

To: The Clerk of the Washington State Supreme Court

RE: COMMENT ON PROPOSED RULES : Proposed comment to RP 4.4 and New Proposed GR 38

Introduction

In an age where the Court touts the openness and transparency of the court system it strikes one as contradictory , if not hypocritical that the following rules are NOT to be given a public hearing and that there is a call for an expedited review (30 days or less) .

If the Court is truly going to claim the mantle of being “open and transparent ” then a public hearing and extended period of review and comment is necessary .

And notice needs to be put out to the public and governmental entities that are affected including state local and federal governments .

Proposed Comment to RPC 4.4 Respect for Rights of Third Persons

Unfortunately , no documentation supporting the claims /conclusions of the proponents are attached to the proposed comment . In essence for a reviewer of the proposed comment , it is baseless and without fact .

The proposed rule does not distinguish between “ lawful immigrants “ and “illegal immigrants” .

The rule speaks to only “immigrants “ .

The rule proposes special treatment to immigrants as opposed to a non immigrant . A non immigrant who comes to court with an arrest warrant or bench warrant outstanding still may be arrested . It appears this proposed rule gives special status / treatment to illegal immigrants or all immigrants based on capricious political whims.

Further the proposed rule / comment states that the “technical amendment comment “ to RPC 4.4 that all lawyers including prosecutors are not contributing to immigration arrests . In essence the proposed comment to the rule requires a lawyer and in particular a prosecutor not to enforce the law when they know there is a violation of law . Turning a blind eye to the violation of law does not lend itself to respect for the law . In comparison would an attorney observing two “non immigrants “ conducting a drug deal on the lawn of the courthouse grounds (which I have personally observed a number of times) be in violation of the rule if the attorney reported it ?No , because the two are “non immigrants” but if they were immigrants then there is a violation of the rule . There is no logical way to make this special class / treatment or status conform with the law . That is because it is political !

In the end this proposed comment requires attorneys to turn the other way and not uphold the law because of the political debate on immigration.

And that is just it – the immigration debate requires a political resolution and not a court rule resolution, that furthers a political position on behalf of those persons who want Washington to be a sanctuary state.

New Proposed General Rule 38

Again if the Court is to claim the mantle of being open and transparent a full public hearing and extended comment period is warranted.

Again the rule does not distinguish between legal and illegal immigrants

It creates a special privilege for immigrants of “immunity /sanctuary “ for immigrants whether legal or illegal , as opposed to non immigrants .

The claims of the use of force , not able to participate in civil litigation or criminal litigation in the comments do not appear to be statistical and appear to be anecdotal .

The rule /comment to the rule does NOT define what “unwarranted immigration enforcement actions” are

And the proposed rule purports to create a CAUSE OF ACTION against state and federal actors/agents

“The proposed rule recognizing the civil arrest privilege is one such strategy. It would prohibit unwarranted immigration enforcement actions and help to restore access to Washington’s courts for all, renew confidence in our judicial system, **and provide a basis to pursue legal action against state and federal actors who violate orders invoking the privilege.** Accordingly, it is appropriate and necessary that the Court adopt the proposed rule.”

Further the comments to the proposed rule erroneously claims that :

“This rule does not create or resolve conflicts with statutes, case law, or other court rules.”

This is false ! It clearly conflicts with the federal law under Title 8 USCA et. seq and the enforcement of that title and clearly is the real reason the proponents seek the adoption of the rule. For instance 8 USCA Sec. 1183 lists inadmissible aliens for health related reasons, conviction for certain crimes i.e. moral turpitude , multiple criminal convictions , drug trafficking , prostitution and vice , those who have asserted immunity from prosecution and more.

Clearly this proposed new court rule conflicts with the federal statutes and the federal governments prosecution of such cases. And to create a new cause of action based on court rule

simply is not appropriate or legal and goes way beyond the bounds of regulating the practice of law.

Conclusion

I would urge the Court not to adopt the proposed comment to RPC 4.4 and the new proposed rule . At the very least I would urge the Court to extend the comment period and to reach out to “stakeholders” or interested parties for their comments . I would further urge the Court to hold public hearings on the rule. And I would urge the Court not to be involved in the “politics of immigration” as clearly Congress and the State Legislature must deal with this political issue – not the Court .

Thank you ,

Stephen Kozer

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Member of the Washington Defender Association

P.S. I understand from WDA Board member ,that they were given only 3 hours or so to comment on WDA position. It is questionable if the WDA representative , whose salary is funded by an “immigration association “ represents the entire WDA board

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Comment on Rules

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