

WSR 22-21-112
RULES OF COURT
STATE SUPREME COURT
[October 13, 2022]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENT TO GR ) NO. 25700-A-1473
22—ACCESS TO FAMILY LAW AND )
GUARDIANSHIP COURT RECORDS )

A Consortium<sup>1</sup>, having recommended the adoption of the suggested amendment to GR 22—Access to Family Law and Guardianship Court Records, and the Court having considered the suggested amendment, and having determined that the suggested amendment will aid in the prompt and orderly administration of justice;

<sup>1</sup> Northwest Justice Project, Sexual Violence Law Center, and Legal Voice

Now, therefore, it is hereby

ORDERED:

(a) That the suggested amendment as shown below is adopted.

(b) That pursuant to the emergency provisions of GR 9 (j)(1), the suggested amendment will be expeditiously published in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 13th day of October, 2022.

Johnson, J.
Owens, J.
Gonzalez, C.J.
Yu, J.
Montoya-Lewis, J.
Whitener, J.

GR 9 COVER SHEET
Suggested Amendment
GR 22—ACCESS TO FAMILY LAW AND GUARDIANSHIP COURT RECORDS

A. Proponents: Northwest Justice Project
Sexual Violence Law Center
Legal Voice

B. Spokesperson: Mary Welch, Statewide Advocacy Counsel Northwest Justice Project
1814 Cornwall Ave.
Bellingham, WA 98225
Tel: (206) 707-0826 Email: maryw@nwjustice.org

C. Purpose: Adding the new Civil Protection Order chapter 7.105 RCW to the list of family law cases enumerated at GR 22 (b)(2). The stated purpose of GR 22 is to protect the privacy of family law and guardianship court records. This proposal seeks to add civil protection orders to the types of cases protected under GR 22.

D. Hearing: The proponent does not believe that a public hearing is necessary.

E. Expedited Consideration:

As the Court is aware, the legislature revised civil protection order law into a new consolidated chapter 7.105 RCW as of July 1, 2022, repealing and replacing the domestic violence protection order chapter, 26.50, among others. Previously, litigants seeking domestic

violence protection orders could rely on the privacy protections in GR 22 when they needed to file medical records or other sensitive personal information to support their claims. GR 22 must be amended to apply to protection orders filed under chapter 7.105 in the same way it previously applied to chapter 26.50.

The Court has already recognized the need for privacy in family and guardianship cases by adopting GR 22 to cover Chapters 11.88, 11.92, 11.130, 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. Chapters 11.88, 11.92, 26.10 and 26.50 have been repealed and should be removed from GR 22. Chapter 7.105 RCW replaces RCW 26.50 regarding Civil Protection Orders and clearly falls into the category of "family and guardianship court records" that GR 22 was intended to protect. Expediting review of the proposed changes to GR 22 is necessary to protect the privacy rights of individuals involved in protection order hearings. RCW 7.105 includes Domestic Violence Protection Orders, Sexual Assault Protection Orders, Stalking Protection Orders, Antiharassment Protection Orders, Vulnerable Adult Protection Orders, and Extreme Risk Protection Orders.

Until GR 22 is amended to include RCW 7.105, litigants will have no way to submit confidential information to the court without exposing it to the public record. The privacy considerations are the same whether the litigant is seeking protection from domestic violence, sexual assault, stalking, harassment, or abuse of a vulnerable adult. Evidence submitted in these cases may include extremely sensitive medical records or confidential reports that detail child abuse, sexual abuse, physical abuse, or mental health struggles. Petitioners may be reluctant to seek protection if they are required to reveal such information publicly. Petitioners should not have to compromise privacy to ensure their safety.

Expedited review of this suggested amendment is critical to the smooth and just implementation of chapter 7.105 RCW. Therefore, we ask the Court to review this suggested amendment immediately.

## SUGGESTED AMENDMENT

## GR 22

ACCESS TO FAMILY LAW, PROTECTION ORDER, AND GUARDIANSHIP COURT RECORDS

**(a) Purpose and Scope of this Rule.** This rule governs access to family law, protection order, 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) "Family law case, protection order, or guardianship case" means any case filed under Chapters 7.105, ~~11.88~~, ~~11.92~~, 11.130, 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 individu-

al 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.

(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, and retirement plan orders, as well as other financial information sealed by court order.

**(c) Access to Family Law, Protection Order, or Guardianship Court Records.**

(1) *General Policy.* Except as provided in RCW 26.26A.500 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 Law Enforcement and Confidential Information Form (LECIF), Confidential Information Form, Sealed Financial Source Documents, Domestic Violence Information Form, Notice of Intent to Relocate required by RCW 26.09.440, Sealed Personal Health Care Record, Retirement Plan Order, Confidential Reports as defined in (e)(2)(B), 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 JIS 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, parties to a protection order case, or the respondent, individual subject to guardianship, conservatorship or other protective arrangement, or other party 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, protection order, 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

RCW 26.09.440, Vital Statistics Form, Law Enforcement and Confidential Information Form (LECIF), Foreign Protection Order Information Form, and any Personal Information Sheet necessary for JIS 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.

**(e) Filing of Reports in Family Law, Protection Order, and Guardianship cases—Cover Sheet.**

(1) This section applies to documents that are intended as reports to the court in Family law, Protection Order, 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, visitor, or court visitor.

(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 cover sheet designated: "Sealed Confidential Report." The material filed with this cover sheet 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) 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 they do not propose to consider. The judicial officer may restrict secondary dissemination of written unredacted JIS database information not available to the public.

**(g) Sealing Financial Source Documents, Personal Health Care Records, and Sealed Confidential Reports in Family Law, Protection Order, 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 family law, protection order, or guardianship cases.

(2) All financial source documents, personal health care records, confidential reports, or JIS 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 cover sheets 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.

**(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, protection order, or guardianship cases:

(A) Judges, commissioners, other court personnel, the Commission on Judicial Conduct, and the Certified Professional Guardianship and Conservatorship 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 family law, protection order or guardianship case, except the Personal Information Sheet, Vital Statistics Form, Confidential Information Form, Law Enforcement and Confidential Information Form (LECIF), Domestic Violence Information Form, ~~Law Enforcement Information Form~~, and Foreign Protection Order Information 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, visitor, or court visitor 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.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.