as clear and as inclusive as possible. For example, rather than cross-referencing the Public Records Act (PRA) for “guidance” it is better to spell out exemptions – (e.g., financial records, etc.) Rules trump statutes and this cross-referencing is potentially very confusing.
- The comments to the proposed rules state that a provision which expressly excluded the Commission on Judicial Conduct was deemed unnecessary. For the benefit of the public that may not understand this distinction, we suggest that there be a comment added to the rule regarding the fact that the Commission on Judicial Conduct is not overseen by the court, and therefore is not subject to the obligations of GR 31.1. We understand the CJC is working on their own version of an administrative records rule; it may be helpful to cross reference to their rules.
- Section m.1. The description of chambers records should further clarify the database information exemption. As the data contained within a database, such as KCMS (the King County Superior Court database used by judges, bailiffs, *and other court operations staff* to record information about the progress of cases and other information that may not be contained in the JIS/SCOMIS system) is case-related, it would appear that all information contained within KCMS would be exempt; however, the rule notes that only the information entered by the judge would fall into this category. The reality is that judicial officers routinely share case and case processing information with court staff other than their bailiff – i.e., calendar management or trial assignment staff, court management, etc. Segmenting this information within a database may not be feasible nor advisable.
- In Section c.3, courts are to respond within five “working days” to the request. The average layperson is likely to have difficulty calculating “working days” particularly with respect to part-time courts (and measuring deadlines in this fashion is more likely to result in staff errors). It would be preferable to have a bright line rule measured in calendar days. We suggest ten calendar days, i.e.”... within 10 calendar days of receipt. For the purposes of this rule, the day of receipt is not included within the computation.” In Section c.5., “Procedures for Records Requests – Substantive Response”, in the last sentence change the word “justify” to “explain” any deviation from the terms of the request.
- In Section h.3., “Charging of Fees”, there should be a disincentive to use this Rule to obstruct court operations by repeatedly requesting records, then not picking them up and not paying for the associated fees. Courts should be allowed to require pre-payment of all fees associated with a records request, if the requestor has previously requested records and failed to pay for them.

In conclusion, our court supports transparency in government, and, to that, end, has had a long standing policy to voluntarily respond to administrative records requests. We continue, however, to be very concerned about the potential impact this rule will have on court operations– both in the time taken to receive and track requests and develop responses, as well as searching and producing records in order to

comply with various requests. Even though this rule is not yet in place, approximately 50 requests for administrative records have been received so far this year by KCSC administration, with an additional 60 received by the County Clerk (Department of Judicial Administration). Each request requires an average of 5 hours to respond, with some large-scale requests requiring much more than that. It is anticipated that, if and when the rule goes into effect, these time demands will increase dramatically. It is worth noting that certain individual requests posed to the Executive Branch in King County have consumed more than 30 hours of staff time each. We note that some jurisdictions that have adopted similar rules have realized the necessity of providing funding for implementation. For example, it appears from a report dated 12/7/09 and maintained on California's Administrative Office of the Courts that \$1.5 million dollars was designated to assist trial courts in implementing a similar rule. We hope that our Supreme Court will respond accordingly and seek funding, if necessary, from the State Legislature to help trial courts comply with this proposed rule.

Lastly, our bench continues to voice significant concern over the potential of discovery of personal, not relevant but highly invasive, information from our personal media devices (i-phone, home computers...) which are utilized to access our work computers during off hours. Further assistance and clarity in this area would be very helpful.

Thank you again for your consideration of our comments and all of the hard work that has gone into developing this rule.

Sincerely,

A handwritten signature in cursive script that reads "Richard F. McDermott". The signature is written in black ink and is positioned above the typed name and title.

Richard F. McDermott  
Presiding Judge

RFM:aj

cc: Justice Tom Chambers  
Justice Susan Owens  
Justice Mary E. Fairhurst  
Justice James M. Johnson  
Justice Debra L. Stephens  
Justice Charles K. Wiggins  
Justice Steve C. Gonzalez