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To: [Martinez, Jacquelynn](#)
Subject: FW: Objection to Proposed Rule Changes
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From: Shindo, Maya <mshindo@kingcounty.gov>
Sent: Wednesday, April 24, 2024 9:15 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Objection to Proposed Rule Changes

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I respectfully ask that the Court reject the following proposed rule changes for the reasons below:

CrR and CrRLJ 8.3

- The proposed amendment ignores the public interest in the prosecution of crimes and protection of the victim and the community. Because it does not require a connection between any misconduct of the State and the defendant's ability to have a fair trial, it does not serve the public interest in punishment of the guilty and public safety. It disregards the victim's right to justice and protection from the defendant.
- By allowing dismissal of a prosecution based on policy disagreements with the prosecutor, the rule violates the separation of powers between the judiciary and the prosecutor.

CrR and CrRLJ 3.2

- This amendment increases the ability of third parties with no connection to the case, such as "community bail funds," to post bail on serious offenses without regard to the risk to the public and the risk that the defendant will fail to appear. When those third parties post bail, the defendant has no incentive to comply with conditions of release or to appear for court.
- The court already has complete discretion to order an appearance bond, which is satisfied by posting 10 percent of the amount set and an agreement to pay the remainder if conditions of release are violated. An appearance bond does not require doing business with a bail bond business.

CrR and CrRLJ 4.7

- Under the proposed rule, the defense attorney does not provide a copy of the redacted discovery to the court or the prosecutor. As a result, no errors in the redaction can be identified and no disagreement with how the redaction rules are being applied can be identified. The existence of unique local redaction rules increases the probability that there

will be errors in compliance with the local rules.

- Under the proposed rule, defense counsel may provide a copy of discovery to the defendant before the State has an opportunity to address additional redactions that may be necessary.
- The prosecutor's office will be required to set hearings in virtually all cases to assure that guidelines that it believes are necessary will be applied. The rule anticipates that any local rule will be inconsistent with the redaction policy of the prosecuting authority. If the rule provided that defense counsel must notify the prosecutor that defense counsel intended to provide a copy of the discovery to the defendant, the prosecuting attorney could limit its motions to modify redaction requirements to those cases.

CrRLJ 3.3

- If the defendant's failure to appear (for a hearing at which their appearance was required) has resulted in resetting the commencement date, it makes absolutely no sense to restart the time for trial without the defendant appearing in court. Even if a remote appearance could be considered, an appearance through counsel is effectively no appearance.
- The current proposal would amend only the rule for courts of limited jurisdiction but those cases should not be dismissed as inconsequential. Domestic violence, assault, and DUI prosecutions are all included.
- The proposed rule requires the prosecution and the court to restart the criminal proceedings in anticipation of trial when there is no assurance that the defendant ever will appear.

ARJ 15

- Allows a court to permit any appearance to be remote or through counsel, even when physical appearance is required.
- This proposed rule overrides the provisions of CrRLJ 3.4, which draws a careful distinction between hearings at which the constitution or logic requires the defendant to appear and hearings for which their physical (or remote) appearance is not required.
- The proposed rule invites errors by the court and counsel in allowing the defendant to not attend hearings as to which their appearance is constitutionally mandated. There will be no record of an adequate waiver.

CrRLJ 3.4

- The proposal eliminates the requirement that counsel be in communication with their client if the matter is stayed pursuant to chapter 10.77 RCW. There must be some assurance that defense counsel is communicating with their client or an appearance through counsel is solely an appearance of counsel.

RAP 9.6

- The proposed requirement that the clerk provide a copy of the entire court file and all exhibits to the parties on request places an unreasonable burden on the clerk, as many records are massive. The request is likely to become routine and overwhelming.

Thank you,

T. Maya Shindo | she/her

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