



101 Yesler Way, Suite 300  
Seattle, WA 98104  
(206) 464-5933  
(800) 542-0794  
(206) 464-1518 TDD  
(206) 382-3386 (fax)

April 15, 2013

Justice Charles Johnson, Chair  
Supreme Court Rules Committee  
Temple of Justice  
PO Box 40929  
Olympia, WA 98504-0929

Re: Proposed Comment (4) to RPC 4.4

Dear Justice Johnson:

On behalf of Columbia Legal Services, I write to support Proposed Comment (4) to Rule of Professional Conduct 4.4. The proposed Comment addresses the problem of purposeful coercion based on immigration status and provides needed guidance to Washington lawyers.

Columbia Legal Services provides no-cost civil legal services to low-income people around the state. Many of our clients are immigrants from Mexico and other countries. We find that members of immigrant communities are often afraid to participate in the civil justice system because of the potential threat of retaliation based on the actual or perceived immigration status of the individual or her family member. Many of our clients are particularly vulnerable to threats based on their immigration status because their case involves discrimination or abuse based on their status -- in cases involving employment, housing, civil rights, sexual abuse, and other areas. We have seen the misuse of immigration status to gain an advantage in civil cases.

Proposed Comment (4) to RPC 4.4 is needed to prevent purposeful intimidation, coercion, and obstruction of persons from participating in a civil matter. The Comment clarifies that only those activities done for these improper purposes are prohibited. This is consistent with RPC 4.4(a), which provides:

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person . . .

In *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 672 (2010), this Court found that immigration status may interfere with access to justice:

We recognize that immigration is a politically sensitive issue. Issues involving immigration can inspire passionate responses that carry a significant danger of interfering with the fact finder's duty to engage in reasoned deliberation.

Coercion based on immigration status deters immigrants from exercising their rights through the legal system and from serving as witnesses to help fairly resolve legal matters. An attorney

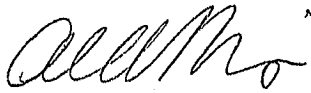


should not be able to undermine or dispense with a case by threatening to call immigration authorities.

Ethical guidance for attorneys as to the application of RPC 4.4(a) to the use of immigration status in civil matters will help to ensure a safe and fair legal system in which immigrant parties and witnesses can participate without fear of reprisal.

Thank you for your consideration of these comments.

Sincerely,



Aurora Martin  
Director

# RULES OF PROFESSIONAL CONDUCT (RPC)

## RULE 4.4. RESPECT FOR RIGHTS OF THIRD PERSONS

1  
2 (a) - (b) [Unchanged.]  
3

### 4 Comment

5 [1] – [3] [Unchanged.]

#### 6 Additional Washington Comment (4)

7 [4] The duty imposed by paragraph (a) of this Rule includes a lawyer's assertion or inquiry  
8 about a third person's immigration status when the lawyer's purpose is to intimidate, coerce, or  
9 obstruct that person from participating in a civil matter. Issues involving immigration status  
10 carry a significant danger of interfering with the proper functioning of the justice system. See  
11 Salas v. Hi-Tech Erectors, 168 Wn.2d 664, 230 P.3d 583 (2010). When a lawyer is  
12 representing a client in a civil matter, a lawyer's communication to a party or a witness that the  
13 lawyer will report that person to immigration authorities, or a lawyer's report of that person to  
14 immigration authorities, furthers no substantial purpose of the civil adjudicative system if the  
15 lawyer's purpose is to intimidate, coerce, or obstruct that person. A communication in  
16 violation of this Rule can also occur by an implied assertion that is the equivalent of an express  
17 assertion prohibited by paragraph (a). See also Rules 8.4(b) (prohibiting criminal acts that  
18 reflect adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other  
19 respects), 8.4(d) (prohibiting conduct prejudicial to the administration of justice), and 8.4(h)  
20 (prohibiting conduct that is prejudicial to the administration of justice toward judges, other  
21 parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or  
22 officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis  
23 of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital  
24 status).  
25  
26