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Subject: FW: Comments on proposed court rules
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From: Marchesano, Joseph <Joseph.Marchesano@kingcounty.gov>
Sent: Friday, April 26, 2024 10:17 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Marchesano, Joseph <Joseph.Marchesano@kingcounty.gov>
Subject: Comments on proposed court rules

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Hello,

Please see below for comments regarding the following proposed court rules: 8.3, 3.2, 4.7, Proposed RAP 18.25.

CrR and CrRLJ 8.3 – Dismissal

With all due respect, this proposed change places far too much discretion within each individual trial judge. Understandably and correctly, trial judges are already given wide discretion on many issues before them. However, the proposed rule eliminates the requirement that the accused be prejudiced and have their fair trial rights materially affected. Thus, there is no uniform standard applicable to each case. What is arbitrary to one trial judge is likely not arbitrary to another. Additionally, this rule appears to violate the separation of powers by allowing trial judges to dismiss cases because they disagree with laws passed by the legislature, including the SRA requirements.

CrR and CrRLJ 3.2 - Release of Accused

Subsection (d)(6) requires the court to set a bond amount “that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice.” However, the bond is automatically reduced by 90%. Additionally, the amendment will not permit forfeiture of even the 10% posted if the accused flees and cannot be located. Victims of crime deserve better than this.

CrR and CrRLJ 4.7 – Discovery

This proposed change is problematic for several reasons. First, the defense attorney is not required to provide a copy of the redactions to the prosecutor. Therefore, there is no way for a prosecutor to know if an error occurred or whether there is a disagreement regarding the redactions. Second, because the defense attorney is not required to provide a copy of the redactions to the prosecutor,

the prosecutor will have no way of knowing if a motion to modify the redactions should be scheduled. This will lead to prosecutors making motions on more cases than necessary out of an abundance of caution, increasing the amount of time the defense, prosecutor, and judge spend on this issue. Third, each court in each jurisdiction is permitted to adopt their own guidelines. Many defense attorneys practice in multiple jurisdictions or courts. It is a burdensome requirement for defense attorneys to apply dozens of different local guidelines on a procedure that is likely to affect every case. Fourth, even if the defense were obligated to provide a copy of the redactions to the prosecutor, the prosecutor will have the added burden of ensuring that the defense attorney complied with the guidelines by checking the redactions. Fifth, while honest mistakes will happen, there is no disincentive to carelessly apply the redactions. Further, if and when an error occurs, what remedy does the affected victim have?

Proposed New RAP 18.25 – Use of Initials – When Required

Because this rule applies to appellate cases, it is appropriately designed to protect the identities of individuals who are legally recognized as victims of a specific type of crime. By either plea or verdict, it was proven that a crime occurred against this individual and they should, at the very least, be entitled to maintain some degree of anonymity involving crimes of an extremely personal nature.

Joseph Marchesano | Senior Deputy Prosecuting Attorney
Special Operations Unit
King County Prosecuting Attorney's Office