



Washington State Office of Civil Legal Aid

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James A. Bamberger, Director
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January 17, 2020

Hon. Debra Stephens, Chief Justice
Hon. Charles Johnson, Chair
Washington State Supreme Court Rules Committee
415 12th 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.¹ For the sake of brevity, I attach a copy of this declaration.

¹ *State of Washington v. U.S. Department of Homeland Security, et al.*, WD WA No. 19-cv-02043
Washington State Office of Civil Legal Aid
Underwriting Justice • Ensuring Accountability

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

1 Pursuant to 28 U.S.C. § 1746(2), I, James Bamberger, hereby declare as
2 follows:

- 3 1. I am over the age of eighteen and competent to testify.
- 4 2. I am the Director of the Washington State Office of Civil Legal Aid
5 (OCLA). OCLA is an independent judicial branch agency of Washington
6 state government.
- 7 3. OCLA's charge is to (1) administer and oversee state appropriations
8 invested for the provision of civil legal aid services to eligible people
9 throughout the state; (2) monitor and report on the capacity of the civil
10 legal aid system to address ongoing needs to low income residents; and
11 (3) develop budget recommendations for civil legal aid. One of OCLA's
12 core driving principles is that our justice system should enable all eligible
13 persons access to and the ability to resolve legal problems in court.
- 14 4. In establishing OCLA, the Washington State Legislature expressly found
15 "that the provision of civil legal aid services to indigent persons is an
16 important component of the state's responsibility to provide for the proper
17 and effective administration of civil and criminal justice." Wash. Rev.
18 Code § 2.53.005
- 19 5. An 11-member bipartisan Civil Legal Aid Oversight Committee,
20 established by the Legislature, oversees OCLA's activities; reviews the
21 performance of the Director; and, from time to time, makes
22 recommendations to the Supreme Court, the Access to Justice Board, and
the Legislature regarding the provision of state-funded civil legal aid.
Members of the Committee are appointed by the Board for Judicial
Administration, the Washington Supreme Court, the majority and

1 minority caucuses of the Washington State Legislature, the Governor,
2 and the Washington State Bar Association. The Access to Justice Board
3 is the principal planning and oversight body for Washington State's
4 Alliance for Equal Justice – the statewide civil legal aid delivery system.
5 It is charged with adopting and overseeing implementation of
6 Washington's State Plan for the Delivery of Civil Legal Aid Services.
7 The Access to Justice Board, hosted and administered through the
8 Washington State Bar Association, reports annually to the Supreme
9 Court. The Access to Justice Board nominates OCLA Director candidates
10 to the Supreme Court.

11 6. I have been the Director of OCLA since its creation in 2005. My position
12 is appointed by the Supreme Court. I am a member in good standing with
13 the Washington State Bar.

14 7. The Washington State Legislature appropriates state civil legal aid
15 funding to OCLA. OCLA is the largest funder of civil legal aid services
16 in Washington State. During the FY 2020-21 biennium, OCLA will
17 contract out more than \$52 million in state and federal funding to support
18 basic civil legal aid services, civil legal aid services to victims of crime,
19 and civil representation of children in dependency cases. OCLA uses
20 funding appropriated pursuant to Wash. Rev. Code § 2.53.030 to
21 underwrite representation of indigent persons in legal civil matters
22 relating to domestic relations and family law; governmental assistance
and services; health care; housing and utilities; mortgage foreclosures;
consumer, financial services, credit, and bankruptcy; employment; long-
term care facilities; wills, estates, and living wills; elder abuse;

1 guardianship; disability rights; education, including special education;
2 administrative agency decisions; and discrimination. OCLA does not use
3 state-appropriated funding to underwrite civil legal aid services on
4 immigration-law matters. A portion of federal Victims of Crime Act
5 (VOCA) funding administered by OCLA is contracted to underwrite civil
6 legal representation of immigrant victims of crime.

7 8. State funding appropriated pursuant to Wash. Rev. Code § 2.53.030, is
8 contracted in the first instance to the Northwest Justice Project (NJP).
9 With OCLA's approval, NJP subcontracts a portion of these funds to
10 support civil legal representation for eligible clients by sixteen (16) local
11 volunteer attorney organizations and four (4) specialty legal aid providers
12 across Washington State. All of these sub-recipients use non-state
13 funding to provide civil legal information, advice, and representation to
14 immigrants regardless of legal status.

15 9. One of the programs administered by OCLA is the statewide Integrated
16 Civil Legal Aid to Crime Victims Program. This program, established in
17 2016, was informed by the findings of Washington State's 2015 Civil
18 Legal Needs Study, which found that victims of crime experience civil
19 (non-criminal) legal problems at substantially higher rates than the
20 general public. The program's integrated approach to civil legal
21 intervention is aimed towards significantly improving safety, security,
22 and well-being of crime victims by quickly addressing the civil legal
problems arising from their victimization. Timely and effective legal
representation helps victims of crime secure their personal and family
safety; protect their identity, privacy and economic security; secure

1 legally-authorized adjustments in their immigration status; and gain
2 access to essential public and mental health, income, and other
3 assistance. About \$5 million/year in VOCA funding is used to
4 underwrite legal aid to crime victims in Washington State.

5 10. The Integrated Civil Legal Aid to Crime Victims Program is funded with
6 federal funds appropriated by Congress from the Crime Victims Fund.
7 The funds are appropriated under authority of the federal Victims of
8 Crime Act (VOCA). Under federal guidelines adopted by the U.S.
9 Department of Justice, legal assistance may be provided to immigrant
10 victims of crime regardless of their legal status. A substantial portion of
11 VOCA funding is used to underwrite civil legal assistance to immigrant
12 victims of crime.

13 11. In accordance with the terms of an interagency agreement with the
14 Washington State Department of Commerce, Office of Crime Victims
15 Advocacy, and consistent with the above referenced federal enabling
16 authority, OCLA enters into and oversees VOCA-funded sub-recipient
17 agreements with the following organizations, each of which provide legal
18 assistance to immigrant victims of crime: NJP, Northwest Immigrant
19 Rights Project, King County Bar Association Pro Bono Services
20 Program, Eastside Legal Assistance, Tacoma Pro Bono, and Sexual
21 Violence Legal Services. The VOCA-funded program includes statewide
22 crime victims legal aid hotlines; local and regional client service services
23 to general crime victims; and representation for victims of workplace-
24 based sexual violence in Central Washington. In the first year of
25 operations, VOCA-funded civil legal aid attorneys in Washington served

1 3,347 crime victims. Consistent with information from the Washington
2 Association of Sheriffs and Police Chiefs that domestic violence-related
3 crimes are the most prevalent category of crimes perpetrated in
4 Washington State, more than two-thirds of victims served through the
5 Integrated Civil Legal Aid to Crime Victims Program presented with
6 civil legal issues arising from domestic violence.

7 12. In administering and overseeing the VOCA funding, OCLA has
8 supported and helped develop statewide trainings for VOCA-funded
9 attorneys; monitored client service performance, analyzed data, and
10 coordinated needs with Washington's Department of Commerce Office
11 of Crime Victims Advocacy; ensured that VOCA-funded legal aid staff
12 established and maintained relationships with statewide crime victims
13 service and support organizations and law enforcement agencies; and
14 helped develop a statewide community of practice among VOCA-funded
15 civil legal aid attorneys.

16 13. In conversations with representatives of each of OCLA's program
17 providers, OCLA staff have been advised that the current and threatened
18 federal immigration enforcement activities at or near courthouses has and
19 continues to result in a chilling effect that deters crime victims from
20 seeking legal help in the first instance, as well as deters them from
21 affirmatively asserting and enforcing their legal rights where doing so
22 would expose them to courthouse-based surveillance and arrest by
federal immigration officials. Many of these individuals are victims of
the most heinous crimes – severe domestic violence, rape and other
sexual violence, and human trafficking to name a few. This chilling and

1 deterrent impact is reported to affect individuals and families regardless
2 of their legal status or that of family members.

3 14. As part of its oversight responsibilities, OCLA conducts site visits to
4 assess the effectiveness of the work of its grantees. These site visits are
5 comprehensive, and involve on-site meetings with legal aid staff, judicial
6 officers, community leaders, social and human services providers, and
7 others. Over the past three years, OCLA conducted site visits to NJP's
8 Yakima, Spokane, and Bellingham offices. During these site visits,
9 OCLA was advised by civil justice system stakeholders and community
10 leaders of a culture of fear pervading the Latinx community that recent
11 courthouse-based immigration enforcement activity has contributed to,
12 and that this fear translates into a reticence on the part of Latinx
13 community members (with or without documentation) to seek recourse
14 through the civil justice system, to seek help from court system-related
15 service providers, or even to seek information and advice about their
16 legal rights. This reticence leads to exploitation of vulnerable
17 Washingtonians on the part of landlords, abusers, collection agencies
18 (and their attorneys), and others; and the corresponding inability of
19 people to assert, defend, and enforce rights they have under applicable
20 state and federal laws. These realities about the impact of federal
21 immigration enforcement on access to the courthouses are reflected in
22 OCLA's public site visit reports, including our Spokane Site Visit Report
 (12/18/18) and Yakima Site Visit Report (11/13/19 draft; final report
 pending).

1 15. Courthouse-based immigration enforcement activity has decreased access
2 to the civil justice system and frustrates OCLA's ability to carry out its
3 mission.

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5 I declare under penalty of perjury that the foregoing is true and correct.

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7 EXECUTED on this 27th day of ~~November~~ 2019 in Olympia, Washington.

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11 James Bamberger
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From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Tracy, Mary](#)
Subject: FW: Proposed GR 38 and Proposed Amendment to RPC 4.4 comment
Date: Friday, January 17, 2020 12:39:59 PM
Attachments: [OCLA Comments Re GR 38 and RPC 4.4 1-17-20 Signed.pdf](#)
[Final Signed Declaration 11-27-19.pdf](#)

From: Bamberger, James (OCLA) [mailto:jim.bamberger@ocla.wa.gov]
Sent: Friday, January 17, 2020 12:39 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Stephens, Justice Debra L. <Debra.Stephens@courts.wa.gov>; Johnson, Justice Charles W. <Charles.Johnson@courts.wa.gov>; Bamberger, James (OCLA) <jim.bamberger@ocla.wa.gov>
Subject: Proposed GR 38 and Proposed Amendment to RPC 4.4 comment

Greetings,

Please find the Office of Civil Legal Aid's comments on the two above referenced rule proposals.

Best regards,

Jim Bamberger

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Gender Pronouns: He/Him/His