

Yvonne K. Chapman
Attorney at Law



Phone: 901-494-4420

February 8, 2020

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

Re: Proposed Rule Change RPC 4.4

To the Clerk,

The Oath of Attorney, which all applicants shall take, includes these first two affirmations:

- (1) I am fully subject to the laws of the State of Washington and the **laws of the United States and will abide by the same**, and
- (2) I will **support** the constitution of the State of Washington and **the constitution of the United States**. APR 5(g) (emphasis added).

The proposed rule change, which declares it is a violation of professional conduct for a lawyer to assist with civil immigration enforcement, is unconstitutional.

The policy of the U.S. Immigration and Customs Enforcement service regarding enforcement of federal law inside courthouses is common sense:

1. Because some law enforcement agencies no longer honor ICE detainers or limit ICE's access to their detention facilities, aliens, many of whom have serious criminal histories, are released to the street, threatening public safety.
2. Safety risks for everyone are substantially diminished because courthouse visitors are typically screened upon entry to search for weapons and other contraband.

I will continue to support and defend the U.S. Constitution and state and federal laws. If an individual has violated such laws and is a threat to the safety and security of our country, I will report that individual to law enforcement, regardless of his or her citizenship status. In some instances, ICE may be the appropriate agency to receive that report.

Sincerely

Yvonne K. Chapman

Attached:
Excerpt of proposed RPC 4.4 with highlights
U.S. ICE Policy Regarding Courthouse Arrests

PROPOSED RULES OF PROFESSIONAL CONDUCT 4.4 COMMENT [4]

[4] The duty imposed by paragraph (a) of this Rule includes a lawyer's assertion or inquiry about any ~~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, or otherwise assist with civil immigration enforcement. Issues involving immigration status carry a significant danger of interfering with the proper functioning of the justice system. ... When a lawyer is representing a client ~~in a civil matter~~, whether the client is the State or one of its political subdivisions, an organization, or an individual, 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 and violates 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). 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 is in violation of this Rule. ...

ICE POLICY REGARDING COURTHOUSE ARRESTS

Retrieved 02/08/2020 from <https://www.ice.gov/ero/enforcement/sensitive-loc>

(Note: Italics added for emphasis)

Courthouse Arrests

Why has ICE issued a policy on enforcement actions inside courthouses?

U.S. Immigration and Customs Enforcement has for some time had established practices in place related to civil immigration enforcement inside courthouses. However, the increasing *unwillingness of some jurisdictions to cooperate with ICE in the safe and orderly transfer of targeted aliens inside their prisons and jails* has necessitated additional at-large arrests, and ICE felt it was appropriate to more formally codify its practices in a policy directive that its law enforcement professionals and external stakeholders can consult when needed. It is important that such arrests, including those taking place inside courthouses, continue to be undertaken with the same level of professionalism and respect that ICE officers and agents are committed to exhibiting every day.

Why does ICE feel it's necessary to conduct enforcement inside a courthouse?

Federal, state, and local law enforcement officials routinely engage in enforcement activity in courthouses throughout the country, as many individuals appearing in courthouses are wanted for unrelated criminal or civil violations. ICE's enforcement activities in these same courthouses are consistent with longstanding law enforcement practices nationwide. *Courthouse arrests are often necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody of aliens from their prisons and jails.* Further, many of the aliens ICE is targeting have taken affirmative measures to avoid detection by ICE officers. *Individuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband. Accordingly, civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents.*

Will all aliens be subject to arrest inside courthouses?

ICE will not make civil immigration arrests inside courthouses indiscriminately. *ICE civil immigration enforcement actions inside courthouses include actions against specific, targeted aliens with criminal convictions, gang members, national security or public safety threats, aliens who have been ordered removed from the United States but have failed to depart (fugitives), and aliens who have re-entered the country illegally after being removed,* when ICE officers or agents have information that leads them to believe the targeted aliens are present at that specific location. Other aliens encountered during a civil immigration enforcement action inside a courthouse, such as family members or friends accompanying the target alien to court appearances or serving as a witness in a proceeding, will not be subject to civil immigration enforcement action, absent special circumstances, such as *when the individual poses a threat to public safety* or interferes with ICE's enforcement actions.

Is there any place in a courthouse where enforcement will not occur?

ICE officers and agents will generally avoid enforcement actions in courthouses, or areas within courthouses, that are dedicated to non-criminal (e.g., family court, small claims court) proceedings. In those instances in which an enforcement action in such locations is operationally necessary, the

approval of the respective Field Office Director (FOD), Special Agent in Charge (SAC), or his or her designee is required.

Is it legal to arrest suspected immigration violators at a courthouse?

Yes. *The arrest of persons in a public place based upon probable cause is legally permissible.* ICE officers and agents are expressly authorized by statute to make arrests of aliens where probable cause exists to believe that such aliens are removable from the United States.

Why does ICE make arrests at courthouses? Are these planned ahead of time?

ICE, like other federal, state, and local law enforcement agencies, makes arrests at courthouses to ensure the laws within the agency's jurisdiction are enforced in a safe and efficient manner. ICE arrests at courthouses are the result of targeted enforcement actions against specific aliens. As with all planned enforcement actions, ICE officers exercise sound judgment when enforcing federal law and make substantial efforts to avoid unnecessarily alarming the public. Consistent with officer and public safety, ICE officers also make every effort to limit the time spent at the planned place of arrest.

Why do courthouse arrests seem to be occurring more frequently?

In years past, most individuals arrested at a courthouse would have been turned over to ICE by local authorities upon their release from a prison or jail based on an ICE detainer. When criminal custody transfers occur inside the secure confines of a jail or prison, it is far safer for everyone involved, including officers and the person being arrested. *Now that some law enforcement agencies no longer honor ICE detainers or limit ICE's access to their detention facilities, these aliens, many of whom have serious criminal histories, are released to the street, threatening public safety. Because courthouse visitors are typically screened upon entry to search for weapons and other contraband, the safety risks for the arresting officers, the arrestee, and members of the community are substantially diminished.* In such instances, ICE officers and agents make every effort to take the person into custody in a secure area, out of public view, but this is not always possible. Further, when these arrests do occur, ICE makes every effort to ensure that the arrest occurs after the matter for which the alien was appearing in court has concluded.

Are there other advantages to arresting criminals and fugitives at a courthouse?

Yes, *when ICE officers and agents have to go out into the community to proactively locate these aliens, regardless of the precautions taken, it puts personnel and potentially innocent bystanders at risk.* Moreover, tracking down priority targets is highly resource-intensive. It is not uncommon for criminal aliens and fugitives to utilize multiple aliases, provide authorities with false addresses, and be working illegally with fraudulent documentation or "off the books." Absent a viable residential address or place of employment, a courthouse may afford the most likely opportunity to locate a target and take him or her into custody.

Last Reviewed/Updated: 09/25/2018

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Tracy, Mary](#)
Subject: FW: Proposed Rules of Court - Comment regarding RPC 4.4 Comment [4]
Date: Monday, February 10, 2020 8:02:17 AM
Attachments: [Comment regarding Proposed Changes to RPC 4.4.pdf](#)

From: Yvonne Chapman [mailto:chapmanyvonnek@yahoo.com]
Sent: Saturday, February 8, 2020 10:08 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Rules of Court - Comment regarding RPC 4.4 Comment [4]

To the Clerk of Washington Supreme Court,

Please see attached comment.

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