



March 3, 2020

Via email only to: supreme@courts.wa.gov

Chief Justice Debra L. Stephens
Members of the Washington State Supreme Court
c/o Ms. Susan L. Carlson
Clerk of the Supreme Court
P.O Box 40929
Olympia, WA 98504-0929

Re: Support for Proposed General Rule 38 and RPC 4.4

Dear Chief Justice Stephens, Members of the Supreme Court, and Madam Clerk:

We write to you today to support the adoption and implementation of proposed General Rule (GR) 38 and proposed comment 4 to Rules of Professional Conduct (RPC) 4.4. The Center for Justice applauds the Court's efforts to date focused on protecting the rights of the public to access our court system.

The Center for Justice is a nonprofit public interest law firm serving greater Spokane, Washington. We provide direct services to low-income people focused on housing justice, criminal justice and reentry, and drivers relicensing. We also engage in policy advocacy and impact litigation, collaborating frequently with other community organizations and Alliance for Equal Justice members on "upstream" solutions to address systemic injustices.

Proposed GR 38 provides that "no person shall be subject to civil arrest without a judicial arrest warrant or judicial order for arrest while the person is inside a court of law of this state in connection with a judicial proceeding or other business with the court." This rule will clarify the privilege against civil arrest, established long ago in Washington State case law. *See, e.g., State v. ex rel Gunn v. Superior Court of King County*, 111 Wash 187 (1920). This privilege actively prohibits civil arrests without a judicial arrest warrant or order from being carried out against a given person attending to business within a Washington court, and is not limited to transit to and from the courthouse.

Numerous incidents involving warrantless arrests by federal civil immigration enforcement are well-documented across 18 Washington counties.¹ Agents from ICE

¹ Washington State looks to end courthouse arrests; <https://crosscut.com/2020/01/washington-state-looks-end-ice-courthouse-arrests>

(Immigration and Customs Enforcement) and CBP (Customs and Border Protection) are regularly detaining and arresting Washington residents both inside and directly outside of Washington district, municipal and superior courts. The actions of immigration enforcement in courthouses are unfortunately now well known throughout immigrant communities within the state, and as a result these individuals are experiencing distrust of our justice system. Individuals and even entire families are hesitant to engage with the justice system, and serious implications abound — for example, victims may be afraid to report crimes for fear they (or their family) would have to attend court and risk danger from immigration agents. Individuals may forego dealing with simple matters, such as traffic tickets and other relatively minor matters, and are choosing not to access other court services, thereby marginalizing those communities further.

These immigration practices compromise our judicial process and are frustrating to the goals of access to justice. So long as courts are being viewed as “staging grounds” for immigration agents, individuals from immigrant communities, and even persons who have immigration status, such as naturalized persons, will tend to avoid interacting with the courts out of fear. Individuals should not be forced to choose between accessing the courts and potential detainment or deportation. Accessing the courts should be an experience free from government harassment and abuse. Crime victims who are not able to access the justice system are being re-traumatized — despite surviving abuse, domestic violence, and many other difficult situations, the very real threat of civil arrest and deportation does not protect them.

Article I, Section 10 of the Washington State Constitution provides that “justice in all cases shall be administered openly and without unnecessary delay.” Const. Art. I, § 10.² This means that all Washington residents have a fundamental right to access the state’s courts. Additionally, the State of Washington recognizes that there are specific barriers to accessing justice for immigrant victims of crime. In 2018, the legislature passed the Safety and Access for Immigrant Victims Act which aims to ensure that immigrant victims of crime “are able to access the protections available to them under the law by supporting greater consistency across law enforcement, prosecution and the courts.”³ Yet, current civil arrest practices are in fact limiting and denying access to our justice system for numerous individuals and their families. Fears of arrest and deportation for civil immigration violations are legitimate, and ultimately require GR 38 to be enacted, so that Washington courts may be open, neutral and accessible.

The proposed GR 38 offers a workable solution by ensuring access to justice, supporting the effective administration of justice, and promoting the constitutional rights of all. Courts, judges, lawyers, and other actors in our legal system cannot fully deliver the promise of equal access to justice and due process of law if entire segments of the community are afraid to access the courts. Furthermore, the First and Fifth Amendments also protect access to the courts as a fundamental right—the impact of immigration enforcement within courthouses undermines public safety and equal protection under the law which is shared by non-citizens

² See Washington State Constitution; <http://leg.wa.gov/lawsandagencyrules/documents/12-2010-wastateconstitution.pdf>

³ See the Safety and Access for Immigrant Victims Act. <http://www.commerce.wa.gov/wp-content/uploads/2013/01/12-27-2018-CSHD-OCVA-Safety-and-Access-for-Immigrant-Victims-One-Page.pdf>

and citizens alike. For those who have openly opposed GR 38, it is important to keep in mind that GR 38 would not interfere with enforcement of any current judicial warrants, and therefore would not impose an undue burden on ICE and CBP. The Center for Justice does not believe the harm to the community in continuing to allow civil arrests greatly outweigh the potential risks related to community safety, since legal processes already exist that keep the community safe.

Additionally, the Center writes in strong support of the new proposed comment 4 to RPC 4.4 prohibiting a lawyer's assertion or inquiry about a third person's immigration status, where the lawyer's purpose is to intimidate, coerce, or obstruct that person from participating in a civil matter. This prohibition against reporting individuals to immigration authorities is rooted in respect for the rights of others.

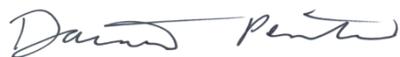
The Center is firm in its belief that no one should fear that their immigration or citizenship status prevents them from seeking justice. Public trust in our justice system is a cornerstone of our judicial system—when an attorney is viewed by segments of the public as simply an extension of the federal immigration system, those without immigration status are less likely to go to court. Access to justice is denied when many in our communities are afraid to access the courts.

We cannot close the doors to the most vulnerable in our society, limiting the fair and equal treatment of members of our community who deserve to be able to have trust and confidence in the courts. Washington's courthouses must remain places where anyone can safely attend a hearing, be a witness, and protect their fundamental rights.

In conclusion, the Center for Justice supports adoption of proposed GR 38 and the proposed comment 4 to RPC 4.4, and respectfully urges the Supreme Court of Washington to adopt these rules in order to protect access to justice for all Washingtonians.

Thank you for the opportunity to provide comments regarding this important matter.

Very truly yours,

A handwritten signature in cursive script that reads "Dainen N. Penta".

Dainen N. Penta
Executive Director & Attorney
Center for Justice

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Tracy, Mary](#)
Subject: FW: Comment re: proposed GR 38 and Comment 4 to RPC 4.4
Date: Tuesday, March 3, 2020 11:17:44 AM
Attachments: [GR 38 and RPC 4.4-final.pdf](#)

From: Dainen Penta [mailto:dpenta@cforjustice.org]
Sent: Tuesday, March 3, 2020 11:15 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment re: proposed GR 38 and Comment 4 to RPC 4.4

Hello Ms. Carlson,

Attached on behalf of the Center for Justice please find written comments in support of proposed GR 38 and comment 4 to RPC 4.4.

If there are any questions please do not hesitate to contact me.

Thank you,

Dainen N. Penta | Attorney | Executive Director | *pronouns: he/him*
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