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2
3 **GENERAL RULE 31.1**
4 **ACCESS TO ADMINISTRATIVE RECORDS**

5 ***GENERAL PRINCIPLES***
6

7 **(a) Policy and Purpose.** Consistent with the principles of open administration of justice
8 as provided in article I, section 10 of the Washington State Constitution, it is the
9 policy of the judiciary to facilitate access to administrative records. Access to
10 administrative records is not absolute and shall be consistent with reasonable
11 expectations of personal privacy, restrictions in statutes, restrictions in court rules,
12 and as required for the integrity of judicial decision-making. Access shall not unduly
13 burden the business of the judiciary.

14 **(b) Overview of Public Access to Judicial Records.** There are three categories of
15 judicial records.

16 (1) Case records are records that relate to in-court proceedings, including case files,
17 dockets, calendars, and the like. Public access to these records is governed by
18 GR 31, which refers to these records as “court records,” and not by this GR 31.1.
19 Under GR 31, these records are presumptively open to public access, subject to
20 stated exceptions.

21 (2) Administrative records are records that relate to the management, supervision, or
22 administration of a judicial entity. A more specific definition of this term is in
23 section (i) of this rule. Under section (j) of this rule, administrative records are
24 presumptively open to public access, subject to exceptions found in sections (j)
25 and (l) of this rule.

26 (3) Chambers records are records that are kept in a judge’s chambers. A more
27 specific definition of this term is in section (m) of this rule. Under section (m),
28 chambers records are not open to public access.

29
30 ***PROCEDURES FOR ADMINISTRATIVE RECORDS***

31 **(c) Procedures for Records Requests.**
32

33 (1) **AGENCIES TO ADOPT PROCEDURES.** Each court and judicial agency must
34 adopt a policy implementing this rule and setting forth its procedures for
35 accepting and responding to administrative records requests. The policy must
36 include the designation of a public records officer and must require that

1 requests for access be submitted in writing to the designated public records
2 officer. Best practices for handling administrative records requests shall be
3 developed under the authority of the Board for Judicial Administration.

4 (2) PUBLICATION OF PROCEDURES FOR REQUESTING ADMINISTRATIVE
5 RECORDS. Each court and judicial agency must prominently publish the
6 procedures for requesting access to its administrative records. If the court or
7 judicial agency has a website, the procedures must be included there. The
8 publication shall include the public records officer's work mailing address,
9 telephone number, fax number, and e-mail address.

10 (3) INITIAL RESPONSE. Each court and judicial agency must initially respond to a
11 written request for access to an administrative record within five working days
12 of its receipt. The response shall acknowledge receipt of the request and
13 include a good-faith estimate of the time needed to respond to the request.
14 The estimate may be later revised, if necessary. For purposes of this provision,
15 "working days" mean days that the court or judicial agency, including a part-
16 time municipal court, is open.

17 (4) COMMUNICATION WITH REQUESTER. Each court and judicial agency must
18 communicate with the requester as necessary to clarify the records being
19 requested. The court or judicial agency may also communicate with the
20 requester in an effort to determine if the requester's need would be better
21 served with a response other than the one actually requested.

22 (5) SUBSTANTIVE RESPONSE. Each court and judicial agency must respond to
23 the substance of the records request within the timeframe specified in the
24 court's or judicial agency's initial response to the request. If the court or judicial
25 agency is unable to fully comply in this timeframe, then the court or judicial
26 agency should comply to the extent practicable and provide a new good faith
27 estimate for responding to the remainder of the request. If the court or judicial
28 agency does not fully satisfy the records request in the manner requested, the
29 court or judicial agency must justify in writing any deviation from the terms of
30 the request.

31 (6) EXTRAORDINARY REQUESTS LIMITED BY RESOURCE CONSTRAINTS.
32 If a particular request is of a magnitude that the court or judicial agency cannot
33 fully comply within a reasonable time due to constraints on the court's or judicial
34 agency's time, resources, and personnel, the court or judicial agency shall
35 communicate this information to the requester. The court or judicial agency
36 must attempt to reach agreement with the requester as to narrowing the
37 request to a more manageable scope and as to a timeframe for the court's or

1 judicial agency's response, which may include a schedule of installment
2 responses. If the court or judicial agency and requester are unable to reach
3 agreement, then the court or judicial agency shall respond to the extent
4 practicable and inform the requester that the court or judicial agency has
5 completed its response.

6 (7) RECORDS REQUESTS THAT INVOLVE HARASSMENT, INTIMIDATION,
7 THREATS TO SECURITY, OR CRIMINAL ACTIVITY.

8 (i) The inspection or production of any nonexempt public record may be
9 enjoined for the reasons set forth in section (c)(7)(iii). The request shall be
10 made by motion and shall be a summary proceeding based on affidavits or
11 declarations, unless the court orders otherwise.

12 (ii) The injunction may be requested by a court or judicial agency which is the
13 recipient of the records request or its representative, or by a person to
14 whom the records request specifically pertains or his or her representative.
15 The injunction request must be filed in the superior court in which the court
16 or judicial agency which is the recipient of the records request is located. If
17 the injunction request is filed by a superior court the decision on the
18 injunction must be made by a visiting judicial officer.

19 (iii) The court may enjoin all or any part of a request or requests. In order to
20 issue an injunction, the court must find by a preponderance of the evidence
21 that: the request was made to harass or intimidate the court or judicial
22 agency or its employees; fulfilling the request would likely threaten the
23 security of the court or judicial agency; fulfilling the request would likely
24 threaten the safety or security of staff, family members of staff, or any other
25 person; or fulfilling the request may assist criminal activity. Based on the
26 evidence, the court may also enjoin, for a period of time the court deems
27 reasonable, future requests by the same requestor or an entity owned or
28 controlled in whole or in part by the same requestor.

29 (iv) In deciding whether to enjoin a records request the court may consider all
30 relevant factors including, but not limited to: other requests by the
31 requestor; the type of record or records sought; statements offered by the
32 requestor concerning the purpose for the request; whether disclosure of the
33 requested records would likely harm any person or vital government
34 interest; whether the request seeks a significant and burdensome number
35 of documents; the impact of disclosure on the court's or judicial agency's
36 security and order, the safety or security of court or judicial agency staff,
37 families, or others; and the potential deterrence of criminal activity.

1 *COMMENT: Section 7 is based on the PRA's provision that provides an injunction*
2 *process for inmate requests that involve harassment or other specified improper*
3 *purposes. See RCW 42.56.565. Section 7 expands the PRA's provision so that it*
4 *applies to any person whose request involves the improper purpose. The statute's*
5 *paragraph on attorney fees was omitted, because this rule does not allow attorney*
6 *fees.*

7 **(d) Review of Records Decision.**

8 (1) NOTICE OF REVIEW PROCEDURES. The public records officer's response to
9 a public records request shall include a written summary of the procedures under
10 which the requesting party may seek further review.

11 (2) DEADLINE FOR SEEKING INTERNAL REVIEW. A record requester's petition
12 under section (d)(3) seeking internal review of a public records officer's decision
13 must be submitted within 90 days of the public records officer's decision.

14 (3) INTERNAL REVIEW WITHIN COURT OR AGENCY. Each court and judicial
15 agency shall provide a method for review by the judicial agency's director,
16 presiding judge, or judge designated by the presiding judge. For a judicial
17 agency, the presiding judge shall be the presiding judge of the court that
18 oversees the agency. The court or judicial agency may also establish
19 intermediate levels of review. The court or judicial agency shall make publicly
20 available the applicable forms. The review proceeding is informal and summary.
21 The review proceeding shall be held within five working days. If that is not
22 reasonably possible, then within five working days the review shall be scheduled
23 for the earliest practical date.

24 (4) EXTERNAL REVIEW. Upon the exhaustion of remedies under section (d)(3), a
25 record requester aggrieved by a court or agency decision may obtain further
26 review by choosing between the two alternatives set forth in subsections (i) and
27 (ii) of this section (d)(4).

28 (i) REVIEW VIA CIVIL ACTION IN COURT. The requesting person may use
29 a process already existing outside of this rule, such as a judicial writ, to
30 file a civil action in court challenging the records decision.

31 (ii) ADMINISTRATIVE REVIEW BY VISITING JUDGE OR OTHER OUTSIDE
32 DECISION MAKER. The requesting person may seek administrative
33 review by a person outside the court or judicial agency. If the requesting
34 person seeks review of a decision made by a court or made by a judicial
35 agency that is directly reportable to a court, the outside review shall be by
36 a visiting judicial officer. If the requesting person seeks review of a
37 decision made by a judicial agency that is not directly reportable to a

1 court, the outside review shall be by a person agreed upon by the
2 requesting person and the judicial agency. In the event the requesting
3 person and the judicial agency cannot agree upon a person, the presiding
4 superior court judge in the county in which the judicial agency is located
5 shall either conduct the review or appoint a person to conduct the review.
6 The review proceeding shall be informal and summary. In order to
7 choose this option, the requesting person must sign a written waiver of
8 any further review of the decision by the person outside the court or
9 judicial agency. The decision under this subsection (ii) is final and not
10 appealable.

11 *COMMENT: Section (4)(i) ensures that record requesters may still go to court if they*
12 *wish, while section (4)(ii) offers requesters an option to resolve the issue in an*
13 *informal and speedier manner. Neither section (4)(i) nor section (4)(ii) creates a new*
14 *cause of action in court; section (4)(i) merely recognizes the existence of other*
15 *methods for filing a civil action in court; section (4)(ii) merely creates what is*
16 *essentially a higher level of administrative review.*

17 (iii) **MONETARY AWARDS NOT ALLOWED.** Attorney fees, costs, civil
18 penalties, or fines may not be awarded under either alternative for
19 external review.

20 (iv) **DEADLINE FOR SEEKING EXTERNAL REVIEW.** A request for external
21 review must be submitted within 30 days of the issuance of the court or
22 judicial agency's final decision under section (d)(3).
23

24 **(e) Persons Who Are Subjects of Records.**

- 25 (1) Unless otherwise required or prohibited by law, a court or judicial agency has the
26 option of notifying a person named in a record or to whom a record specifically
27 pertains, that access to the record has been requested.
- 28 (2) A person who is named in a record, or to whom a record specifically pertains,
29 may present information opposing the disclosure to the applicable decision
30 maker under sections (c) and (d).
- 31 (3) If a court of judicial agency decides to allow access to a requested record, a
32 person who is named in that record, or to whom the record specifically pertains,
33 has a right to initiate review under subsections (d)(3)-(4) or to participate as a
34 party to any review initiated by a requester under subsections (d)(3)-(4). If
35 either the record subject or the record requester objects to administrative review
36 under subsection (d)(4)(ii), such alternative shall not be available. The deadlines
37 that apply to a requester apply as well to a person who is a subject of a record.

1 *COMMENT: Subsection (1) is adapted from the PRA statute, which allows but*
2 *does not require agencies to notify a person who is a subject of a record.*
3 *Subsection (2) allows the subject of a record to oppose release and present*
4 *argument in support of the opposition. Subsection (3) allows a person who is*
5 *a subject of a record to initiate the next level of review.*

6 **(f) Bad Faith Decisions.** Records decisions made in bad faith are grounds for
7 discipline.

8 (1) If the decision maker is a judge, sanctions may be imposed by the Commission
9 on Judicial Conduct for violations of the Code of Judicial Conduct;

10 (2) If the decision maker is an attorney, other than a judge, sanctions may be
11 imposed by the Washington State Bar Association for violations of the Rules of
12 Professional Conduct;

13 (3) If the decision maker is a judicial employee, sanctions may be imposed through
14 personnel actions.

15
16 **(g) Court and Judicial Agency Rules.** Each court by action of a majority of the
17 judges may from time to time make and amend local rules governing access to
18 administrative records not inconsistent with this rule. Each judicial agency may from
19 time to time make and amend agency rules governing access to its administrative
20 records not inconsistent with this rule.

21
22 **(h) Charging of Fees.**

23 (1) A fee may not be charged to view administrative records.

24 (2) A fee may be charged for the photocopying or scanning of judicial records. If
25 another court rule or statute specifies the amount of the fee for a particular type
26 of record, that rule or statute shall control. Otherwise, the amount of the fee
27 may not exceed the amount that is authorized in the Public Records Act,
28 Chapter 42.56 RCW.

29 (3) The court or judicial agency may require a deposit in an amount not to exceed
30 ten percent of the estimated cost of providing copies for a request. If a court or
31 judicial agency makes a request available on a partial or installment basis, the
32 court or judicial agency may charge for each part of the request as it is
33 provided. If an installment of a records request is not claimed or reviewed
34 within 30 days, the court or judicial agency is not obligated to fulfill the balance
35 of the request.

36 *COMMENT: Paragraph (3) incorporates a modified version of the Public*
37 *Records Act's "deposit and installments" language.]*

- 1 (4) A fee not to exceed \$30 per hour may be charged for research services
2 required to fulfill a request taking longer than one hour. The fee shall be
3 assessed from the second hour onward.

4 *COMMENT: The authority to charge for research services is discretionary,*
5 *allowing courts to balance the competing interests between recovering the*
6 *costs of their response and ensuring the open administration of justice. The*
7 *fee should not exceed the actual costs of response. It is anticipated that a*
8 *best-practices group will consider further guidelines in this area, including fee*
9 *waivers.*

11 **APPLICATION OF RULE FOR ADMINISTRATIVE RECORDS**

12 This rule applies to all administrative records, regardless of the physical form of the
13 record, the method of recording the record, or the method of storage of the record.

14 **(i) Definitions.**

- 15
16 (1) "Access" means the ability to view or obtain a copy of an administrative record.
17
18 (2) "Administrative record" means a public record created by or maintained by a
19 court or judicial agency and related to the management, supervision, or
20 administration of the court or judicial agency.

21 *COMMENT: The term "administrative record" does not include any of the*
22 *following: (1) "court records" as defined in GR 31; (2) chambers records as*
23 *set forth later in this rule; or (3) an attorney's client files that would otherwise*
24 *be covered by the attorney-client privilege or the attorney work product*
25 *privilege.*
26

- 27 (3) "Court record" is defined in GR 31.
28
29 (4) "Judge" means a judicial officer as defined in the Code of Judicial Conduct
30 (CJC) Application of the Code of Judicial Conduct Section (A).
31
32 (5) "Public" includes an individual, partnership, joint venture, public or private
33 corporation, association, federal, state, or local governmental entity or agency,
34 however constituted, or any other organization or group of persons, however
35 organized.
36
37 (6) "Public record" includes any writing, except chambers records and court
38 records, containing information relating to the conduct of government or the
39 performance of any governmental or proprietary function prepared, owned,

1 used, or retained by any court or judicial agency regardless of physical form or
2 characteristics. "Public record" also includes meta-data for electronic
3 administrative records.

4 *COMMENT: The definition in paragraph (6) is adapted from the Public Records*
5 *Act. The work group added the exception for chambers records, for*
6 *consistency with other parts of the proposed rule.*
7

8 (7) "Writing" means handwriting, typewriting, printing, photostating, photographing,
9 and every other means of recording any form of communication or
10 representation including, but not limited to, letters, words, pictures, sounds, or
11 symbols, or combination thereof, and all papers, maps, magnetic or paper
12 tapes, photographic films and prints, motion picture, film and video recordings,
13 magnetic or punched cards, discs, drums, diskettes, sound recordings, and
14 other documents including existing data compilations from which information
15 may be obtained or translated.

16 *COMMENT: The definition in paragraph (7) is taken from the Public Records*
17 *Act. E-mails and telephone records are included in this broad definition of*
18 *"writing."*
19

20 **(j) Administrative Records—General Right of Access.** The public has a
21 presumptive right of access to court and judicial agency administrative records
22 unless access is exempted or prohibited under this rule, other court rules, federal
23 statutes, state statutes including the Public Records, Act, Chapter 42.56 RCW, court
24 orders, or case law. To the extent that an ambiguity exists as to whether records
25 access would be exempt or prohibited under this rule or other enumerated sources,
26 responders and reviewing authorities shall be guided by the Public Records Act,
27 Chapter 42.56 RCW, in making interpretations under this rule. In addition, to the
28 extent required to prevent a significant risk to individual privacy or safety interests, a
29 court or judicial agency shall delete identifying details in a manner consistent with
30 this rule when it makes available or publishes any public record; however, in each
31 instance, the justification for the deletion shall be provided fully in writing.

32 *COMMENT: The paragraph states that administrative records are open to*
33 *public access unless an exemption or prohibition applies. The paragraph's final*
34 *sentence allows agencies to redact information from documents based on*
35 *significant risks to privacy or safety.*

36 *Any public-access exemptions or prohibitions from the Public Records Act and*
37 *from other statutes or court rules would also apply to the judiciary's*
38 *administrative records. For example, GR 33(b) provides that certain medical*
39 *records relating to ADA issues are to be sealed; the sealed records would not*
40 *be subject to access under this proposed GR 31A.*

41

1 **(k) Entities Subject to Rule.**

2 (1) This rule applies to the Supreme Court, the Court of Appeals, the superior
3 courts, the district and municipal courts, and the following judicial branch
4 agencies:

5 (i) All judicial entities that are overseen by a court, including entities that are
6 designated as agencies, departments, committees, boards, commissions,
7 task forces, and similar groups;

8 (ii) The Superior Court Judges' Association, the District and Municipal Court
9 Judges' Association, and similar associations of judicial officers and
10 employees; and

11 (iii) All subgroups of the entities listed in this section (k)(1).

12 *COMMENT: The elected court clerks and their staff are not included in this*
13 *rule because (1) they are covered by the Public Records Act and (2) they do*
14 *not generally maintain the judiciary's administrative records that are covered*
15 *by this rule.*
16

17 (2) This rule applies to the Office of Civil Legal Aid and the Office of Public
18 Defense.

19 (3) This rule does not apply to the Washington State Bar Association. Public
20 access to the Bar Association's records is governed by [a proposed General
21 Rule 12.4, pending before the Supreme Court].

22 (4) A judicial officer is not a court or judicial agency.

23 *COMMENT: This provision protects judges and court commissioners from*
24 *having to respond personally to public records requests. Records requests*
25 *would instead go to the court's public records officer.*
26

27 (5) An attorney or entity appointed by a court or judicial agency to provide legal
28 representation to a litigant in a judicial or administrative proceeding does not
29 become a judicial agency by virtue of that appointment.
30

31 (6) A person or agency entrusted by a judicial officer, court, or judicial agency with
32 the storage and maintenance of its public records, whether part of a judicial
33 agency or a third party, is not a judicial agency. Such person or agency may
34 not respond to a request for access to administrative records, absent express
35 written authority from the court or judicial agency or separate authority in court
36 rule to grant access to the documents.
37

1 *COMMENT: Judicial e-mails and other documents sometimes reside on IT*
2 *servers, some are in off-site physical storage facilities. This provision*
3 *prohibits an entity that operates the IT server from disclosing judicial records.*
4 *The entity is merely a bailee, holding the records on behalf of a court or*
5 *judicial agency, rather than an owner of the records having independent*
6 *authority to release them. Similarly, if a court or judicial agency puts its*
7 *paper records in storage with another entity, the other entity cannot disclose*
8 *the records. In either instance, it is the court or judicial agency that needs to*
9 *make the decision as to releasing the records. The records request needs to*
10 *be addressed by the court's or judicial agency's public records officer, not by*
11 *the person or entity having control over the IT server or the storage area. On*
12 *the other hand, if a court or judicial agency archives its records with the state*
13 *archivist, relinquishing by contract its own authority as to disposition of the*
14 *records, the archivist would have separate authority to disclose the records.*

15
16 *Because of the broad definition of "public record" appearing later in this rule,*
17 *this paragraph (6) would apply to electronic records, such as e-mails (and*
18 *their meta-data) and telephone records, among a wide range of other records.*
19

20 **(I) Exemptions.** In addition to exemptions referred to in section (j), the following
21 categories of administrative records are exempt from public access:

- 22 (1) Requests for judicial ethics opinions;
23 (2) Minutes of meetings held by judges within a court and staff products prepared
24 for judicial discussion or decision-making during the meeting;

25 *COMMENT: Minutes of the deliberations at judges' meetings are exempt.*
26 *Records produced by staff for consideration in judges' meetings and identified*
27 *in the minutes would be exempt under this section.*

- 28 (3) Preliminary drafts, notes, recommendations, and intra-agency memorandums
29 in which opinions are expressed or policies formulated or recommended are
30 exempt under this rule, except that a specific record is not exempt when
31 publicly cited by a court or agency in connection with any court or agency
32 action;

33 *COMMENT: Paragraph (3) is identical to the "deliberative process" exemption*
34 *from the Public Records Act, RCW 42.56.280. The PRA's deliberative process*
35 *exemption applies only until a final decision is made, see Progressive Animal*
36 *Welfare Soc'y v. University of Wash., 125 Wn.2d 243, 257, 884 P.2d 592*
37 *(1994), at which point the deliberative documents become publicly accessible.*

- 38 (4) Evaluations and recommendations concerning candidates seeking
39 appointment or employment within a court or judicial agency;

40 *COMMENT: Paragraph (4) is intended to encompass documents such as those*
41 *of the Supreme Court's Capital Counsel Committee, which evaluates attorneys*

1 *for potential inclusion on a list of attorneys who are specially qualified to*
2 *represent clients in capital cases.*

- 3 (5) Personal identifying information, including individuals' home contact
4 information, Social Security numbers, driver's license numbers, and
5 identification/security photographs;

6 *COMMENT: The work group considered including private financial information in*
7 *this provision, but ultimately concluded that financial information is already*
8 *addressed in the Public Records Act's exemptions.*
9

- 10 (6) Documents related to an attorney's request for a trial or appellate court
11 defense expert, investigator, or other services, any report or findings submitted
12 to the attorney or court or judicial agency by the expert, investigator, or other
13 service provider, and the invoicing and payment of the expert, investigator or
14 other service provider;

- 15 (7) Documents, records, files, investigative notes and reports, including the
16 complaint and the identity of the complainant, associated with a court's or
17 judicial agency's internal investigation of a complaint against the court or
18 judicial agency or its contractors during the course of the investigation. The
19 outcome of the court's or judicial agency's investigation is not exempt;

- 20 (8) Family court evaluation and domestic violence files when no action is legally
21 pending;

- 22 (9) Family court mediation files; and

- 23 (10) Juvenile court probation social files.

24 *COMMENT: Paragraphs (8)-(10) create exemptions for files that are already*
25 *covered, at least in part, by exemptions in state statutes or elsewhere. These*
26 *paragraphs are included here to make sure that there is no doubt about their*
27 *exempt status. The inclusion of these three paragraphs should not be*
28 *interpreted as excluding other statutory (or rule) exemptions that are not*
29 *expressly listed here. Per section (j) of this rule, exemptions existing in other*
30 *rules, statutes, and other authorities apply to records under this rule, even if*
31 *they are not expressly stated here.*

- 32 (11) Those portions of records containing specific and unique vulnerability
33 assessments or specific and unique emergency and escape response plans,
34 the disclosure of which would have a substantial likelihood of threatening the
35 security of a judicial facility or any individual's safety.

36 *COMMENT: Paragraph (11) expands on comparable language from the Public*
37 *Records Act, RCW 42.56.420. The PRA language is limited to correctional*
38 *facilities and the like.*

1 (12) The following records of the Certified Professional Guardian Board:

2 (i) Investigative records compiled by the Board as a result of an investigation
3 conducted by the Board as part of the application process, while a
4 disciplinary investigation is in process under the Board's rules and
5 regulations, or as a result of any other investigation conducted by the
6 Board while an investigation is in process. Investigative records related to
7 a grievance become open to public inspection upon the filing of a Board-
8 approved complaint for disciplinary action.

9 (ii) Deliberative records compiled by the Board or a panel or committee of the
10 Board as part of a disciplinary process.

11 (iii) Dismissed grievances shall be disclosed upon written request using
12 established procedures for inspection, copying, and disclosure with
13 identifying information about the grievant, incapacitated person, and
14 professional guardian and/or agency redacted. A request for dismissed
15 grievances shall cover a specified time period of not less than 12 months.

16 *COMMENT: The exemptions for the CPG Board are taken from the Board's*
17 *regulations. The sentence at the end of paragraph (a) was added to reflect*
18 *the manner in which the Board has interpreted this provision.*
19

20 **CHAMBERS RECORDS**

21
22 **(m) Chambers Records.** Chambers records are not administrative records and are
23 not subject to disclosure.

24 *COMMENT: Access to chambers records could necessitate a judicial officer*
25 *having to review all records to protect against disclosing case sensitive*
26 *information or other information that would intrude on the independence of*
27 *judicial decision-making. This would effectively make the judicial officer a de*
28 *facto public records officer and could greatly interfere with judicial functions.*
29 *Records may remain under chambers control even though they are physically*
30 *stored elsewhere. For example, records relating to chambers activities that*
31 *are stored on a judge's personally owned or workplace-assigned computer,*
32 *laptop computer, cell phone, and similar electronic devices would still be*
33 *chambers records. However, records that are otherwise subject to disclosure*
34 *should not be allowed to be moved into chambers control as a means of*
35 *avoiding disclosure.*

36 (1) "Chambers record" means any writing that is created by or maintained by any
37 judicial officer or chambers staff, and is maintained under chambers control,
38 whether directly related to an official judicial proceeding, the management of
39 the court, or other chambers activities. "Chambers staff" means a judicial

1 officer's law clerk and any other staff when providing support directly to the
2 judicial officer at chambers.

3 *COMMENT: Some judicial employees, particularly in small jurisdictions, split*
4 *their time between performing chambers duties and performing other court*
5 *duties. An employee may be "chambers staff" as to certain functions, but not*
6 *as to others. Whether certain records are subject to disclosure may depend on*
7 *whether the employee was acting in a chambers staff function or an*
8 *administrative staff function with respect to that record.*

- 9 (2) Court records and administrative records do not become chambers records
10 merely because they are in the possession or custody of a judicial officer or
11 chambers staff

12 *COMMENT: Chambers records do not change in character by virtue of being*
13 *accessible to another chambers. For example, a data base that is shared by*
14 *multiple judges and their chambers staff is a "chambers record" for purposes*
15 *of this rule, as long as the data base is only being used by judges and their*
16 *chambers staff.*

17 **IMPLEMENTATION AND EFFECTIVE DATE**

- 18
19
20 **(n) Best Practices.** Best practice guidelines adopted by the Supreme Court may be
21 relied upon in acting upon public requests for documents.

22 *COMMENT: A new work group is contemplated to recommend best practices to*
23 *guide courts and judicial agencies in implementing this rule's necessarily*
24 *broad, general standards. Courts and judicial agencies would benefit greatly*
25 *from further work in applying the general principles to the specific types of*
26 *documents and requests that are most likely to arise. For example, best*
27 *practices could include designating more specific lists of records that are*
28 *presumptively characterized as "chambers records" or as being within other*
29 *categories of records under this rule. The BJA's original work group prepared*
30 *some documents to assist a new best-practices group in this regard. The*
31 *best-practices group could also recommend the best methods and resources*
32 *for training judges and staff.*

33 **(o) Effective Date of Rule.**

- 34 (1) This rule goes into effect on _____, and applies to records that are created
35 on or after that date.

36 *COMMENT: A delayed effective date will be used to allow time for*
37 *development of best practices, training, and implementation.*

- 38 (2) Public access to records that are created before that date are to be analyzed
39 according to other court rules, applicable statutes, and the common law

1 balancing test. The Public Records Act, Chapter 42.56 RCW, does not apply to
2 judicial records, but it may be used for non-binding guidance.
3