

The following are each individual comments for proposed changes to **RPC 4.4 (“Respect for Rights of Third Persons”)**, available online at http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=281.

Comment #2

The comments fail to address whether a law firm may, by policy, report ***all*** non-privileged immigration status issues to INS.

The rule speaks solely of use of “threat” to obtain an advantage in a civil proceeding. A threat implies that the adverse party’s actions could prevent the reporting action. Where a law firm policy requires reporting ***all*** immigration status issues (employee or otherwise), the adverse party cannot prevent the reporting.

Q: In such a hypothetical, would the proposed comment to RPC 4.4 require the law firm to ***explicitly refrain*** from reporting a known immigration status problem, solely due to the law firm handling a civil litigation that is in some way “related” to the person having such immigration status problem?

If the answer were “yes”, the proposed comments would appear to be problematic where the adverse party is a former employee. In some situations, the law firm may be required to report (or avoid liability by reporting) the immigration status issue to ICE.

If the answer were “no”, the comments may not prevent public knowledge of the law firm policy from creating the very fear these comments are intended to prevent.

Accordingly, it is imperative that the comments carefully restrict the prohibition to achieve the policy goals without inadvertently exposing corporations (including law firms) to increased liability.

For example, the comments could indicate that inquiry and reporting are not prohibited by the existence of civil matters. The comments could also indicate that inquiry and reporting are not prohibited when there is a nexus between the civil matter and the immigration status.