

KEY TO YOUR SUCCESS:

DEVELOPING RELEVANT STATE COURT RULES

By

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Agenda



- **History and Background**
- **GR 31 – Access to Court records**
- **GR 15 – Sealing and Destruction**
- **GR 22 – Family Law and Guardianship**
- **GR 30 – Electronic Filing**

Public Access/Private Concerns



Justice in All
Cases Shall Be
Administered
Openly,...

State Constitution
Article I
Section 10

No Person Shall
Be Disturbed in
His Private
Affairs...Without
Authority of Law

State Constitution
Article I
Section 7

What Are We Going To Do?



- The way we get government information is changing.
- Courts records – go to the courthouse
- Now – get it online – from your home
- Raises privacy concerns, but still want transparent court
- Supreme Court – draft a new court rule

CONFLICTING PHILOSOPHIES



One Tier vs. Two Tier

One Tier – If it's accessible at the courthouse, it should be accessible remotely. If it is accessible in paper it should be accessible electronically.

Two Tier – Litigants have historically relied on the “practical obscurity” of records filed at the courthouse. Certain court records should only be available at the courthouse even though the records are considered “public.”

Sec. 10. Administration of justice.

Justice in all cases shall be administered openly,
and without unnecessary delay.

Washington Adopts One Tier Philosophy



Years of Debate and Discussion

Public Hearings and Meetings

Workgroups

Public Comment

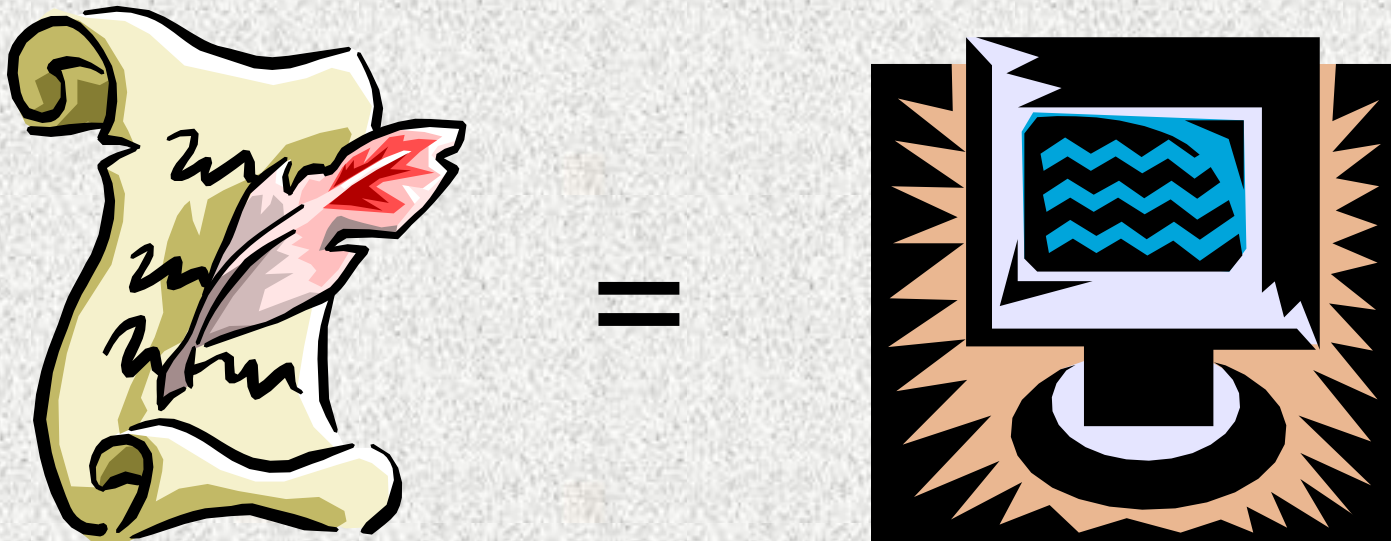
CONCLUSION—
Washington Has a Long History of Open Access to Public Records - Apply To Remote Access To Court Records.

General Rule 31 - Access To Court Records (adopted 2004)



- “The public shall have access to all court records...”
- “...applies to all court records, regardless of the physical form of the court record, the method of recording the court record or the method of storage of the court record.”

Document Format



Privacy is Protected



Redaction and Omission of Certain Personal Identifiers. GR 31(e).

No Public Access if Court Records

Restricted by “federal law, state law, court rule, court order, or case law.”

GR 31(d)(1)

Philosophy Behind GR 31 and Open Access



Open Courts and Court Records Promote:

- **Accessibility to Everyone**
- **Transparency**
- **Public Trust in Judiciary**
- **Accountability**

Exceptions to Open Court Records



COURT RECORDS ARE OPEN TO THE PUBLIC

Except For...

- **Statutory Restrictions**
- **Court Order**
- **Common Law Restrictions**
- **Court Rule Restrictions -**

In King County....



- **The Development of GR 31 lead to LGR 31**
- **Local bench debate still occurred, despite GR 31**
- **Since 2004 we have ECR On-Line**
- **Internet based access to subset of records**
- **Fee-based**

General Rule (GR) - 15

Court Order - Seal a Document



- **GR 15 Sealing, Redacting and Destruction of Court Records**
- **Access restricted to authorized court staff**
- **Restrict access to hard copy, electronic copy (website), and microfiche or microfilm copy of document**

WRITTEN FINDINGS

Court must make written findings that specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh public interest in access.

AGREEMENT ALONE INSUFFICIENT



“Agreement of the parties alone does not constitute a sufficient basis for sealing or redaction.” GR 15(c)(2)

Court Order - Seal a Case



- **Restricted access to case file**
- **Limited case information available to the public on index:**
 - **Case number**
 - **Names of parties**
 - **Case type**
 - **Seal status**

REDACTION

“Court Record should not be sealed when redaction will adequately resolve issues.”

GR 15(c)(3)

GR 15: Redacting Everything You Need to Know



- Definition of *redacting* is new – education of parties, judges, is an important part.
- Moving party (NOT THE CLERK) is to supply redacted, public version, pursuant to GR 15.
- Clerk is to seal the originally filed version – not give it back.
- Redacted version must be the whole document – not selected pages

- **There is NO statutory authority to destroy/expunge court records with exception of RCW 36.23.065**

GR 22 – Family Law and Guardianship Cases



EXAMPLES OF RESTRICTED ACCESS

- Confidential Information Form
- Domestic Violence Information Form
- Financial Source Documents
- Personal Health Care Records
- Confidential Reports in Family Law and Guardianship

GR 22

RESTRICTED ACCESS



Access is additionally restricted to:

- **Sealed Personal Health Care Records**
- **Retirement Plan Orders**
- **Confidential Reports as defined in (e)(2)(B)**

GR 22

CONFIDENTIAL REPORTS



Reports in family law or guardianship cases shall be filed as two separate documents, one public and one sealed.

Public portion includes a simple listing of:

- Materials or information reviewed
- Individuals contacted
- Tests conducted or reviewed
- Conclusions and recommendations

Detailed descriptions and analysis shall be contained in the sealed portion filed under a coversheet designated “Sealed Confidential Report”

GR 22

CONFIDENTIAL REPORTS



Reports subject to filing as two separate documents include:

- **Parenting Evaluations**
- **DV Assessment reports**
- **CPS summary reports**
- **Risk assessment reports**
- **Sexual abuse evaluations**
- **GAL or CASA reports**

In King County....



GR 15 and GR 22 Key to Implementing LGR

31 and getting to ECR On-Line

GR 22 easy to implement in electronic;

difficult with paper files

New redaction process works with

electronic records

GR 30 – Electronic Filing



- **Bring Every Stakeholder to the Table**
- **Stress the Importance and Inevitability**
- **Address Reluctance Head On**

ISSUES



Timing

Signatures

Fees

Mandatory Filing

Timing – When is A Document Filed



**Filed when received by court during
business hours**

After business hours next business day

Signature – Is it Authentic?



Biggest Issue for Attorneys and Judges

How do we know he/she signed

Authentication



Digital Signature

**Attorney Signature – Sign with Bar Number,
Address, Telephone, Fax , and Email – It’s
Authentic**

**Non-Attorney – Same as Attorney Unless
“Under Penalty of Perjury”**

Non-Attorney Signatures

Authentic if:

- **Digital Signature or**
- **Scan and file signed document and maintain original signed document for duration of case plus 60 days**

Exceptions



**Citing or arresting officer in CLJ can file
using only PW and User ID**

**Electronic Signature Pad Equipment that
has been “authorized and facilitated by
the court.”**

FEES

**OK to charge fees, but make sure allows for
waiver for indigent filing – Access to
Justice Issues**

MANDATORY ELECTRONIC FILING



Local Rule

Attorneys only

Waiver Policy

In King County....



- Used this rule to mandate e-filing as of July 1, 2009
- Developed LGR 31
- Developed an electronic way to submit bench copies
- Complaints we get relate to:
 - electronic service; filed date provisions
- Watch for higher standard for electronic

QUESTIONS



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