

Foster, Denise

Subject: FW: Comments for RPC 4.4

From: Shawn Hicks [mailto:shawnhicks@att.net]

Sent: Wednesday, December 26, 2012 11:10 AM

To: AOC DL - Rules Comments

Subject: Comments for RPC 4.4

I recently attended the seminar Law of Lawyering where they discussed proposed comments from the court for RPC 4.4 submitted to the Supreme Court by the Board of Governors regarding inquiries into immigration status. I believe the Supreme Court should not adopt the proposed comments to RPC 4.4.

I believe the comments are not necessary because there are adequate remedies available to prevent an illegal or abusive inquiry into a person's immigration status. For example, in *Silas v. Hi-Tech Erectors*, 168 Wn.2d 664 (2010) evidence regarding immigration status was determined to have been more prejudicial than probative. As a result of this holding, counsel could move for an appropriately worded protective order. In *In re Disciplinary Proceeding Against McGrath*, 174 Wn.2d 813, 280 P.3d 1091 (2012), the lawyer was sanctioned for his communications to the court concerning the immigration status of a party.

I believe the request for the Comment to RPC 4.4 is premised on politics and not ethics. Issues concerning the immigration policy of the federal are political issues for resolution by the federal government, and not by individual courts or jurisdictions. Like in *Arizona v. US*, ___ US ___ (2012), where the Supreme Court held that Arizona's legislation was pre-empted by the federal government, so also would the comments here be political and an invasion of a federal law. Even if the comments are not unconstitutional, the proposed comments are too political.

If the comments were adopted, then they could be in conflict with *In Re Discipline of Conteth*, 175 Wn.2nd 134 (2012) where a lawyer was suspended for 6 months because he made false representations in connection with his bar application regarding his immigration status. If false statements regarding immigration status are made that may lead to discovery of admissible evidence in civil litigation, then counsel should be free to inquire about those false statements.

I believe the proposed comments would also have a chilling effect on lawyers, punishing a lawyer for good faith inquiries about the immigration status of a party or witness.

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