

From: [OFFICE RECEPTIONIST, CLERK](#)
To: "[Brad Englund](#)"
Cc: [Tracy, Mary](#)
Subject: RE: Public Comment on Proposed Court rule – GENERAL RULE 38
Date: Friday, January 24, 2020 2:42:47 PM

Your comments have been forwarded to the rules committee.

Thank you,

Receptionist
Supreme Court Clerk's Office
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From: Brad Englund [mailto:benglund@englundlaw.com]
Sent: Friday, January 24, 2020 2:36 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Tracy, Mary <Mary.Tracy@courts.wa.gov>
Subject: Public Comment on Proposed Court rule – GENERAL RULE 38

Greetings,

I am Brad Englund. I write in opposition to the proposed General Rule 38.

General Principals

Rule 38 is not a court rule, it is a legislative action. The rule states: "No person shall be subject to civil arrest without a judicial arrest warrant or judicial order for arrest." The court's authority, implicit or otherwise, does not extend to determining when or whether a person is *subject to* civil arrest. If the court has authority to determine that a person is not subject to civil arrest in the court or on the way to or from court, can the court also determine that the person is not subject to civil arrest in other places and at other times? If so, what are the limits to the courts authority? These are policy issues that range far outside of the court's ability to control of courtroom proceedings. If this rule is adopted, the court will be venturing into the province of the legislature.

Our judicial system is based on the principle of the rule of law. The court house is intended to be a place where the law is enforced--not where the violation of law is disregarded and unenforceable. This creates a sanctuary process. The underlying message of this rule is that certain "disfavored" laws will not be enforced within a court of law. That is the opposite of the rule of law.

Along this line, the rule creates a privileged class. Violators of immigration law have special rights others do not have. The proposed rule is intended to prevent the enforcement of the federal immigration law--theoretically, because of possible negative consequences caused by such enforcement. There are always negative consequences that flow from the enforcement of the law. Immigration violations are not entitled to special protections.

There are comity issues that should be considered. This rule offends the notice of comity. The in-court arrests are relatively rare and this rule is not really required. The purpose of the rule appears primary to send a message to the federal government.

Based on anecdotal or extrapolated evidence, the proponents of the rule claim that it is necessary because the specter of a civil arrest will interfere with justice. Other than in a few counties no such arrests are occurring. The rule is unnecessary. Yet, the proponents seek a special accommodation because of the claimed problems. If this special accommodation is provided, it will produce a need for future additional accommodations. When the negative consequences of illegal immigration are removed, the number of illegal immigrants will increase. As the number increases the problems created by enforcement of the law will increase.

The rule extends far beyond the claimed harm that civil arrests would produce. The list of activities that constitute doing business with the court contains many actions that will not produce the harm the rule is intended to avoid.

This rule runs afoul of the preemption clause. It seeks to dictate how federal immigration law can be enforced--not only in the courthouse, but also outside of the courthouse. It provides that the courts "may issue writs or other court orders necessary to enforce this court rule." This rule authorizes any court can issue a writ or order requiring a federal officer to release a person who was arrested in violation of the rule.

Specific Problems

The rule is vague. What is a "court of law?" Is that phrase limited to the "supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide," or does it include administrative courts?

What constitutes being "inside a court of law of this state?" Is that the court room? Does it include the hall outside of the court room? Does it refer to the entire building?

The rule prohibits a civil arrest of anyone "while traveling to a court of law of this state for the purpose of participating in any judicial proceeding." When does the travel start? At the home? What if the person stops by a coffee shop on the way? Could he be arrested at the coffee shop, or is that part of traveling to a court of law? What if the person is arrested as he steps out of his door, on the way to the car? Is he traveling?

Similarly, the rule prohibits civil arrest "while traveling to return home or to employment." This phrase has same problems as the former phrase.

The rule is overbroad. The definition of "business with the court and accessing court services" is so broad as to create sanctuary location within the "court of law," however that term is defined. The list of what constitutes doing business and accessing services are exemplars only--"includes, but is not limited to." A court is not limited to the listed actions, but is free to expand on the list.

Cordially,
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