

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Tracy, Mary](#)
Subject: FW: Proposed Changes to RPC 4.4 - Respect for Rights of Third Person
Date: Thursday, February 6, 2020 8:00:21 AM

From: Michael Farrell [mailto:michael.farrell42@gmail.com]
Sent: Wednesday, February 5, 2020 9:10 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Changes to RPC 4.4 - Respect for Rights of Third Person

I want to provide comment on the proposed comment to RPC 4.4. I do not support the amendment to Comment 4 of RPC 4.4.

While I do not support courthouse arrests the proposed comment is over broad and has significant unintended consequences which would hamper the state from pursuing justice against criminals as well as disincentivized the undocumented from accessing justice.

The comment states that a lawyer who represents the state or its political subdivisions is prohibited from reporting a party or witness to immigration authorities. This plainly subverts the laws that congress has enacted on immigration and therefore would make RPC 4.4 ripe for challenge under the U.S. Constitution Supremacy Clause.

The comment goes no to state that a communication can be an express or implied assertion. This language could place state and local prosecutors in jeopardy when charging those with out legal status, Legal Permanent Residents, and those with Conditional Status with crimes. This comment would prohibit prosecutors from charging state law offenses that carry immigration consequences, e.g. Aggravated Felonies (Sexual Abuse of a Minor and crimes involving physical violence against a victim) and Crimes Involving Moral Turpitude (fraud based crimes), in order to secure a plea to a lesser crime. The comment would remove leverage from state prosecutors seeking to get justice for crime victims while conserving limited resources. The plea bargain is a tool of judicial economy which would be lessened as a result of the proposed comment.

Additionally by restricting state government lawyers from communicating regarding individual's immigration status this would have a negative impact on state law enforcement and their ability to obtain informants when fighting human trafficking, prostitution, and smuggling. Often law enforcement will encounter a potential informant and to convince this person to act as an informant by indicating the potential negative immigration consequences of charging this person with a crime. An individual who decides to act as an informant and aids law enforcement in combatting crime would have path to legal status. That being an S visa which is reserved for specifically for informants. The comment to the RPC would make it harder for law enforcement to break up prostitution, human trafficking, and smuggling rings because this often requires the use of informants. It would also remove an avenue for the undocumented to gain status as state prosecutors could not be involved in the securing of potential informants. If the whole point of the proposed comment is that undocumented immigrants gain access to justice the effect of the comment is that less will have access because there will be less informants for law enforcement to use against smugglers and human traffickers which typically prey on the undocumented.

If it is the intention of the Washington Supreme Court to prevent courthouse arrests because of the chilling effect they would have on immigrants and the undocumented accessing justice then prohibiting courthouse immigration arrests should be effected by a different rule. By placing the duty on attorneys, government or not, this has too many unforeseen consequences which ultimately will restrict access to justice for immigrants and the undocumented.

For these reasons I do not support the proposed amendment to Comment 4 of RPC 4.4.

Michael Farrell