

The following are each individual comments for proposed changes to **RPC 4.4 (“Respect for Rights of Third Persons”)**, available online at [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.proposedRuleDisplay&ruleId=281](http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=281).

### **Comment #3**

The comments should mirror ABA Formal Op. 92-363, to avoid absurd restrictions on the practice of law.

The reference ABA Formal Op. 92-363 appears to explicitly allow threats of criminal proceedings where: (1) the criminal matter is related to the civil claim, (2) the lawyer has a well-founded belief that both the civil claim and criminal charges are warranted by the law and the facts, and (3) the lawyer does not attempt to exert or suggest improper influence over the criminal process.

The important exception carved out by the ABA formal opinion on threats of criminal prosecution is absent from the currently proposed comments to RPC4.4 on threats of immigration status reporting.

Failing to have an exception similar to the above ABA formal opinion would create situations where no lawyer could properly represent a given client’s claims. Although obvious on its face, it is admitted that situations where civil claims are directly related to undocumented immigration status are rare. However, rarity should not prevent proper representation.

Accordingly, the comments to RPC4.4 should explicitly carve out a similar exception. For example, threats to report undocumented immigration status shall be permissible where both: (1) *the undocumented immigration status is directly related to the civil claim*, and (2) *the lawyer has a well-founded belief that both the civil claim and the undocumented immigration status are warranted by the law and the facts*. (Reciting the third requirement from the ABA opinion is allowable, but redundant in view of RPC 8.4(e)).