

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelyn](#)
Subject: FW: Comment to proposed amendments to CrR 3.2, 4.7 and 8.3, and CrRLJ 3.2, 4.7 and 8.3
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From: Summers, Ann <Ann.Summers@kingcounty.gov>
Sent: Monday, April 29, 2024 11:14 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment to proposed amendments to CrR 3.2, 4.7 and 8.3, and CrRLJ 3.2, 4.7 and 8.3

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As a former WSBA Court Rules and Procedure committee member, and a former chair of that committee's CrR/CrRLJ and RAP subcommittees, I would like to address the procedure for publishing the public defense bar's proposed amendments to the CrRs and CrRLJs referenced above. Pursuant to GR 9(f), after this Court makes an initial determination that a suggested rule change has merit and is not merely technical, the Court is to consider whether the rule should be considered under the schedule provided by the Court for review of rules, or whether it needs to receive expedited consideration. After this initial determination, the Court "shall" forward each suggest rule change to the WSBA.

Under the current schedule, the WSBA Court Rules and Procedure committee will review the CrRs and CrRLJs in the next cycle, 2025-26. Since the proponents for these amendments did not request expedited consideration, I urge this Court to refer these proposed amendments to the WSBA committee for consideration in 2025-26 with other proposed amendments to CrRs and CrRLJs which may be submitted.

The committee review process provides an opportunity for a broad range of practitioners to study the proposed amendments, analyze them for ambiguity and ensure consistency with related court rules. The committee serves an important function by reaching out to all stakeholders for feedback before making a recommendation to the Court. This process has proven invaluable in the past, in my opinion, for making sure that amendments are sufficiently vetted for precision and to avoid unintended consequences as well as provide the opportunity for robust stakeholder feedback. I am particularly concerned that since these amendments were published in January with many other proposed amendments to court rules, many of which are only technical, and that many important stakeholders may still be unaware of the proposed changes. For example, with the comment period ending I see no comments from victim advocacy groups.

Substantively, I would like to comment on the proposed amendment to CrR 8.3 and CrRLJ 8.3. As Chief Justice Gonzalez has previously observed, the separation of powers is one of the cardinal and fundamental principles of our constitutional system, and the fundamental functions of each branch should remain inviolate. *State v. Rice*, 174 Wn.2d 884, 900 (2012). This is especially important in the criminal justice system. *Id.* at 901. Broad prosecutorial charging discretion is essential. *Id.* at 903. "A prosecutor's broad charging discretion is part of the inherent authority granted to prosecuting attorneys as executive officers under the Washington State Constitution." *Id.* at 904. Unfortunately, we currently see anti-democratic forces attacking prosecutorial discretion on a daily basis on the national stage. Under the proposed amendment, any court could dismiss a prosecution by simply labeling it as arbitrary, without any showing that the rights of the defendant have been prejudiced by misconduct. This proposed amendment will infringe on the inherent authority of prosecutors and severely undermine the careful balance of power that must be maintained between the judicial, executive and legislative branches.

Thank you for your consideration of these comments,

Ann Summers



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