

# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE PROPOSED  
AMENDMENT TO RPC 4.4 COMMENT [4]

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ORDER NO.  
  
25700-A-1289

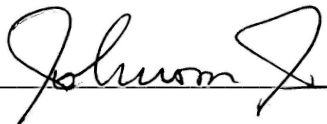
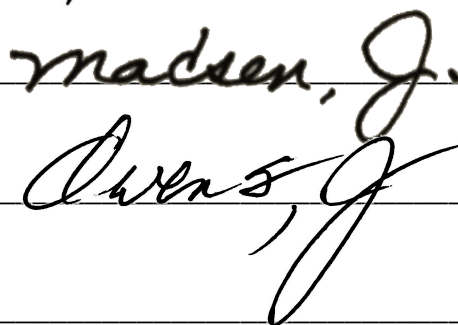
The Washington Defender Association, et al., having recommended the expeditious adoption of the proposed amendment to RPC 4.4 Comment [4], and the Court having considered the proposed amendment, and having determined that the suggested amendment will aid in the prompt and orderly administration of justice;




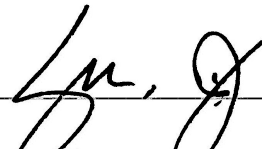
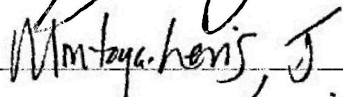
Now, therefore, it is hereby

ORDERED:

- (a) That the proposed amendment as attached hereto is expeditiously adopted.
- (b) That pursuant to the emergency provisions of GR 9(j)(1), the proposed amendment will be published expeditiously in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 1st day of April, 2020.

  
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## SUGGESTED RULE CHANGES

### RPC 4.4: RESPECT FOR RIGHTS OF THIRD PERSON

(a) – (b): Unchanged

#### Comment

Comment [1] – [3]: Unchanged

#### Additional Washington Comments (4-5)

[4] 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 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 federal immigration authorities engaged in authorized activities within the scope of lawful duties shall not be deemed 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.

[5] Unchanged