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Subject: FW: Comment Opposing Changes to CrR 8.3(b) and CrRLJ 8.3(b)
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From: Boeshans, Evan <eboeshans@kingcounty.gov>
Sent: Wednesday, April 30, 2025 4:34 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment Opposing Changes to CrR 8.3(b) and CrRLJ 8.3(b)

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To the Court,

I am writing to oppose the changes currently proposed to CrR 8.3(b) and CrRLJ 8.3(b). The proposal 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” for a trial court to dismiss a case due to arbitrary action or governmental misconduct.

Dismissals pursuant to 8.3(b) are ordered in the furtherance of justice. The prejudice requirement clearly defines justice in the context of the rule. By removing it, the amendment’s proponents muddy the waters as to what “justice” is.

Justice is not some amorphous concept. It is shaped by statutes, case law, and court rules. It is shaped by those things—in black letter—out of necessity, not nicety. Vagueness, not to mention being unconstitutional, is not just. Though the proponents of these changes say they seek to remedy the unequal application of the law, vagueness only gives fuel to that. The proposed changes to 8.3(b) are vague.

By unmooring 8.3(b) dismissals from prejudice to the rights of the accused, the proposed amendments strip from the rule any guidance for judges on what justice is under 8.3(b). If the comments from the Superior Court Judges’ Association and from the District and Municipal Court Judges’ Association are any indication, judges *want* the guidance the current rule provides as its language is better at avoiding unequal or disparate outcomes.

All of the above was true about last year’s similarly flawed proposal for changes to these rules. This year, the proponents have added four factors that courts shall consider in deciding whether to dismiss pursuant to the rule. However, while the proposed language requires courts *consider* these factors, it does not require those considerations be given any particular weight. Thus, as was true last year, the proposed rule would allow a court to dismiss a case due to arbitrary action or governmental misconduct even if the action or misconduct had absolutely no negative effect on the rights of the accused.

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.

The current language of 8.3(b) does not erect or maintain artificial or procedural barriers to justice. It allows courts dismiss any case based on arbitrary action or governmental misconduct where said arbitrary action or misconduct has prejudiced the rights of the accused. The only reason to adopt the proposed changes would be to allow dismissals for reasons other than the impact of the action at issue on the rights of the accused. Such other reasons are not relevant and should not be brought into consideration.

I urge the Court reject the proposed changes to CrR 8.3(b) and CrRLJ 8.3(b).

Respectfully,
Evan

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