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As a member of the Bar, I urge this court to reject the proposed Rule amendment to CrR/CrRLJ 3.2. The proposed Amendment would prevent courts from addressing the myriad of nonviolent methods criminal defendants use to interfere with the administration of justice.

The proposed amendment would leave courts powerless to address nonviolent coercion or creative methods of interfering with the administration of justice.

Under the proponents' amendment, a defendant could not be held on bail due to concerns that the defendant would encourage a witness to absent themselves without the use of intimidation or threats, for example. Those who are charged with crimes against family members, such as sex offenses and domestic violence, frequently use nonviolent coercion to discourage witnesses from obeying a subpoena.

For example, in *State v. Hernandez*, 192 Wn. App. 673, 368 P.3d 500 (2016) the defendant, who was charged with three counts of Rape of a Child in the 1st Degree and three counts of Child Molestation in the 1st Degree used "coded language" to convince his girlfriend, who was the mother of his 8-year-old victim, to make the child unavailable to testify at trial. If the proposed amendment were adopted, such behavior would not justify bail or a release condition designed to prevent such interference with the administration of justice.

The facts of *Hernandez* are, unfortunately, far from anomalous. One need only search for cases involving the doctrine of forfeiture by wrongdoing to find multiple similar examples.

This is not the only way a person might interfere with the administration of justice that would fall under the proponents' narrow definition. A defendant might seek to bribe a juror or judge, for example. Under the instant proposal, a court would be powerless to address this nonviolent interference with justice.

The rule as currently written can encompass new creative ways of interfering with the courts.

As written, the rule also allows courts to address new methods of interfering with justice. A clever defendant might, for example, flood jurors social media accounts with misinformation

intended to influence deliberations. Social media's impact on jurors has been studied for many years, and its impact is undeniable. It is easily plausible that a crafty, tech-savvy person could accomplish such a feat. But under the proponents' amendment, a court would be powerless to stop it with the use of custodial detention.

The rule as currently written is consistent with other laws.

The rule as currently written is also consistent with other Washington law. For example, the rule harmonizes with RCW 13.40.040, which governs when a juvenile offender may be taken into custody. Amending the rule would create a separate standard for adults.

The rule as currently written is not overly broad. It presumes release but is flexible enough to address creative methods of interfering with a fair adjudication of a criminal matter. This court should reject the proposed amendment, and leave the rule as it is currently written.

Thank you,

Jason Walker, WSBA #44358