



## Washington State Office of Civil Legal Aid

1206 Quince St. SE  
Olympia, WA 98504  
MS 41183  
360-704-4135

James A. Bamberger, Director  
jim.bamberger@ocla.wa.gov

January 17, 2020

Hon. Debra Stephens, Chief Justice  
Hon. Charles Johnson, Chair  
Washington State Supreme Court Rules Committee  
415 12<sup>th</sup> Ave., SW  
Olympia, WA 98501-0929

Re: Proposed General Rule 38 and Proposed Amendment to RPC 4.4

Dear Chief Justice Stephens and Justice Johnson,

I write to encourage the Supreme Court to adopt proposed General Rule 38 and the proposed amendments to comment 4 of RPC 4.4. These proposals are designed protect the sanctity and integrity of our courts, the ability of all people in need of judicial protection the freedom to seek the same in our courts without fear of federal civil immigration enforcement, and to clarify the rights and duties of attorneys to preserve inviolate certain personal information.

The Washington State Supreme Court has taken a principled and courageous stand against warrantless civil arrests being conducted in and around courthouses in this state by federal immigration enforcement agents. As former Chief Justice Fairhurst made clear in her March 2017 and April 2019 letters to federal immigration officials, such activities have a direct and immediate chilling impact on the willingness of a wide range of individuals to seek justice and safety in our courts. These include many of the most vulnerable members of society including victims of domestic violence, sexual assault, human trafficking, and other crimes. It also includes many people who face day-to-day civil legal problems such as eviction, debt collection, probate, child welfare, and the like. Finally, it includes many people who are called to appear and testify in both civil and criminal cases in our trial courts; their failure to appear and provide testimony necessarily resulting dismissal of significant criminal charges.

The Office of Civil Legal Aid's interest and concerns related to this unprecedented federal assault on the sanctity and security of our courts is outlined in detail in the declaration I filed in conjunction with the recent action filed by Attorney General Ferguson seeking to enjoin such courthouse and near-courthouse based immigration enforcement activities.<sup>1</sup> For the sake of brevity, I attach a copy of this declaration.

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<sup>1</sup> *State of Washington v. U.S. Department of Homeland Security, et al.*, WD WA No. 19-cv-02043  
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Re: GR 38 and RPC 4.4

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Proposed GR 38 would invoke the longstanding civil arrest privilege by prohibiting unwarranted immigration enforcement actions on or near courthouses in our state. In doing so, it will help restore access to Washington's courts for all, renew confidence in our judicial system, and provide a basis to pursue legal action against state and federal actors who violate orders invoking the privilege.

While it is unfortunate to say that we need to protect our courts and court users from unwarranted federal civil enforcement actions, it is sadly a reflection of the times we live in. The Washington Supreme Court has a duty to take all actions to protect the integrity of our judicial process, including the safety and security of court users and attendees. Proposed GR 38 is an appropriately tailored response to the unprecedented assault on our courts. For these reasons, the Office of Civil Legal Aid fully supports both the intent and approach outlined in proposed GR 38 and recommends its adoption by the Court.

OFFICE OF CIVIL LEGAL AID

James A. Bamberger  
Director

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Tracy, Mary](#)  
**Subject:** FW: Proposed GR 38 and RPC 4.4  
**Date:** Monday, February 10, 2020 8:04:18 AM  
**Attachments:** [OCLA Comments Re GR 38 and RPC 4.4 1-17-20 Signed.pdf](#)

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**From:** Bamberger, James (OCLA) [mailto:jim.bamberger@ocla.wa.gov]  
**Sent:** Sunday, February 9, 2020 11:24 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Proposed GR 38 and RPC 4.4

Greetings,

The Office of Civil Legal Aid hereby reaffirms the comments previously submitted on these two proposals.

**Jim Bamberger**

James A. Bamberger, Director  
Office of Civil Legal Aid  
PO Box 41183  
Olympia, WA 98504  
360-704-4135 (Direct)  
360-280-1477 (Mobile)  
[jim.bamberger@ocla.wa.gov](mailto:jim.bamberger@ocla.wa.gov)

Gender Pronouns: He/Him/His