

COMMENT ON PROPOSED AMENDMENT TO WRPC 4.4, COMMENT 4

I write in support of the proposed amendment to Comment 4. I do so from the perspective of one who provides advice to judges and lawyers throughout the Northwest on compliance with ethical responsibilities. I believe that the proposed amendment, or something similar, should be adopted because in the last month alone, I have had two requests for ethics advice from criminal defense practitioners. Each have asked for my advice about anonymously or otherwise reporting to immigration authorities the immigration status of victims/witnesses in cases in which the requesting lawyer is defending against a criminal charge brought by the undocumented alien. One case involved a rape in which the rape victim was undocumented and her removal would have completely destroyed the prosecution's ability to bring the case and it was in a jurisdiction in which the county prosecutor's office has been reluctant to seek temporary status for crime victims to avoid deportation in order to testify. The other case involved a critical witness to the crime without whose testimony it is unlikely the criminal charges could be tried. Although in both cases I advised the lawyers that I would not recommend their proposed course of conduct, the absence of express language in Comment 4 to WRPC 4.4 making it clear that the restrictions apply in criminal proceedings as well as civil proceedings allowed both lawyers to debate the ethical propriety of such a course of conduct. It is particularly ironic that Comment 4 does not expressly include criminal proceedings as well as government lawyers engaged in prosecution of cases. Given that the Washington Supreme Court's concerns about ICE practices at courthouses is expressly based on the chilling affect it has on victims and witnesses coming forward to allow the criminal justice system to operate properly. There is no good policy reason to exclude criminal proceedings from Comment 4 and every reason to include it from a societal, police, prosecutorial, and defense perspective. I strongly support this proposed amendment or something similar to it.

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