



## Skagit County Prosecuting Attorney

# Richard A. Weyrich

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### CRIMINAL DIVISION

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OFFICE ADMINISTRATOR  
**KRIS DESMARAIS**

To Whom it May Concern,

I am writing on behalf of the Skagit County Prosecuting Attorney's Office to express our concern about the proposed amendments to CrR 8.3 and CrRLJ 8.3. While the proposed amendments claim that they are done in the interests of justice, such would in fact would be a grave overreach of judicial power.

Currently, under the above rules, dismissal of charges is appropriate when there is governmental mismanagement and it has been shown that there is prejudice to the defendant. Under the proposed rules, defendants need not show prejudice, simply that there is mismanagement. Based on current caselaw, simple mismanagement, even if not done in an evil or dishonest way, could qualify as government mismanagement. See State v. Michielli, 132 Wn.2d 229, 239-240, 937 P.2d 587 (1997). This also includes dismissal due to arbitrary action by the government. *Id.* The proposed rule would change this. If there is any mismanagement, even if accidental or unintentional, a court may dismiss. This includes situations where the defendant would not be prejudiced. Without there being a showing of prejudice, a defendant has not suffered harm necessitating mismanagement.

The proposed rule would also be an intrusion on the separation of powers. "A prosecuting attorney's most fundamental role as both a local elected official and an executive officer is to decide whether to file criminal charges against an individual and, if so, which available charges to file." State v. Rice, 174 Wn.2d 884, 901, 279 P.3d 849 (2012). Under the proposed rule, a court, even after probable cause has been found, could dismiss a case simply because it does not like the charges or feels that the prosecutor should have charged the case differently or even not have charged it at all. This would be a broad overreach of judicial authority and intrude upon the executive branch's functions.

We ask that the court reject the proposed amendments to CrR 8.3 and CrRLJ 8.3 for the aforementioned reasons. Thank you in advance for the consideration.

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