

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Martinez, Jacquelynn](#)  
**Subject:** FW: Comment Opposing Changes to CrR 8.3(b) and CrRLJ 8.3(b)  
**Date:** Monday, April 29, 2024 4:25:00 PM

---

---

**From:** Boeshans, Evan <eboeshans@kingcounty.gov>  
**Sent:** Monday, April 29, 2024 3:58 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment Opposing Changes to CrR 8.3(b) and CrRLJ 8.3(b)

**External Email Warning!** This email has originated from outside of the Washington State Courts Network. Do not click links or open attachments unless you recognize the sender, are expecting the email, and know the content is safe. If a link sends you to a website where you are asked to validate using your Account and Password, **DO NOT DO SO!** Instead, report the incident.

To the Court,

I am writing to express my opposition to the change currently proposed to CrR 8.3(b) and CrRLJ 8.3(b). The proposed change removes the requirement that there must be “prejudice to the rights of the accused which materially affects the accused’s right to a fair trial.” In other words, under the proposed rule courts could dismiss the most serious of criminal cases when there is arbitrary action or governmental misconduct that has **no** effect on a defendant’s right to a fair trial. What then is the reason for the dismissal?

The retort will be that the dismissal is in the furtherance of justice. However, the existing rule ties those considerations of justice to the arbitrary action or governmental misconduct only through the requirement they cause prejudice. The removal of the prejudice requirement unmoors the furtherance of justice from the arbitrary action or governmental misconduct at issue. Courts could then conceivably dismiss any case in which they thought dismissal furthered justice so long as some arbitrary action—no matter how small—occurred, regardless of whether the action effected their view on whether dismissal furthers the interest of justice at all.

This invites judges to make prosecutorial decisions, blurring the lines between the judiciary and the executive. A judge, on their own motion, could dismiss a criminal case they had always found unjust once any arbitrary act occurred in the case. This could be a seemingly arbitrary charging decision, or conceivably even the arbitrary ordering of the charges on the charging document. Though some will argue that such an absurd basis for a dismissal would never result in a granted motion, the proposed rule change undoubtedly enables the attempt.

I cannot close without noting that the Superior Court Judges Association opposes these changes, seemingly in part because it offers judges so little guidance. Clear requirements and established case law surrounding dismissal help distinguish between the roles of the judiciary and executive

branches in adjudicating criminal cases. That clear separation of powers is important and the Court shouldn't do away with it so easily.

Very respectfully,

Evan

--

**Evan K. Boeshans** (he/him)

Deputy Prosecuting Attorney – Complex Financial Crimes and Wage Theft  
King County Prosecuting Attorney's Office

---

516 Third Avenue, Seattle, WA 98104

**O** 206.477.4981 | **C** 206.886.8768 | **E** [eboeshans@kingcounty.gov](mailto:eboeshans@kingcounty.gov)

Notice: Any emails coming to or from this account may be subject to disclosure as public records. This communication may contain confidential information. If you have received it in error, please advise this sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.