

February 2, 2020

By Email and 1st Class U.S. Mail

Susan L. Carlson
Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
supreme@courts.wa.gov

Dear Madam Clerk,

We are retired Washington judges who feel strongly that lawyers should be found to breach their ethical duties if they use a person's immigration status to intimidate or coerce that person from participating in our courts. We therefore submit these comments in support of the Proposed Amendment to Comment to Rule of Professional Conduct 4.4 – Respect For Rights Of Third Persons, published for comment in November 2019.

The functioning of, and confidence in, our courts and judicial system are severely impaired if a lawyer threatens, explicitly or impliedly, to disclose the immigration status of a person necessary or helpful to court proceedings. Important witnesses and other individuals will be deterred from coming to assist courts, counsel, and the parties in ensuring the fair, just, and truthful resolution of disputes. Our courts must be viewed as safe places where individuals can participate without fear that they will be apprehended by immigration authorities.

The comments to RPC 4.4 already prohibit lawyers from conduct that intimidates individuals based on their immigration status on civil proceedings. The proposed amendments extend the prohibition to criminal proceedings, and we support that extension.

Thank you for your consideration of the proposed amendment to the comment to RPC 4.4.

Justice Bobbe Bridge (ret.), Washington Supreme Court and King County Superior Court
Judge Harriett M. Cody (ret.), King County Superior Court
Judge Ronald E. Cox (ret.), Washington Court of Appeals, Division I
Judge Tari S. Eitzen (ret.), Spokane County Superior Court
Judge Deborah Fleck (ret.), King County Superior Court
Justice Faith Ireland (ret.), Washington Supreme Court and King County Superior Court
Judge Eileen Kato (ret.), King County District Court Judge James M. (Jim) Murphy (ret.), Spokane
Judge Kenneth Kato (ret.), Washington Court of Appeals, Division III, and Spokane County
Superior Court

Judge James M. (Jim) Murphy (ret.), Spokane County Superior Court and Spokane County District Court

Judge Kathleen O'Connor (ret.), Spokane County Superior Court

Judge Michael Spearman (ret.), Washington Court of Appeals, Division I, and King County Superior Court

Judge Dennis Yule (ret.), Benton and Franklin Counties Superior Court

Proposed Amendments to Rules of Professional Conduct 4.4 Comment (4)

Amendments are shown by strike-outs and underline.

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 but not limited to, 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: Comments by retired Washington Judges In support of GR 38 and amendment to RPC 4.4 comments
Date: Monday, February 3, 2020 8:14:01 AM
Attachments: [Retired judges in support of amendment to RPC 4.4 comments FINAL.pdf](#)
[Retired judges in support of GR 38 FINAL.pdf](#)

From: Bannai, Lorraine [mailto:bannail@seattleu.edu]
Sent: Sunday, February 2, 2020 7:28 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments by retired Washington Judges In support of GR 38 and amendment to RPC 4.4 comments

Attached, please find two letters submitted by retired Washington judges, one in support of GR 38 and the other in support of amendments to the RPC 4.4 comments. Thank you.

Lorraine K. Bannai
Professor of Lawyering Skills and
Director, Fred T. Korematsu Center for Law and Equality

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