

WSR 21-04-088
RULES OF COURT
STATE SUPREME COURT
[December 2, 2020]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENT TO GR) NO. 25700-A-1329
22—ACCESS TO FAMILY LAW AND)
GUARDIANSHIP)

The Administrative Office of the Court's Office of Guardianship and Elder Services, having recommended the suggested amendment to GR 22—Access to Family Law and Guardianship, 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 2021.

(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, 2021. 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 2nd day of December, 2020.

For the Court

Stephens, C.J.

CHIEF JUSTICE

SUGGESTED AMENDMENTS TO GENERAL RULE (GR) 22
ACCESS TO FAMILY LAW AND GUARDIANSHIP RECORDS

(A) Name of Proponent: Administrative Office of the Courts
of Guardianship and Elder Services

(C) Purpose: Background: The suggested amendments aim to align GR 22 with the legislature's 2019 adoption of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act ("UGCOPAA" or the colloquial "UGA") in the form of Senate Bill 5604, as amended during the 2020 Legislative Session by Senate Bill 6287. The UGA is codified at RCW 11.130. The UGA becomes effective in stages, with provisions governing minor guardianship effective January 1, 2021. The provisions of the UGA that become effective January 1, 2022, include those affecting adult guardianships, and conservatorships and protective arrangements applicable to both adults and minors. Washington's Title 11 guardianship laws are currently covered in Chapters 11.88 and 11.92. Chapters 11.88 and 11.92 will be repealed in full as of January 1, 2022.

Of significance, the UGA repeals RCW 26.10, the nonparent custody statute, as of January 1, 2021. GR 22 revisions require expedited re-

view due to the impending effective date of minor guardianship provisions under the UGA and repeal of nonparent custody.

Suggested changes with respect to Personal Identifiers protection. With the repeal of RCW 26.10, the volume of minor guardianship cases under Title 11 is expected to greatly increase. The UGA states that the "Letters of Office" are the record issued by the court that certifies a guardian's authority to act. See RCW 11.130.010(16). Pursuant to the terms of the UGA, the authority to act must expire on the minor's attainment of majority. See RCW 11.130.215(7) "(7) An order granting guardianship for a minor must direct the clerk of the court to issue letters of office to the guardian containing an expiration date which should be the minor's eighteenth birthday."

A minor's birthdate is a personal identifier entitled to protection under state law. The suggested changes to GR 22 provide a mechanism to seal the Letters of Office to maintain the confidentiality of this information.

Other technical changes. Other technical changes involve amendments to statutory references and to guardianship nomenclature contained in statute.

The definition of "guardianship case" to include all actions under RCW 11.130, including actions for conservatorships and other protective arrangements in addition to guardianship actions, means all three case types will be covered by revised GR 22.

Other nomenclature related suggested changes include:

a) Persons subject to guardianship, conservatorship or other protective arrangement proceedings are "respondents" under the UGA.

b) Persons subject to guardianship or conservatorship are an "individual subject to guardianship" or an "individual subject to conservatorship". Persons subject to a protective arrangement are not separately defined under the UGA.

c) "Court visitor" and "Visitor" are new statutory terms that encompass investigation and reporting to the court on various issues as delineated in statute. Under the statute, a "visitor" is defined as "a court visitor". Therefore the terms can be used interchangeably, and both terms are used in statute.

The role of the court visitor is in lieu of the guardian ad litem in most proceedings, but does not replace the role of a guardian ad litem in guardianships in its entirety.

(D) Hearing: None requested.

(E) Expedited Consideration: Requested. The UGCOPAA (aka UGA) has an effective date of January 1, 2021 with respect to minor guardianship.

SUGGESTED AMENDMENTS TO GR 22

ACCESS TO FAMILY LAW AND GUARDIANSHIP COURT RECORDS

(a) Purpose and Scope of this Rule. This rule governs access to 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) "Family law case or guardianship case" means any case filed under 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.

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

(9) "Sealed documents containing Restricted Personal Identifiers" means a document containing one or more Restricted Personal Identifier required by statute.

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

(1) *General Policy.* Except as provided in RCW ~~26.26.610(2)~~ 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 Confidential Information Form, Sealed Financial Source Documents, Sealed Documents containing Restricted Personal Identifiers, 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 or the ~~protected person~~ 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 or guardianship case, except:

(1) "Sealed financial source documents" or "Sealed documents containing Restricted Personal Identifiers" 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 or in a document containing restricted personal identifiers under the provisions of section (g) of this rule.

Comment

Court records not meeting the definition of "Sealed Financial Source Documents," "Sealed documents containing Restricted Personal Identifiers" "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 or 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 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) 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) Sealing Financial Source Documents, Sealed documents containing Restricted Personal Identifiers, Personal Health Care Records, and Sealed Confidential Reports in Family Law and Guardianship cases—Cover Sheet.

(1) Financial source documents, documents containing Restricted Personal Identifiers, 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 DOCUMENTS CONTAINING RESTRICTED PERSONAL IDENTIFIERS," "SEALED PERSONAL HEALTH CARE RECORDS," "SEALED CONFIDENTIAL REPORT" OR "JUDICIAL INFORMATION SYSTEM DATABASE RECORDS" for filing in the court record of family law or guardianship cases.

(2) All financial source documents, documents containing restricted personal identifiers, 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 or other 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.

Comment

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 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, 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.

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

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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