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April 15, 2024

VIA EMAIL

Honorable Mary I. Yu
Supreme Court Rules Committee
c/o Clerk of the Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: Comments on Proposed Amendments to CrRLJ 8.3 – Dismissal

Dear Justice Yu and Members of the Supreme Court Rules Committee:

The District and Municipal Court Judges' Association respectfully opposes the suggested changes to CrRLJ 8.3 for the reasons discussed below:

The Proposed Rule Change is Not Necessary

Pursuant to GR 9(a)(4), the Supreme Court must ensure that a proposed rule is "necessary statewide" before it should be adopted. The proponents have not provided any evidence that the proposed amendment to CrRLJ 8.3 is necessary. The proponents only argue that a broader rule will prevent judges from rubber stamping the decisions of government agencies and that other states have a broader dismissal rule. The proponents fail to identify a statewide need for this rule change, or how this rule change will advance racial justice.

CrRLJ 8.3, as written, vests wide discretion in trial courts to dismiss prosecutions in the interests of justice. Requiring 'prejudice to the rights of the accused which materially affect the accused's right to a fair trial' in order to dismiss a case is an appropriate standard and counterbalance to the exercise of that broad discretion. Where no prejudice has resulted affecting the defendant, remedies short of dismissal may be appropriate. See, CrRLJ 4.7(g)(7). The required showing of prejudice creates a statewide standard, and this standard reduces the risk that individual judges in different jurisdictions will apply the rule extremely differently to similarly-situated defendants.

The proposed rule change greatly increases the risk of inconsistent standards among jurisdictions and even among individual judges at the same court.

State v. Starrish Does Not Support a Change in CrRLJ 8.3

Proponents' reliance on *State v. Starrish*, 86 Wn. 2d 200 (1975) is misplaced. At the time of the *Starrish* decision, the relevant portions of CrR 8.3 read as follows:

The court on its motion in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution and shall set forth its reasons in a written order.

The CrR 8.3 language requiring a showing of prejudice was added to the rule in 1995, well after *Starrish* was decided. CrRLJ 8.3 wasn't adopted until well after *Starrish* in 1987 and included the prejudice requirement. Justice Utter's dissent was not advocating for a broader rule in *Starrish*, he was applying the rule as it existed at the time, and arguing for a different result than that adopted by the majority. The holding in *Starrish* does not support a change to CrRLJ 8.3.

The Supreme Court amended CrR 8.3 to include a prejudice standard and adopted CrRLJ 8.3 with the prejudice standard to provide balance to trial courts' broad discretion. Proponents do not demonstrate that rescinding the prior changes to Rule 8.3 is necessary, or even appropriate.

In sum, the DMCJA urges you to reject the proposed amendments to CrRLJ 8.3. We thank you for consideration of our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey R. Smith", with a stylized flourish at the end.

Judge Jeffrey Smith
DMCJA President

cc: Judge Catherine McDowall, DMCJA Rules Committee Co-Chair
Judge Wade Samuelson, DMCJA Rules Committee Co-Chair
Evan Walker, MPA, MJur, DMCJA Rules Committee Staff