The Snohomish County Prosecuting Attorney's Office and the Snohomish County Public Defender Association learned of the court's proposal to amend SCLCrR 3.3 via notice published in the Snohomish County Bar Association on September 19, 2022. It should be noted that neither office received direct notice as required by GR 7(b)(1) until October 19, 2022. While the extended comment period is appreciated, both offices are disappointed that the court opted to exercise its rulemaking authority before attempting to address the underlying concerns with other criminal justice stakeholders given the significant impact this will have on their work. Having been afforded no other opportunity, the Prosecuting Attorney's Office and the Public Defender's Office offer the following shared objections to the court's proposal here.

1. The criteria for determining which cases require a hearing is illogical. The proposed rule states that "[r]equests for continuances of any case filed prior to January 1 of the preceding calendar year must be noted for a hearing, even if the continuance is agreed by both parties." In practice, this language would have the Court treat cases that are 12.5 months old the same as cases that are twice as old (e.g., parties proposing a continuance in January of 2022 in a case filed in December of 2020 (13 months) vs. parties proposing a continuance in December of 2022 in a case filed in December 2020 (24 months)). If the aim of the proposed amendment is to scrutinize continuances in old cases, the rule should simply require a hearing in any case filed XX number of months (18, 24, etc.) before the proposed continuance. But the real problem with this kind of blind calculus—whether considering the language of the proposed amendment or the alternative suggestion articulated here—is that it is rooted in an assumption that delays in adjudicating the case are the result of some lack of diligence by the parties, and it fails to account for the relative complexity of the case, periods of time when the case was in bench warrant status, stays of proceedings related to competency proceedings, etc.

2. Requiring the attorneys to spend even more time in court hearings is inefficient and counterproductive. The proposed change requires noting a motion on cases filed before a certain date which will increase the number of times attorneys will need to appear in court and lengthen the trial call calendar at a point when our attorneys are already spending an unprecedented amount of time in court from week-to-week due to the recently revised Omnibus procedures and the general expansion of criminal court calendars (e.g., criminal hearings, extended motions, warrant authorization, etc.). And time spent in court is time away from the substantive casework necessary to efficiently and responsibly move cases through the criminal justice system—making charging decisions, reviewing discovery, meeting with clients, conducting investigation, communicating with opposing counsel, scheduling witness interviews, drafting substantive motions, preparing for trial, etc. At a time when the attorneys in both the Public Defender's Office and the Prosecutor's Office are struggling with unmanageable caseloads, the Court should be looking for ways to reduce the amount of time the attorneys spend in court, not increase it. See, e.g., "*Advisory Note by the WSBA Council on Public Defense: Response to the Emergency Caused by Pandemic Driven Increased Public Defender Caseloads*" (recommending, *inter alia*, that courts "[r]educe status hearings for pre-trial and compliance

hearings" and "[r]eserve show cause and probation review hearings for the most serious allegations").

3. Cases are being adjudicated at pre-pandemic rates. To the extent that the proposed amendment is rooted in some perception by the court that attorneys are not acting with sufficient diligence to adjudicate cases in a timely fashion, that assumption is incorrect. Pleas and referrals to prosecution alternatives are occurring at rates comparable to pre-pandemic times. Similarly, the number of cases proceeding to trial has steadily increased coming out of the pandemic and the typical lull during the Summer vacation season. It is unreasonable to expect a sudden return to normal trial practice after the substantial and prolonged disruptions caused by the pandemic. There is evidence that that return is well under way, and further intervention by the court is unnecessary at this time.

4. The court's proposed rule change is unnecessary. As things stand, if the court is concerned about the age of a particular case or the offered reasons for an agreed proposed continuance, it can reject the parties' proposed order and invite them to note a motion on a criminal hearings or extended motions calendar.

5. The court should take a "wait-and-see" approach. According to GR 7, "[n]ew proposed rules and amendments must be filed on or before July 1, to be effective September 1 of the same year." If the court moves forward with the proposed amendment now, it will not take effect until September 1, 2023. Because there are reasons to doubt whether the proposed amendment is prudent and/or necessary (as articulated above), the court should wait to see whether the concerns underlying the proposed amendment are addressed in the next 6-8 months. If not, the court can reinitiate the rulemaking process to file an amendment before July 1, 2023.

Submitted November 8, 2022 by:

Matt Baldock
Chief Criminal Deputy
Snohomish County Prosecutor's Office

Tiffany Mecca
Felony Supervisor
Snohomish County Public Defender Association