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**Subject:** FW: Comments to CrRLJ 8.3  
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**From:** City Attorney <CityAttorney@kentwa.gov>  
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**Re: CrR/CrRLJ 8.3**

Our office objects to the proposed amendments of CrR/CrRLJ 8.3. To remove the current requirement that prejudice must also be shown before granting dismissal of a criminal case leaves no checks on trial courts' exercise of discretion. Based on the remaining language, a philosophical difference between a judge and a prosecuting attorney allows the former to find any decision by the latter arbitrary and dismiss a case. To give a judge the authority to second-guess a prosecutor's filing decision, sentence recommendation, etc. goes against the established precedent of Washington caselaw and violates separation of powers between the judiciary and the executive.

Washington courts have made clear that the bar is not high when it comes to what might qualify as government misconduct, concluding "simple mismanagement" can support dismissal under the current rule. Acceptance of the proposed rule change will increase demands for dismissal of cases by the defense based on minor issues and encourages lower courts to dismiss instead of considering lesser sanctions for issues that do not adversely impact defendants or their ability to prepare for trial. This, in turn, will result in more appeals of trial courts' decisions granting dismissal. This is an unnecessary and additional burden for our criminal courts when the rule as written protects both defendant and government interests.

Including the requirement that prejudice be shown provides a framework all Washington courts must apply before reaching the extraordinary remedy of dismissal and creates consistency in trial court rulings. Further, if there is no demonstrated prejudice to a defendant or their ability to prepare for trial, it begs the question, what is actually gained in dismissing the case? While the proposed change would be welcomed by the defendants as another possible avenue to avoiding accountability, it will do little to serve the public interest.

**City of Kent Law Department, Criminal Division**