From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Subject: FW: Proposed Changes to CrR/CrRLJ 8.3(b)
Date: Friday, April 25, 2025 3:41:01 PM

From: Shen, Tim <tshen@kingcounty.gov>
Sent: Friday, April 25, 2025 3:34 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Changes to CrR/CrRLJ 8.3(b)

To Whom It May Concern:

I am writing to express my objection to the proposed rule changes to CrR/CrRLJ 8.3(b). I agree with the reasons put forth by others voicing objections to these proposed changes. As many commenters have already addressed the practical considerations, I would like to address the authorities from other jurisdictions that the proponents cite for support.

The proponents of the rule change cite criminal rules and authorities from Idaho, Ohio, Iowa, and New York to argue that other jurisdictions already "allow for broader discretion than Washington for courts to dismiss charges." However, an examination of these rules and relevant case law reveals that courts in these jurisdictions are not actually imbued with the dismissal powers that the proponents claim.

The proponents' reliance on criminal rules from these jurisdictions is misplaced, and their representations are an inaccurate reflection of the law or practices within those states. In three of these states, the procedural criminal rules largely do not grant courts the authority to dismiss cases with prejudice, based solely upon a finding of government mismanagement or misconduct. Further, their case law makes it clear that if a trial court does dismiss a case with prejudice, then the trial court must engage in an analysis of whether the defendant has suffered a violation of a constitutional right.

Idaho Criminal Rule 48(a)(2)

Idaho Criminal Rule 48(a)(2) can only be used to dismiss misdemeanor offenses with prejudice.

By the plain language of Idaho Criminal Rule 48(c), dismissals will only be a bar to prosecution of misdemeanor offenses and an "order for dismissal is not a bar if the offense is a felony."

No such limitation applies to Washington Courts exercising authority under CrR/CrRLJ 8.3(b).

Further, in Idaho cases where courts considered government misconduct, they have required the defendant to make a showing of prejudice to his or her right to a fair trial. See e.g., State v. Summers, 152 Idaho 35, 39, 266 P.3d 510 (Idaho Ct. App. 2011) (defendant failed to show that a prosecutor's threat to seek an arrest warrant or intentional delay of trial "impaired her ability to receive a fair trial" or "was a deliberate device to gain an advantage over her"); State v. Bacon, 117 Idaho 679, 683, 791 P.2d 429, 433 (1990) (defendant failed to show actual prejudice where, due to procedural errors by the State dismissing and refiling a complaint three times).

Thus, the broad grant of authority that the proponents are asking for and purporting to be available to Idaho courts does not actually exist in the state in the same manner that it would under their proposed rule change.

Ohio Criminal Rule 48(b)

Ohio Criminal Rule 48(b) has a more limited application than CrR/CrRLJ 8.3(b).

Unlike CrR/CrRLJ 8.3(b), Ohio Criminal Rule 48(b) does not inherently give Ohio courts the ability to dismiss a case with prejudice and limits the types of cases that can be dismissed with prejudice.

Ohio law limits Ohio courts' ability to dismiss cases with prejudice to only "where there is a deprivation of a defendant's constitutional or statutory rights, the violation of which would, in and of itself, bar further prosecution." State v. Troisi, 169 Ohio St. 3d 514, 525, 206 N.E.3d 695 (2022). Ohio courts have held that this generally entails "cases involving the deprivation of a defendant's rights to a speedy trial or against double jeopardy, which would preclude further proceedings." Id. (citing, State v. Michailides, 114 N.E.3d 382, 390 (Ohio Ct. App. 2018); State v. Dunn, 101648, 2015 WL 4656534 (Ohio Ct. App. Aug. 6, 2015)).

This is fundamentally different and more restrictive than a Washington Court's authority under CrR/CrRLJ 8.3(b). For example, CrRLJ 8.3(b) has been applied to cases involving violations of CrRLJ 4.7. See e.g., State v. Salgado-Mendoza, 189 Wn.2d 420, 403 P.3d 45 (2017). Finally, when Ohio courts do engage in similar discovery violation analyses, they require a showing of prejudice. See e.g., State v. LaMar, 95 Ohio St. 3d 181, 190, 767 N.E.2d 166 (2002) (rule-based discovery violation requires "the accused has suffered prejudice.")

Iowa Rule of Criminal Procedure 2.33(1)[1]

Iowa Rule 2.33(1) is to be exercised "exercised sparingly" and does not apply to as many cases as CrR/CrRLJ 8.3(b).

Iowa courts have limited the application of Rule 2.33(1); stating the rule "should be 'exercised sparingly' and only in that 'rare' and 'unusual' case where it 'cries out for fundamental justice beyond the confines of conventional consideration.'" State v. Smith, 957

N.W.2d 669, 681 (Iowa 2021).

This clear limitation contrasts greatly with Washington's law where, "governmental misconduct" warranting dismissal need not be evil or dishonest and simple mismanagement is sufficient to warrant dismissal. State v. Michielli, 132 Wn.2d 229, 239, 937 P.2d 587 (1997).

Iowa Rule 2.33(1) Severely Limits Courts' Ability to Dismiss Cases With Prejudice.

Under Iowa Rule 2.33(1), a dismissal "in the furtherance of justice" allows for refiling of any charges stemming from felonies or aggravated misdemeanors. State v. Fisher, 351 N.W.2d 798, 800–01 (Iowa 1984). While the district court has discretion on the question of dismissals in "the furtherance of justice," "once such a dismissal is ordered, the *court has no discretion to bar future prosecutions*." Id. (emphasis added).

No such limitation applies to Washington Courts acting under CrR/CrRLJ 8.3(b).

Iowa Rule 2.33(1) Cannot Be Applied to a Defendant's Motion to Dismiss.

"Rule 2.33(1) does not apply to a dismissal on the *defendant's* motion." Smith, 957 N.W.2d at 681 (emphasis original). See Also, State v. Fisher, 351 N.W.2d 798, 801 (Iowa 1984) (2.33(1) "may only be invoked by the court . . . or [] the prosecuting attorney; it is not available to a defendant").

In Washington, application of CrR/CrRLJ 8.3(b) is not limited purely sua sponte actions by trial courts or the State's motions. It applies in a wide variety of defense motions, e.g. discovery violations, prosecutorial vindictiveness, 6th Amendment right to counsel violations, etc.

In State v. Brumage, the Iowa Court Did Not Expressly Reject Washington's Approach in CrR/CrRLJ 8.3(b).

In State v. Brumage, 435 N.W. 2d 337, 330 (Iowa 1989), the Iowa court reviewed an appeal where a trial court dismissed the state's case because it found the state could not meet its burden of proof. Id. at 339. The Iowa court's analysis of Washington law appears to be a misinterpretation of CrR/CrRLJ 8.3(b) and 8.3(c). Id. at 340. This is further evidenced by the Iowa court's consideration of California and New York case law, wherein the court's string cites largely focused on the sufficiency of the evidence, and its ultimate holding is whether "the trial court abused its discretion by dismissing the charges "in the furtherance of justice" based on the lack of evidence before the State had an opportunity to present its case at trial." Id. at 340-42.

New York C.P.L. § 170.40

As is the case in Iowa, New York courts limit their power of dismissal in furtherance of justice in rare and unusual cases. "The power to dismiss an accusatory instrument in furtherance of justice should be used sparingly and only in that rare and unusual case where it cries out for fundamental justice beyond the confines of conventional considerations." People v. LaFont, 43

Misc. 3d 384, 388, 978 N.Y.S.2d 832, 835 (N.Y.Crim.Ct. 2014). As argued above, this is fundamentally different and more restrictive than Washington's approach, where simple government mismanagement is sufficient to warrant dismissal.

Conclusion

The court rules in these jurisdictions simply do not operate in the manner that the proponents suggest. The proponents' reliance on these other states is misplaced, and CrR/CrRLJ 8.3(b) offer better protections for defendants than these proposed changes.

If the goal of the rule change is to give courts greater authority in dismissing cases, than adoption of this proposal would have the opposite effect. Courts in these other jurisdictions appear to have less authority than Washington Courts to dismiss cases with prejudice and the rules in these other jurisdictions have much more limited applications.

By asking Washington Courts to adopt rules like these other jurisdictions, outcomes would become worse for defendants. For example, if Washington utilized the Idaho and Iowa rules, the result would likely be that prosecutors' offices could charge more crimes as felonies and be less incentivized to exercise discretion when making charging decisions. Further, defendants would not be able to bring CrR/CrRLJ 8.3(b) motions. Regarding the proposed factors, if #1-3 weighed against the defendant and #4 weighed in favor, them presumably, a court would be justified in denying a motion dismiss that would have been granted under the existing rules. These are objectively worse results for defendants.

The rules committee should reject the proposed changes because the proponents have failed to demonstrate that their proposal would in fact solve the problems they claim exist.

Sincerely,
Timothy Shen

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[1] Proponents cite to Iowa Rule of Criminal Procedure 27(1). The Iowa rule has been renumbered to 2.33(1) since at least 2003. See e.g., State v. Thomas, 659 N.W.2d 217 (Iowa 2003)