Washington State Supreme Court Gender and Justice Commission

January 27, 2020

By Email and 1st Class U.S. Mail

Susan L. Carlson
Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
supreme@courts.wa.gov

Dear Madame Clerk,

On behalf of the Washington State Gender and Justice Commission (GJC), please accept the following comments to the proposed new Washington State Court Rule GR 38, published for comment in November 2019. After extensive and collegial discussion with the proponents of the rule, as well as our fellow judicial branch commissions (Washington State Minority and Justice Commission, Washington State Interpreter Commission) hereafter, together "Commissions" and the Washington State Access to Justice Board, hereafter "Board," this letter is sent on behalf of the Washington State Gender and Justice Commission.

The Washington State Gender and Justice Commission supports adoption of this Court rule, with consideration of certain amendments discussed below. Together with the Commissions and the Board, the GJC believes that the adoption of this Court rule is necessary to the fundamental mission of our organizations to protect the access of all persons to our State Courts, where the vast majority of justice is sought and achieved in this State.

The Commissions and the Board believe that the failure to enact such a rule would weaken our system of justice, close the doors to the most vulnerable, make our communities less safe, and pervert the fair and equal treatment of all, to which we all aspire.

About the Gender and Justice Commission

The Washington State Supreme Court established the Gender and Justice Commission (hereafter GJC) in 1987 with the mission to promote gender equality in the judicial system through several means including the development of leadership to help implement effective policy throughout the courts.

Since inception, the GJC has recognized the disproportionate representation of women and minorities as victims of domestic violence with great needs for access to the courts. The State Supreme Court has unanimously renewed the order of establishment of the GJC every five years since enactment. Commission members include a broad network of national, state, and local partners to coordinate the advancement of gender equity and justice through education, research, coordination and a clear understanding of the practices that inhibit gender equity.

For immigrant victims, the lack of secure immigration status negatively influences immigrant victims' willingness to seek law enforcement, social service, and legal interventions (Reina, A., Lohman, B., and Maldonado, M., (2014). "He Said They'd Deport Me": Factors Influencing Domestic Violence Help-Seeking Practices Among Latina Immigrants *Journal of Interpersonal Violence*, 29(4), 593–615). According to survey results compiled by seven nationwide domestic and sexual violence organizations of 575 victim advocates and attorneys across the country during April and May 2019, including advocates and attorneys from seven counties in Washington, 76% nationally reported they were working with survivors who reported they had concerns about attending court in matters related to their abusers.

Here in Washington State, 91% of responding victim advocates reported they were working with survivors who had concerns attending court. The survey further revealed that 52% of advocates nationally, and 46% of advocates in Washington have worked with immigrant survivors who decided to drop civil or criminal cases because they were fearful to continue with their cases. (Asian Pacific Institute on Gender-Based Violence, et al, "May 2019 Findings: Immigrant Survivors Fear Reporting Violence," available at: https://www.api-gbv.org/resources/may-2019-advocate-legal-services-findings-immigrant-survivors-fear-reporting-violence/)

Comments

Procedural, Legal and Factual Background

The Supreme Court is of course well aware that twice in the last several years, the Chief Justice of the Washington State Supreme Court wrote the leadership of the United States Department of Homeland Security (DHS) to express the Court's concern about immigration officers and agents taking enforcement action in and around our State's courthouses.

The Chief Justice respectfully asked DHS to mitigate enforcement actions in and around our local courthouses and asked DHS to designate the courthouses and their immediate vicinities as "sensitive locations." On November 21, 2019, U.S. Attorney General Bill Barr and the Acting Secretary of DHS wrote the Chief Justices Of Washington and Oregon, advising that, under the Supremacy Clause of the United States Constitution, court rules "cannot and will not govern the conduct of federal officers" and urged the Chief Justices to "reconsider these misguided rules."

Contrary to the position of Attorney General Barr however, two federal district courts this year have held that the common law privilege to be free from civil arrests while at court or while travelling to and from courthouses, upon which the instant rule is based, is "still operative" and "applies" to immigration civil arrests. *See State of New York et al. v. U.S. ICE et. al*, No. 19-cv-8876, (S.D.N.Y., Order of December 19, 2019).

One of these federal district courts has granted a preliminary injunction, enjoining DHS from "civilly arresting parties, witnesses, and others attending Massachusetts courthouses on official business while they are going to, attending, or leaving the courthouse." *See Ryan et. al. v. U.S. ICE et al.*, No. 19-cv-11003 (D.MA., Order of June 20, 2019).

Finally, there is no factual dispute: Immigration-related civil arrests have been occurring at or near our state courthouses regularly and that the effect on our immigrant communities has been profound. To take but one example of the type of litigants who are being excluded from our courts: immigrant victims are unwilling to seek the protection or services of the courts; immigrant victims are unwilling to report crimes; and immigrant victims and others are unwilling to serve as witnesses. This type of enforcement is making our communities less safe.

In short, productive conversations with DHS have been attempted in good faith and been unsuccessful. The proposed GR 38 is on sound legal-footing and factually ripe.

Amendments

The undersigned are aware that a coalition of advocacy organizations is planning to suggest amendments to the proposed GR 38 (as it was filed with the court in November 2019). These proposed amendments are for technical clarification, to inclusively define a court of law, and to define the court's remedies for example. While the GJC believes these issues are worthy of consideration, we also believe it is premature to discuss these planned amendments that are not yet part of the Supreme Court's record, nor have they received robust discussion and comment by other interested parties. Other commenters may have additional recommendations for change (for example the Washington State Interpreter Commission asks that "participants in a proceeding" include parents or guardians in a juvenile court or dependency proceeding).

The GJC is very supportive of the proposed GR 38 and respectfully urges the Supreme Court to adopt a Rule that considers all of these concerns and others that may be raised.

Thank you for your consideration.

Justice Sheryl Gordon McCloud
Chair, Gender and Justice Commission

Judge Marilyn G. Paja
Vice Chair, Gender and Justice Commission

From:	OFFICE RECEPTIONIST, CLERK
To:	Tracy, Mary
Subject:	FW: GJC Comment - GR 38
Date:	Monday, January 27, 2020 12:31:22 PM
Attachments:	GJC - Letter of Support GR 38 - 1.27.20.pdf

From: Amburgey-Richardson, Kelley
Sent: Monday, January 27, 2020 12:20 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Delostrinos, Cynthia <Cynthia.Delostrinos@courts.wa.gov>
Subject: GJC Comment - GR 38

To Whom It May Concern:

On behalf of the Chairs of the Washington State Gender and Justice Commission (GJC), please accept the attached comment to the proposed new Washington State Court Rule GR 38, published for comment in November 2019.

This letter has also been sent via U.S. mail.

Please let me know if you have any questions.

Sincerely,

Kelley

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