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To: [Martinez, Jacquelynn](#)
Subject: FW: In Support of the Proposed Rule Change to CrR/CrRLJ 8.3
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From: Paul Wagner <pwagner@snocopda.org>
Sent: Tuesday, April 30, 2024 3:09 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: In Support of the Proposed Rule Change to CrR/CrRLJ 8.3

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To All,

The Court should adopt the proposed change. I don't think we have a failure of the court in too narrowly interpreting prejudice to a defendant under this standard. Based on the case law that we have, this prejudice has a specific definition that the court seems to have followed. However, this allows for significant government mismanagement and misconduct so long as it can arguably be mitigated. The primary way that I've experienced the trial courts claiming that any potential prejudice is mitigated is to continue the trial date out, which typically results in my clients staying in custody for weeks or months longer.

I have countless times heard the question from trial courts: "will there be any prejudice to your actual defense?" The current caselaw is rife with claims that dismissal is an "extraordinary remedy." No matter how many late witnesses are added, how much additional forensic testing is delayed or concealed, how much physical evidence or alternate suspects go unexplored, a continuance typically seems to be a sufficient and appropriate remedy at the trial court level for the court to make a finding that there is no prejudice to the defense from the misconduct and mismanagement that too frequently occurs. If the purpose of CrR 8.3 is to eliminate or at least significantly reduce misconduct and mismanagement from the State, then prejudice to the defense should not be required. Even in my relatively short career, I have seen the same preventable mistakes recur among my cases and those of my colleagues.

The current CrR 8.3 doesn't seem to be fixing them. I think this one will.

Best,
Paul Wagner
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