

December 20, 2012

Washington State Supreme Court
c/o Associate Chief Justice Charles Johnson
Chair, Rules Committee
PO Box 40929
Olympia, WA 98504

Re: Comments on Proposed General Rule 31.1

Honorable Justices:

On behalf of the Association of Washington Cities (AWC) and the Washington State Association of Municipal Attorneys (WSAMA), we are writing to share our comments on the revised proposed rule on Access to Administrative Records. We commented on the previous version of this rule and appreciate the Court's willingness to continue to revise the rule and consider comments. We are encouraged by provisions that recognize the need to provide transparency and access while maintaining our ability to perform essential services. Some of these provisions include establishing internal appeals, offering alternatives to litigation and allowing jurisdictions alternatives to dealing with overbroad or abusive requests. However, we remain concerned about some aspects of the proposal and the practicality of implementing the new rule. Our concerns are outlined below.

Regarding the designation of a PRO (c) (1). The proposed rule directs each court and judicial agency to appoint a Public Records Officer (PRO) for court records. The court rule should designate the city's dedicated, trained and experienced PRO as the PRO for court records in those jurisdictions where the city operates its own municipal court. (If the city contracts with another jurisdiction for court services, then the PRO for the other jurisdiction should also be the PRO for court records).

Duplicate PROs would create a problem for several reasons. There is a risk of disparate application of policies regarding the release of records. For example, to whom would that person turn for legal advice in the event he/she were to have a question about the application of an exemption (the appointing judge or the city's attorney)? In the event that person's decision were to be appealed, who takes on the representation of the court's PRO (the appointing judge or the city's attorney)? And, in instances where the city or jurisdiction must hire outside counsel, who pays for those hired attorneys-(the court out of its budget or the city out of the general fund)? There is also the possibility that the city's attorney disagrees with the decision made by the court's PRO and, if the city's PRO would have made the opposite decision (as compared to the court's PRO), that person (the city's PRO) will be called as a witness in the appeal. Additionally, in cases where a city contracts with a district court, but operates its own violations bureau, it could be unclear as to which PRO the violations bureau must use. We believe

that these kind of issues and other opportunities for conflict could be avoided by defining the PRO as the jurisdiction's PRO.

Regarding internal review within the court agency (d) (3). This section indicates that there will be a review proceeding held within five working days but does not indicate what the trigger mechanism is for starting that clock. It would be useful to clarify that the five working days is from receipt of the request for review.

Additionally, we are concerned about the possible conflict it presents. If the PRO is appointed by the presiding and only judge in a court and the PRO seeks guidance from that same judge for questions and clarifications in interpreting exemptions or other aspects of the policy, then to whom does the review go? Would that same judge then conduct the internal review?

We recognize that the rule provides some additional options but at a cost to the requestor. There should be some provisions made to ensure that a judge is not put into this position. Echoing our earlier comment, part of this issue could be addressed by appointing the jurisdiction's PRO to create a better system of checks and balances. However, there should still be some clear guidance as to when a judge should not be part of the internal review process.

Regarding Bad Faith (f). We share the concerns raised by the DMCJA, and it would be preferable to remove this section. Sanctions for failure to follow adopted policies does not need to be addressed in this rule as such issues are already addressed by either professional codes of conduct or internal employment policies.

Regarding exemptions (l). In section (7), the records of an investigation, it may be clearer to state that the records of an ongoing investigation are exempt and the exemption ends when the investigation is complete. We would also request adding another exemption for Adult Court Probation files for similar reasons as the proposed exemption for juvenile court probation social files. We would also recommend adding financial records associated with criminal and traffic infraction cases to the exemption in (l) (5).

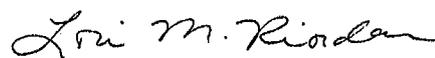
We appreciate the intent to provide a delayed implementation date to ensure adequate time prior to adoption for the development of policies and training. We encourage the Court to err on the side of providing the greatest amount of time as reasonable as this is a particularly complex and time consuming undertaking.

As local government officials, we are dedicated to transparency and public access in all areas of government. We hope that you will be able to address our concerns before adopting the new rule. If you have any questions about our comments, please feel free to contact Candice Bock at AWC (candiceb@awcnet.org). Thank you again for considering our concerns.

Sincerely,



Mike McCarty
Chief Executive Officer
Association of Washington Cities



Lori Riordan
President
Washington State Association of Municipal Attorneys