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**THE ALLIANCE**  
*for Equal Justice*

MEMBER

January 31, 2020

SENT VIA ELECTRONIC MAIL TO: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

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: Support for Proposed Amendment to RPC 4.4

Dear Chief Justice Stephens and Justice Johnson:

On behalf of the Access to Justice Board, I am writing to submit our support for the proposed amendments to Comment 4 of the Rules of Professional Conduct (RPC) 4.4.

Over the last couple of years, there has been an increasing number of arrests of immigrants attempting to access the courts. This has created an environment of fear and deterred noncitizens from engaging in the justice system.

There is evidence that attorneys are reporting people to the immigration authorities in order to advance their case even though their case is unrelated to the immigration status of people they report. When a lawyer learns of a person's immigration status through their professional duties, they should not attempt to leverage that information or prevent people from accessing the courts. Doing so undermines trust in the judicial system and should be unethical.

To that end, the proposed amendments to the comments of RPC 4.4 are designed to make it clear that members of the Bar are prohibited from engaging in such action. We support the proposed amendments which are enclosed with this letter.

We believe that amendments are consistent with the following [Hallmarks for Equal Justice](#) which serve as our guiding principles:

***Inherent Right to Justice.*** *Justice and meaningful access to the civil justice system are inherent rights of all persons. We will work individually and collectively to ensure that the civil justice system is open, accessible, and*

*available to protect and promote the rights of low-income, marginalized and vulnerable people to secure justice under the law.*

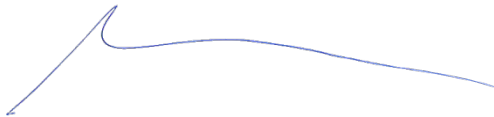
***Duty to Identify and Eliminate Barriers.*** *We will use our legal skills to identify and eliminate systems—within our own community, the justice system, and greater society—that operate to deny justice to low-income members of racial, national, ethnic and social minorities and other low-income persons who experience barriers due to explicit or implicit bias and other marginalizing dynamics. We appreciate the cultural, language and other differences among our clients, client communities and ourselves. We will take affirmative steps to develop and implement personal and organizational competencies and systems to bridge these differences without placing additional undue burdens on our clients.*

***Duty to Identify and Serve the Most Vulnerable.*** *We will focus our limited resources on meeting the civil justice needs of those who are most vulnerable and/or in need.*

It is vital we stop allowing the erosion of trust of the justice system in our communities. We urge the Court to approve the proposed amendments.

If you have any questions or would like to discuss this further, please contact our staff liaison, Equity and Justice Manager Diana Singleton, at [dianas@wsba.org](mailto:dianas@wsba.org) or 206-727-8205.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Salvador Mungia', with a long horizontal flourish extending to the right.

Salvador Mungia  
Access to Justice Board Chair

cc: Terra Nevitt, WSBA Interim Executive Director

#### **Additional Proposed Amendment to Rules of Professional Conduct 4.4 Comment (4)**

The duty imposed by paragraph (a) of this Rule includes a lawyer's assertion or inquiry about a third person's immigration status when the lawyer's purpose is to intimidate, coerce, or obstruct that person from participating in a civil or criminal matter. Issues involving immigration status carry a significant danger of interfering with the proper functioning of the justice system. See *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 230 P.3d 583 (2010). When a lawyer is representing a client in a civil or criminal matter, a lawyer's communication to a party or a witness that the lawyer will report that person to immigration authorities, or a lawyer's report of that person to immigration authorities, furthers no substantial purpose of the ~~civil~~ adjudicative system if the lawyer's purpose is to intimidate, coerce, or obstruct that person. Sharing personal information with federal immigration authorities including home address, court hearing dates, citizenship or immigration status, or place of birth, absent a court order, for the purpose of facilitating civil immigration arrests is conduct that constitutes a report of a person to immigration authorities for purposes of this rule. A communication in violation of this Rule can also occur by an implied assertion that is the equivalent of an express assertion prohibited by paragraph (a). See also Rules 8.4(b) (prohibiting criminal acts that reflect adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), 8.4(d) (prohibiting conduct prejudicial to the administration of justice), and 8.4(h) (prohibiting conduct that is prejudicial to the administration of justice toward judges, lawyers, LLLTs, other parties, witnesses, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status). Lawyers employed by local, state and federal government entities engaged in authorized activities within the scope of lawful duties are presumptively not in violation of this Rule unless there is clear indication of no substantial purpose other than to intimidate, coerce, or obstruct a third person from participating in a legal matter.

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Tracy, Mary](#)  
**Subject:** FW: Access to Justice Board Support for Proposed Amendments to RPC 4.4. Comments  
**Date:** Friday, January 31, 2020 12:59:10 PM  
**Attachments:** [image001.png](#)  
[ATJ Board Letter to Supreme Court In Support of RPC 4.4 - 1.31.20.pdf](#)

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**From:** Diana Singleton [mailto:dianas@wsba.org]  
**Sent:** Friday, January 31, 2020 12:43 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; Stephens, Justice Debra L. <Debra.Stephens@courts.wa.gov>; Johnson, Justice Charles W. <Charles.Johnson@courts.wa.gov>  
**Cc:** Mungia, Sal <SMungia@gth-law.com>; Terra Nevitt <terran@wsba.org>  
**Subject:** Access to Justice Board Support for Proposed Amendments to RPC 4.4. Comments

Dear Chief Justice Stephens and Justice Johnson,

Please see the attached letter from the Access to Justice Board outlining its support for the proposed amendments to the RPC 4.4 Comments.

Please let me know if you have any questions or concerns.

Thank you,  
Diana



**Diana K. Singleton | Equity and Justice Manager**

*Gender Pronouns: She/Her/Hers*

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The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please let Paige Hardy at [paigeh@wsba.org](mailto:paigeh@wsba.org) know.