



WASHINGTON STATE  
ASSOCIATION OF  
COUNTY CLERKS

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May 20, 2013

The Honorable Charles Johnson  
Supreme Court Justice  
Chair of the Supreme Court Rules Committee  
c/o Clerk of the Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929

RE: Comment to Proposed Changes in GR 31

Dear Justice Johnson:

On behalf of the Washington State Association of County Clerks (WSACC), I submit these comments in response to proposed new GR 31 (I) (Access to evaluations, presentence reports, probation and compliance reports).

At the superior court level, the documents described in this proposed new section of the general rule are not subject to automatic sealing or otherwise "presumed to be private." Each document would be the subject of a motion and order to seal. The proposed change to GR 31 does not include a court order to seal these records. It appears the County Clerk would be responsible for deciding which documents meet these criteria.

We suggest that the GR 22 model is the appropriate mechanism to use so the County Clerk is removed from deciding which documents should be confidential.

The GR 22 model is a nationally recognized records access model that has worked well at the superior court level since 2001. It allows for the Supreme Court to decide categories of records that deserve automatic protection from public access and then describes a self-service process for filers to use to invoke the sealing of those records.

Without comment as to the policy of automatically protecting this record type at all levels of court, we have attached proposed edits to GR 22 to effectuate this DMCJA proposed policy. We believe these edits would work operationally at the Superior Court level. Another option would be to assign the Data Dissemination subcommittee of JIS to draft an appropriate edit to GR 22 that takes into account this criminal record type. Whichever option is chosen, we suggest the changes to GR 22 take the place of the proposed change to GR 31.

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The coversheet describes the reason for this automatic protection as "A particular concern for courts of limited jurisdiction is the high volume of cases these courts handle and the number of pro se defendants who may not appreciate the need to make a motion to preserve their privacy interests in certain court records." Though this is likely the case, we assume that these types of reports are filed by agencies, not the pro se parties themselves. The treatment and assessment agencies are regular filers with the Limited Jurisdiction courts and can learn to use the GR 22 cover sheet process easily.

Thank you for the opportunity to comment on this proposed rule change. Please contact me at 360-786-5549 or Barbara Miner, King County Clerk at 206-477-0777 should you want more information or have any questions. We would be happy to appear at a Rules Committee meeting to discuss this further, should that be helpful.

Sincerely,

WASHINGTON STATE ASSOCIATION OF COUNTY CLERKS



Betty J. Gould,  
President

Cc: Barbara Miner, King County Clerk  
WSACC

## **Suggested Amendments:**

### Proposed New GR 31(l)

(l) Access to evaluations, presentence reports, probation and compliance reports.

(1) Criminal cases. Unless the court rules otherwise in a particular case, documents containing personal private information about a defendant such as: alcohol, competency, drug, mental health and sexual deviancy evaluations; domestic violence assessments; reports relating to compliance or noncompliance with treatment programs; presentence reports; probation reports; self-help support group attendance (e.g., AA or NA), are presumed to be private.

(A) The defendant, the defendant's attorney of record, and the prosecuting attorney for the case shall have access to such records. Upon receipt of a written motion requesting access to these types of records by some other person, the court may allow access to court records restricted under this rule, or relevant portions of court records restricted under this rule, if the court finds no statute or other court rule prohibits access, and the public interest in granting access or the personal interest of the petitioner seeking access, outweighs the privacy and safety interests of the defendant or other persons mentioned in the records.

(B) If the court grants access to court records restricted under this rule, the court may enter such orders necessary to balance the personal privacy and safety interests of the defendant or other persons with the public interest in access.

ACCESS TO Certain Criminal, FAMILY LAW AND GUARDIANSHIP COURT

## RECORDS

(a) Purpose and Scope of this Rule. This rule governs access to certain criminal, family law and guardianship court records, whether the records are maintained in paper or electronic form. The policy of the courts is to facilitate public access to court records, provided that such access will not present an unreasonable invasion of personal privacy, will not permit access to records or information defined by law or court rule as confidential, sealed, exempted from disclosure, or otherwise restricted from public access, and will not be unduly burdensome to the ongoing business of the courts.

(b) Definition and Construction of Terms.

(1) "Court record" is defined in GR 31 (c)(4).

(2) "Criminal, Family law case or guardianship case" means any case filed under Chapters \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 11.88, 11.92, 26.09, 26.10, 26.12, 26.18, 26.21, 26.23, 26.26, 26.27, 26.50, 26.52, 73.36 and 74.34 RCW.

(3) "Personal Health Care Record" means any record or correspondence that contains health information that: (1) relates to the past, present, or future physical or mental health condition of an individual including past, present, or future payments for health care; or (2) involves genetic parentage testing.

(4) "Personal Privacy" is unreasonably invaded only if disclosure of information about the person or the family (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.

(5) "Public access" means unrestricted access to view or copy a requested court record.

(6) "Restricted personal identifiers" means a party's social security number, a party's driver's license number, a party's telephone number, financial account numbers, social security number of a minor child and date of birth of a minor child.

## COMMENT

A party is not required to provide a residence address. Petitioners or counsel to a family law case will provide a service or contact address in accordance with CR 4.1 that will be publicly available and all parties and counsel should provide a contact address if otherwise required. Pattern forms shall be modified, as necessary, to reflect the intent of this rule.

(7) "Retirement plan order" means a supplemental order entered for the sole purpose of implementing a property division that is already set forth in a separate order or decree in a family law case. A retirement plan order may not grant substantive relief other than what is set forth in a separate order. Examples of retirement plan orders are orders that implement a

division of retirement, pension, insurance, military, or similar benefits as already defined in a decree of dissolution of marriage.

(8) "Sealed financial source documents" means income tax returns, W-2s and schedules, wage stubs, credit card statements, financial institution statements, checks or the equivalent, check registers, loan application documents, retirement plan orders, as well as other financial information sealed by court order.

(c) Access to Family Law or Guardianship Court Records.

(1) General Policy. Except as provided in RCW 26.26.610(2) and subsections (c)(2) and (c)(3) below, all court records shall be open to the public for inspection and copying upon request. The Clerk of the court may assess fees, as may be authorized by law, for the production of such records.

(2) Restricted Access. The Confidential Information Form, Sealed Financial Source Documents, Domestic Violence Information Form, Notice of Intent to Relocate required by R.C.W. 26.09.440, Sealed Personal Health Care Record, Retirement Plan Order, Confidential Reports as defined in (e)(2)(B), and (f), copies of any unredacted Judicial Information System (JIS) database information considered by the court for parenting plan approval as set forth in (f) of this rule, and any Personal Information Sheet necessary for Judicial Information System purposes shall only be accessible as provided in sections (h) and (i) herein.

(3) Excluded Records. This section (c) does not apply to court records that are sealed as provided in GR 15, or to which access is otherwise restricted by law.

(d) Restricted Personal Identifiers Not Required - Except. Parties to a family law case or the protected person in a guardianship case shall not be required to provide restricted personal identifiers in any document filed with the court or required to be provided upon filing a family law or guardianship case, except:

(1) "Sealed financial source documents" filed in accordance with (g)(1).

(2) The following forms: Confidential Information Form, Domestic Violence Information Form, Notice of Intent to Relocate required by R.C.W. 26.09.440, Vital Statistics Form, Law Enforcement Information Form, Foreign Protection Order Information Form, and any Personal Information Sheet necessary for Judicial Information System purposes.

(3) Court requested documents that contain restricted personal identifiers, which may be submitted by a party as financial source documents under the provisions of section (g) of this rule.

#### COMMENT

Court records not meeting the definition of "Sealed Financial Source Documents", "Personal Health Care Records", Retirement Plan Orders, Confidential Reports or court records that otherwise meet the definition but have not been submitted in accordance with (g)(1) are not automatically sealed.

Section (3) provides authority for the court to seal court records containing restricted personal identifiers upon motion of a party, or on the court's own motion during a hearing or trial.

(e) Filing of Reports in Family Law and Guardianship cases - Cover Sheet.

(1) This section applies to documents that are intended as reports to the court in Family law and Guardianship cases including, but not limited to, the following:

(A) Parenting evaluations;

(B) Domestic Violence Assessment Reports created by Family Court Services or a qualified expert appointed by the court;

(C) Risk Assessment Reports created by Family Court Services or a qualified expert;

(D) CPS Summary Reports created by Family Court Services or supplied directly by Children's Protective Services;

(E) Sexual abuse evaluations; and

(F) Reports of a guardian ad litem or Court Appointed Special Advocate.

(2) Reports shall be filed as two separate documents, one public and one sealed.

(A) Public Document. The public portion of any report shall include a simple listing of:

(i) Materials or information reviewed;

(ii) Individuals contacted;

(iii) Tests conducted or reviewed; and

(iv) Conclusions and recommendations.

(B) Sealed Document. The sealed portion of the report shall be filed with a coversheet designated: "Sealed Confidential Report." The material filed with this coversheet shall include:

(i) Detailed descriptions of material or information gathered or reviewed;

(ii) Detailed descriptions of all statements reviewed or taken;

(iii) Detailed descriptions of tests conducted or reviewed; and

(iv) Any analysis to support the conclusions and recommendations.

(3) The sealed portion may not be placed in the court file or used as an attachment or exhibit to any other document except under seal.

(f) Evaluations, presentence reports, probation and compliance reports in criminal cases. Documents containing personal private information about a defendant such as: alcohol, competency, drug, mental health and sexual deviancy evaluations; domestic violence assessments; reports relating to compliance or noncompliance with treatment programs; presentence reports; probation reports; self-help support group attendance (e.g., AA or NA), are presumed to be private and shall be considered a confidential report and utilize the confidential report coversheet process described in (h) below.

(g) Information Obtained from JIS Databases with Regard to Approval of a Parenting Plan.

When a judicial officer proposes to consider information from a JIS database relevant to the placement of a child in a parenting plan, the judicial officer shall either orally disclose on the record or disclose the relevant information in written form to each party present at the hearing, and, on timely request, provide any party an opportunity to be heard regarding that information. The judicial officer has discretion not to disclose information that he or she does not propose to consider. The judicial officer may restrict secondary dissemination of written unredacted JIS database information not available to the public.

~~(g)~~(h) Sealing Financial Source Documents, Personal Health Care Records, and Sealed Confidential Reports in criminal, Family Law and Guardianship cases - Cover Sheet.

(1) Financial source documents, personal health care records, confidential reports as defined in (e)(2)(B) of this rule, and copies of unredacted JIS database records considered by the court for parenting plan approval as set forth in (f) of this rule, shall be submitted to the clerk under a cover sheet designated "SEALED FINANCIAL SOURCE DOCUMENTS", "SEALED PERSONAL HEALTH CARE RECORDS", "SEALED CONFIDENTIAL REPORT" or "JUDICIAL INFORMATION SYSTEM DATABASE RECORDS" for filing in the court record of criminal, family law or guardianship cases.

(2) All financial source documents, personal health care records, confidential reports, or judicial information system database records so submitted shall be automatically sealed by the clerk. The cover sheet or a copy thereof shall remain part of the public court file.

(3) The court may order that any financial source documents containing restricted personal identifiers, personal health care records, any report containing information described in (e)(2)(B), or copies of unredacted JIS database records considered by the court for parenting plan approval as described in (f) be sealed, if they have not previously automatically been sealed pursuant to this rule.

(4) These coversheets may not be used for any documents except as provided in this rule. Sanctions may be imposed upon any party or attorney who violates this rule.

See comment to (d)(3) above.

(h) Access by Courts, Agencies, and Parties to Restricted Documents.

(1) Unless otherwise provided by statute or court order, the following persons shall have access to all records in family law or guardianship cases:

(A) Judges, commissioners, other court personnel, the Commission on Judicial Conduct, and the Certified Professional Guardian Board may access and use restricted court records only for the purpose of conducting official business of the court, Commission, or Board.

(B) Any state administrative agency of any state that administers programs under Title IV-A, IV-D, IV-E, or XIX of the federal Social Security Act.

(2) Except as otherwise provided by statute or court order, the following persons shall have access to all documents filed in a criminal, family law or guardianship case, except the Personal Information Sheet, Vital Statistics Form, Confidential Information Form, Domestic Violence Information Form, Law Enforcement Information Form, and Foreign Protection Order Form.

(A) Parties of record as to their case.

(B) Attorneys as to cases where they are attorneys of record.

(C) Court appointed Title 11 guardians ad litem as to cases where they are actively involved.

(i) Access to Court Records Restricted Under This Rule.

(1) The parties may stipulate in writing to allow public access to any court records otherwise restricted under section (c)(2) above.

(2) Any person may file a motion, supported by an affidavit showing good cause, for access to any court record otherwise restricted under section (c)(2) above, or to be granted access to such court records with specified information deleted. Written notice of the motion shall be provided to all parties in the manner required by the Superior Court Civil Rules. If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful, or if the motion requests access to redacted JIS database records.

(A) The court shall allow access to court records restricted under this rule, or relevant portions of court records restricted under this rule, if the court finds that the public interests in granting access or the personal interest of the person seeking access outweigh the privacy and safety interests of the parties or dependent children.

(B) Upon receipt of a motion requesting access, the court may provide access to JIS database records described in (f) after the court has reviewed

the JIS database records and redacted pursuant to GR 15 (c), any data which is confidential or restricted by statute or court rule.

(C) If the court grants access to restricted court records, the court may enter such orders necessary to balance the personal privacy and safety interests of the parties or dependent children with the public interest or the personal interest of the party seeking access, consistent with this rule.

[Adopted effective October 1, 2001; amended effective July 1, 2006; amended effective August 11, 2009.]