

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Martinez, Jacquelynn](#)  
**Subject:** FW: Proposed amendments to CrR 8.3 and CrRLJ 8.3  
**Date:** Friday, April 19, 2024 9:59:06 AM  
**Attachments:** [image001.png](#)

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**From:** Vitalich, Andrea <Andrea.Vitalich@kingcounty.gov>  
**Sent:** Friday, April 19, 2024 9:57 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Proposed amendments to CrR 8.3 and CrRLJ 8.3

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To the Court:

I am writing to object in the strongest possible terms to the proposed amendments to CrR 8.3 and CrRLJ 8.3, which would allow a trial court to dismiss a criminal case without any showing or finding of prejudice. These amendments would transform the rule from a tool that is currently used appropriately—*i.e.*, sparingly and in the most egregious circumstances—into a vehicle for arbitrary judicial overreach in circumstances where the draconian remedy of dismissal is unwarranted.

One way to illustrate how arbitrary and harmful these amendments would be is to contrast the proposed new rule with the standard for a claim of ineffective assistance of counsel. Under the well-established *Strickland* test, a criminal defendant must demonstrate *both* that the lawyer's representation was constitutionally deficient (under a highly deferential standard of review), and that material prejudice resulted from that deficient representation, before a conviction will be reversed on appeal. (This Court just reaffirmed this well-settled standard in *Bertrand* on 4/18/24.) If a showing of prejudice is *required* for reversal and a new trial when a defendant's lawyer has made errors so serious that the lawyer is "not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment" (*see Strickland* at 687), how is it rational or just that a criminal case could be dismissed when a single judge decides they disagree with the prosecutor's charging decision, the jury's verdict, or some other aspect of the case *without* a showing of prejudice?

Lastly, the virtually unfettered discretion without the "anchor" of prejudice that would be granted under the new proposed rule would result in wildly inconsistent outcomes. Cases

would be dismissed, or not, depending on the jurisdiction and on each individual judge's idea of what "the interests of justice" means. Rather than furthering the interests of justice, the new rule would result in *injustice*—to defendants, to victims, and to the public—depending upon which judge happened to hear the case that day.

I respectfully urge this Court to reject the proposed amendments to CrR 8.3 and CrRLJ 8.3.

Sincerely,  
Andrea Vitalich



Andrea Vitalich (she/her)

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