From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: proposed court rule changes
Date: Thursday, April 18, 2024 8:34:10 AM

From: Hastings, Theodore <thastings@kingcounty.gov>
Sent: Wednesday, April 17, 2024 7:41 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: RE: proposed court rule changes

I will have been a public defender in King County for three years this August, and prior to that I was a public defender in New York for just shy of eight years. Having done the same work in two different states affords me a somewhat unusual perspective. As a result, I'm writing in support of a number of proposed Court Rule changes as follows:

CrR 8.3 – the information posted on the Court's website notes that other jurisdictions including Idaho, Ohio, and Iowa already permit judges broader discretion to dismiss cases in the interest of justice. New York also provides for such a procedure pursuant to Criminal Procedure Law 210.40 (or a "Clayton motion"). In practice such motions are exceedingly rarely granted and only in extraordinary circumstances. Similarly, in this state dismissal for failure to establish a prima facie case, while permitted by CrR 8.3(c) (or a "Knapstad motion"), is rarely granted. My experience in two states strongly suggests fears expressed by prosecutors that this proposed change would result in frivolous motions and arbitrary dismissals are unfounded. Given Washington judges have demonstrated restraint in exercising their existing authority to dismiss under CrR 8.3(c) it is exceedingly unlikely they, unlike their New York colleagues, would abuse the broader discretion afforded by this proposed change. Expressed concerns about infringement on prosecutorial powers are similarly unwarranted given this nation's courts have always had the authority to oversee the administration of justice, and especially considering in this state felony filing decisions are not subject to grand jury review. This proposed change would only ensure the fringe case extraordinarily likely to result in substantial injustice could be dismissed by the courts—a result which all Washingtonians should support.

CrR 3.2 – the practical import of this proposed change is simply to mandate defendants be permitted to post 10% of an ordered bail amount directly to the court rather than to a bail bond company—in other words, to cut out the middle man. A similar change was enacted while I was working in New York (that change also permitted posting of bail by credit card) without any significant impact on FTA rates or other failures to comply with court orders. Prosecutors have

argued that this proposed change is problematic because upon default only the 10% would be forfeited. However, CrR 3.2 is not intended to generate revenue for the courts but rather to ensure defendants comply with their obligations; toward that end whether defendants sign a promissory note to a bondsman or directly to the court is of no consequence. Likewise claims that this would "reduce any bail amount set by 90%" are meritless because defendants can already pay 10% to a bondsman as a fee. The only difference is that the 10% paid to the court will be repaid to the person having posted upon successful completion of their obligations whereas the 10% fee paid to a bondsman is nonrefundable. The Court should promote equal access to justice for people across the socioeconomic spectrum by enacting this proposed change.

CrR 4.7 – at every plea hearing in which I've participated in this state the court asks the defendant whether they've seen or discussed the discovery provided. While defense attorneys such as myself habitually discuss the discovery with our clients, it is relatively rare that defendants be provided a copy themselves because of the prohibitively onerous process required to do so. As noted on the Court's website prosecutors not infrequently condition negotiations on such a copy not being provided. Given everyone involved explicitly recognizes the importance of defendants having access to discovery, ease of access should be facilitated whenever possible. Establishing local rules pertaining to redaction makes good sense procedurally and, if prosecutors are concerned about not having the ability to confirm redactions comply with said rules, they are more than welcome to prepare the redacted copies themselves and relieve already-overburdened public defense paralegals of this responsibility.

Thank you,

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