

Foster, Denise

From: Alyson Dimmitt Gnam [alysondimmitt@gmail.com]
Sent: Tuesday, April 30, 2013 1:01 PM
To: Foster, Denise
Subject: Comment to Proposed Comment (4) to RPC 4.4 on behalf of Students for Labor and Employment Justice

April 30, 2013

Justice Charles Johnson

Supreme Court Rules Committee

c/o Clerk of the Supreme Court

P.O. Box 40929

Olympia, WA 98504-0929

RE: Proposed Comment to RPC 4.4

Dear Justice Johnson and Members of the Rules Committee:

I am writing on behalf of the Students for Labor and Employment Justice (SLEJ) at the University of Washington School of Law to express our support for the proposed Comment to Rule 4.4.

SLEJ is an organization of law students dedicated to providing educational opportunities about issues affecting the lives of low-wage workers. We host events on the law school campus and connect students to volunteer opportunities in the community. Our student members have worked and volunteered at organizations including the Equal Employment Opportunity Commission, the Unemployment Law Project, Columbia Legal Services, CASA Latina, the Immigrant Families Advocacy Project, and the National Employment Law Project.

In our experiences working on behalf of low-wage workers, many of our student members have witnessed the challenges facing immigrant workers who seek to protect their rights in the civil legal system. Immigrant workers must already overcome substantial barriers in order to access the justice system and assert their workplace rights, including language and limited economic resources. These workers, many of whom have suffered substantial wage theft, discrimination, and harassment in their workplaces, must also overcome a fear

of immigration consequences if they chose to interact with the legal system. This fear is widespread and legitimate, based on experiences of other community members. The possibility of facing immigration enforcement threats gives pause to undocumented workers as well as documented workers who risk adverse consequences to their employment and family members.

The proposed Comment to RPC 4.4 clarifies that members of the bar violate their ethical duties if they act to restrict the rights of Washington residents to access the civil legal system. The proposed Comment affirms that “issues involving immigration status carry a significant danger of interfering with the proper functioning of the justice system” and holds members of the bar accountable for immigration threats and inquiries for the purpose of intimidating, coercing, or obstructing participation in civil matters. As students striving for workplaces free from all forms of discrimination, the members of SLEJ encourage you to affirm the commitment of the Washington Bar to ensure access to justice for all workers.

The need for this comment is real. Unfortunately, we have seen attorneys in Washington use inquiries into immigration status to coerce and intimidate immigrant workers. As a legal extern, I conducted extensive legal research related to a recent Washington State case of severe and persistent sexual harassment of immigrant farmworkers. In this case, the plaintiffs were subjected to extensive and harassing discovery requests for their immigration statuses. Such behavior puts immigrants on notice that any attempt to assert their civil rights in the workplace will cost them their privacy and potentially their job. This exposes immigrant workers to a greater degree of scrutiny than non-immigrants. Nothing more than aggressive discovery requests was necessary to create a chilling effect in this case. Because of this, we urge the committee to affirm that an “inquiry about a third person’s immigration status when the lawyer’s purpose is to intimidate, coerce, or obstruct that person from participating in a civil matter” is prohibited, just as is a threat to report the person to immigration authorities.

Finally, we note that protection orders are not a sufficient substitute for the proposed Comment. The Ninth Circuit in *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1064 (9th Cir.2004) noted that requiring plaintiffs—twenty-three female factory workers—to answer questions about their immigration status in the process of discovery “would likely deter them, and future plaintiffs, from bringing meritorious claims.” See also *Sandoval v. Rizzuti Farms, Ltd.*, No. CV-07-3076-EFS, 2009 WL 2058145, at *1 (E.D.Wash. July 15, 2009) (concluding that preventing manifest injustice and the chilling of the plaintiff’s private right of action under Washington law “necessitates barring discovery into Plaintiffs’ immigration status”).

We commend the commitment expressed in this comment to ensure access to justice for all Washington residents. This comment is critically important for immigrant workers asserting their right to the wages they are owed and to a workplace free from harassment and discrimination. We urge the approval of the proposed Comment to RPC 4.4.

Sincerely,

Alyson Dimmitt Gnam

President, Students for Labor and Employment Justice

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Alyson Dimmitt Gnam

J.D. Candidate 2014

University of Washington School of Law

alysondimmitt@gmail.com

alyd@uw.edu