

# WASHINGTON STATE BAR ASSOCIATION

Board of Governors

Rajeev Majumdar, President

January 27, 2020

Susan L. Carlson  
Clerk of the Supreme Court  
Washington Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929

**re: Comment re the Matter of the Proposed Creation of GR 38—Regarding Civil Arrest,  
Publication Order 25700-A-1274**

Dear Madam Clerk:

As President of the Washington State Bar Association (WSBA), I submit the following comment on behalf of the WSBA in support the Proposed Creation of General Rule (GR) 38—Regarding Civil Arrest, as amended by one of its proponents (Northwest Justice Project) in its comment submitted on January 27, 2020.<sup>1</sup>

With this comment, we hope to provide the Court with the background as we understand it, the rationale for our support of the changes.

On November 6, 2019, the Court published suggested new General Rule (GR) 38 for public comment, with an expedited 60-day comment period. According to the materials provided to the Court by the rule proponents, the proposal seeks to prohibit civil arrests, without a judicial arrest warrant or judicial order for arrest of a person who is inside a court of law in connection with a judicial proceeding or other business with the court, or while a person is traveling to such a proceeding.

The rule proponents requested that the WSBA review and consider supporting an amended version of the proposed new rule. The Board of Governors requested that the WSBA Committee on Professional Ethics [Committee] review the proposed amendments to the Proposed General Rule 38 and advise the Board accordingly.

The Committee issued a written report on January 8, 2020, and appeared before the Board of Governors, along with representatives from the rule proponents on January 17, 2020. Following a thorough presentation and lively discussion, the WSBA endorses the new General Rule 38 as amended by the proponents and attached here. To be clear, the WSBA reviewed Northwest Justice Project's submitted amendment before it was submitted to the Court.

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<sup>1</sup> Attached here as Exhibit A is our understanding of the proponents' amended proposed rule as adopted and endorsed by the WSBA.



We agree wholeheartedly that it is a fundamental right of all Washington residents to access our courts, and that targeting those who appear at our courthouses and subjecting them to arrest without a judicial warrant for alleged civil immigration violations frustrates justice and compromises our judicial process. Such arrests breach both our basic societal assumptions about using courts to resolve disputes and foundational common law privileges.<sup>2</sup>

This civil arrest activity denies access to our justice system for large numbers of individuals and their families, who may be victims of crime seeking protection, witnesses for our own law enforcement, or simply trying to stabilize children’s lives with parenting plans. Their legitimate fears of arrest and deportation require each of us as officers of the court to engage in all possible strategies to ensure our Washington courts are open, neutral, and accessible to the public, free of restrictions that would otherwise impede the proper administration of justice. The proposed rule would help to restore access to Washington’s courts for all and maintain confidence in our judicial system.

For these reasons, the WSBA respectfully urges the Court to adopt the proposed GR 38, as amended by its proponents on January 27, 2020.

In Service,



Rajeev D. Majumdar  
WSBA President

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<sup>2</sup> Christopher N. Lasch, *A Common-Law Privilege To Protect State and Local Courts During the Crimmigration Crisis*, 127 Yale L.J. F. 410 (2017).



PROPOSED AMENDMENT LANGUAGE TO COURT RULE PROHIBITING CIVIL ARRESTS

1. No person shall be subject to civil arrest without a judicial arrest warrant or judicial order for arrest while the person is inside a court of law of this state in connection with a judicial proceeding or other business with the court.
2. No person shall be subject to civil arrest without a judicial arrest warrant or judicial order for arrest while the traveling to a court of law of this state for the purpose of participating in any judicial proceeding, accessing services or conducting other business with the court, or while traveling to return home or to employment after participating in any judicial proceeding, accessing services or conducting business with the court. Participating in a judicial proceeding includes, but is not limited to, participating as a party, witness, interpreter, attorney or lay advocate. Business with the court and accessing court services includes, but is not limited to, doing business with, responding to, or seeking information, licensing, certification, notarization, or other services, from the office of the court clerk, financial/collections clerk, judicial administrator, courthouse facilitator, family law facilitator, court interpreter, and other court and clerk employees.
3. Washington courts may issue writs or other court orders necessary to enforce this court rule.  
Unless otherwise ordered, the civil arrest prohibition extends to within one mile of a court of law. In an individual case, the court may issue a writ or other order setting forth conditions to address circumstances specific to an individual or other relevant entity.

For purposes of this rule:

- A. "Court of law" means any building or space occupied or used by a court of this state and adjacent property, including but not limited to adjacent sidewalks, all parking areas, grassy areas, plazas, court-related offices, commercial spaces within buildings or spaces occupied or used by a court of this state, and entrances to and exits from said buildings or spaces.
- B. "Court Order" and "Judicial Warrant" include only those warrants and orders signed by a judge or magistrate authorized under Article III of the United States Constitution or Article IV of the Washington Constitution or otherwise authorized under the Revised Code of Washington. Such warrants and orders do not include civil immigration warrants or other administrative orders, warrants or subpoenas that are not signed by a judge or magistrate as defined in this section. Civil immigration warrant means any warrant for a violation of federal civil immigration law issued by a federal immigration authority and includes, but is not limited to, administrative warrants issued on forms I-200 or I-203, or their successors, and civil immigration warrants entered in the national crime information center database.
- C. "Subject To Civil Arrest" includes, but is not limited to, stopping, detaining, holding, questioning, interrogating, arresting or delaying individuals by state or federal law enforcement officials or agents acting in their official capacity.

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Tracy, Mary](#)  
**Subject:** FW: WSBA Comment re the Matter of the Proposed Amendment to GR 38 - Regarding Civil Arrest; Publication Order 25700-A-1274  
**Date:** Monday, January 27, 2020 4:43:41 PM  
**Attachments:** [Comment WSBA to the Court GR 38 Proposal.pdf](#)  
**Importance:** High

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**From:** Rajeev Majumdar [mailto:rajeev@northwhatcomlaw.com]  
**Sent:** Monday, January 27, 2020 4:24 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** WSBA Comment re the Matter of the Proposed Amendment to GR 38 - Regarding Civil Arrest; Publication Order 25700-A-1274  
**Importance:** High

Dear Madam Clerk,

Please find attached a courtesy copy of the Washington State Bar Association's Comment *re* the Matter of the Proposed Amendment to GR 38 - Regarding Civil Arrest.

A hard copy will not be transmitted pursuant to Publication Order 25700-A-1274, as our comment is less than 1500 words.

Warmly,

Rajeev D. Majumdar, President  
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