

April 29, 2013

Clerk of the Supreme Court
P.O. Box 40929,
Olympia, WA 98504-0929, or

Re: Proposed Comment (4) to RPC 4.4

Sent via e-mail to denise.foster@courts.wa.gov.

On behalf of the National Employment Law Project, I am writing to express strong support for Proposed Comment (4) to Rule of Professional Conduct 4.4. The proposed Comment is necessary to provide guidance to Washington attorneys with respect to the serious problem of misconduct based on immigration status.

For some forty-five years, the National Employment Law Project has worked to ensure that work provides a ladder to economic opportunity and a bridge to security. In particular, we work to ensure that all immigrant workers, including the some eight million undocumented workers who labor in some of the most difficult and low-paying jobs available in our economy, can assert their labor rights in a climate of equality and fairness.

In our experience, threats of immigration status-related retaliation and actual retaliation are common whenever immigrant workers seek to enforce their labor rights. Our recent report, "Workers' Rights on ICE," documents 21 recent incidents of employer retaliation against immigrant workers across the United States. In the last ten years, we have lectured, written, trained lawyers and engaged in litigation nationwide in cases in which employers and their lawyers argue that immigrant workers must disclose their immigration status in court cases before they can get compensation for labor abuses. Cases in which NELP has submitted amicus curiae briefs on this point include *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 669-70 (2010) and *Rivera et al. v. NIBCO, Inc.*, 364 F.3d 1057, 1065 (9th Cir. 2004), both cited by the Board of Governors in its explanation of the new comment.

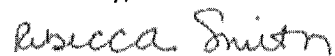
Misuse of immigration status, whether by parties or their lawyers, deters immigrants

from exercising their core labor rights and from serving as witnesses to help fairly resolve legal matters. An attorney should not undermine or dispense with a case by threatening to call immigration authorities. Ethical guidance on attorneys' use of immigration status in civil matters is necessary to allow immigrant parties and witnesses to participate in the legal system without fear of reprisal.

RPC 4.4(a) provides, "[i]n representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person . . ." Proposed Comment (4) is needed to clarify that intentional intimidation, coercion, and obstruction of persons based on immigration status is unethical.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Smith".

Rebecca Smith
Coordinator, Immigrant Worker Justice Project
NELP