

WSR 21-14-106
RULES OF COURT
STATE SUPREME COURT
[July 1, 2021]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENT TO GR) NO. 25700-A-1363
22—ACCESS TO FAMILY LAW AND)
GUARDIANSHIP COURT RECORDS)

The District and Municipal Court Judges' Association, having recommended the suggested amendment to GR 22—Access to Family Law and Guardianship Court Records, and the Court having approved the suggested amendment for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendment as shown below is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2022.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2022. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 1st day of July, 2021.

For the Court

Gonzalez, C.J.

GR 9 COVER SHEET

Suggested Amendments to

WASHINGTON STATE COURT GENERAL RULES:

RULE 22: ACCESS TO FAMILY LAW AND GUARDIANSHIP COURT RECORDS

Submitted by the District & Municipal Court Judges' Association

A. Name of Proponent: District & Municipal Court Judges' Association

B. Spokesperson: Judge Michelle Gehlsen, DMCJA President

C. Purpose: The DMCJA recommends amending GR 22 to include therapeutic court records. Therapeutic courts are defined under RCW 2.30.010. This amendment would further the goal of therapeutic courts to provide individualized treatment intervention. Limited public access to assessments and treatment reports would help encourage defendants to cooperate more honestly with risk/needs assessments, mental health and chemical dependency evaluations, and treatment.

In RCW 2.30.010, the Legislature recognized the unique ability of therapeutic courts to help defendants address their individual treatment needs:

(1) The legislature finds that judges in the trial courts throughout the state effectively utilize what are known as therapeutic courts to remove a defendant's or respondent's case from the criminal and civil court traditional trial track and allow those defendants or respondents the opportunity to obtain treatment services to address

particular issues that may have contributed to the conduct that led to their arrest or other issues before the court. Trial courts have proved adept at creative approaches in fashioning a wide variety of therapeutic courts addressing the spectrum of social issues that can contribute to criminal activity and engagement with the child welfare system.

(2) The legislature further finds that by focusing on the specific individual's needs, providing treatment for the issues presented, and ensuring rapid and appropriate accountability for program violations, therapeutic courts may decrease recidivism, improve the safety of the community, and improve the life of the program participant and the lives of the participant's family members by decreasing the severity and frequency of the specific behavior addressed by the therapeutic court.

(3) The legislature recognizes the inherent authority of the judiciary under Article IV, section 1 of the state Constitution to establish therapeutic courts, and the outstanding contribution to the state and local communities made by the establishment of therapeutic courts and desires to provide a general provision in statute acknowledging and encouraging the judiciary to provide for therapeutic court programs to address the particular needs within a given judicial jurisdiction.

Successful completion of a therapeutic court program by a defendant is dependent on the defendant being honest throughout the entire process. Initial evaluations require defendants to be honest about their personal history, their addiction issues, their mental health issues, etc. Having such evaluations and treatment reports be restricted will help facilitate this goal because defendants can speak freely to evaluators, treatment providers and probation counselors without fear their personal private information will be released to the general public.

To further this end, the DMCJA proposes an amendment to GR 22 that would create restricted access to certain critical records used in therapeutic courts. This amendment would facilitate public access to court records while also protecting personal privacy and not unduly burdening the ongoing business of the courts. Please note that this proposal was distributed to various justice partners, and their input incorporated into the final version. In addition to the DMCJA, this proposal has been reviewed and approved by the Superior Court Judges' Association and the Washington State Association of County Clerks.

D. Proposed Amendments: [set forth below]

E. Hearing: A hearing is not recommended.

F. Expedited Consideration: Expedited consideration is not requested.

PROPOSED AMENDMENT:

GR 22

ACCESS TO FAMILY LAW, AND GUARDIANSHIP, AND THERAPEUTIC COURT RECORDS

(a) Purpose and Scope of this Rule. This rule governs access to family law, and guardianship, and therapeutic 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)-(8) [Unchanged.]

(9) "Therapeutic court cases" means any case in which a party is receiving treatment pursuant to a therapeutic court program under Chapter 2.30 RCW.

(c) Access to Family Law, ~~or~~ Guardianship, and Therapeutic 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 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, and evaluations and reports pursuant to chapter 10.77 RCW, therapeutic court risk/needs assessments, treatment evaluation and treatment compliance forms used in therapeutic court cases or otherwise ordered by a court, 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 or defendants in a therapeutic court or those ordered to do treatment by a therapeutic court 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 RCW 26.09.440, Vital Statistics Form, Law Enforcement Information Form, 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.

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, and Therapeutic Court cases—Cover Sheet.

(1) This section applies to documents that are intended as reports to the court in Family law, ~~and~~ Guardianship, and therapeutic court 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, or created for a therapeutic court purpose or otherwise ordered by a court;

(C) Risk Assessment Reports created by Family Court Services or a qualified expert, or created for a therapeutic court purpose or otherwise ordered by a court;

(D) Treatment evaluation and compliance reports required by a therapeutic court or otherwise ordered by a court;

(E) Mental health competency evaluations;

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

(~~E~~G) Sexual abuse evaluations; and

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

(2)-(3) [Unchanged.]

(~~f~~)-(g) [Unchanged.]

(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, or therapeutic court cases:

(A)-(B) [Unchanged.]

(2) Except as otherwise provided by statute or court order, the following persons shall have access to all documents filed in a family law, ~~or~~ guardianship, or therapeutic court 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)-(C) [Unchanged.]

(i) [Unchanged.]