

Written testimony of Attorney Joachim Morrison, Columbia Legal Services, Wenatchee, Washington related to House Bill 4111.

- Good afternoon, Chair Krup, Vice Chairs Wallen and Chotzen, and other members of the committee
- My name is Joe Morrison and I have been an employment law attorney in WA state for over 30 years
- I helped develop Washington's evidentiary rule—which came into effect in 2018—which prevents irrelevant immigration status evidence in the trial process
- The goal of the rule was to have cases decided on the merits, not upon human prejudice
- One of the primary drivers to adopt the rule involved a construction worker, Alex Salas, who fell off unsafe scaffolding and injured himself so badly, he required 13 surgeries
 - In his first trial, the jury found the scaffolding company was negligent, but awarded no monetary damages after the court allowed in evidence of Mr. Salas's immigration status
 - The WA Supreme court ordered a re-trial writing:
 - **“Issues involving immigration can inspire passionate responses that carry a significant danger of interfering with the fact finder's duty to engage in reasoned deliberation”**
 - With the immigration evidence removed, a second jury awarded Mr. Salas \$2.6 million in damages

- His case led to the adoption of the rule, and apart from some minor non-substantive edits in 2021 (attached below), the rule's been in effect for over 8 years and there's been no outcry from either the bench or the bar which indicates to me, the rule has hit its mark
- Virtually all appeals have involved criminal cases, with almost nothing on the civil side
- In my opinion, the rule has delivered on its promise to provide clear guidelines for judges and predictability to litigants—both of which were absent prior to the rule
- Judges have also used the rule to prevent invasive inquiries during the pre-trial fact investigation (discovery) by issuing protective orders
- In sum, I believe the rule has significantly improved WA's court system by providing clear guidance to busy trial courts to help them make the right decision the first time and avoid unnecessary and costly appeals

Attachment

Showing differences between versions effective [See Text Amendments] to November 1, 2021 and November 2, 2021
[current]

Key: ~~deleted text~~ added text

5 deletions · 10 additions

Washington Rules of Evidence, ER 413 RULE 413. IMMIGRATION STATUS

(a) Criminal Cases; Evidence Generally Inadmissible. In any criminal matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the criminal offense with which the defendant is charged, or to show bias or prejudice of a witness pursuant to [ER 607](#). The following procedure shall apply prior to any such proposed uses of immigration status evidence to show bias or prejudice of a witness:

- (1) A written pretrial motion shall be made that includes an offer of proof of the relevancy of the proposed evidence.
- (2) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.
- (3) If the court finds that the offer of proof is sufficient, the court shall order a hearing outside the presence of the jury.
- (4) The court may admit evidence of immigration status to show bias or prejudice if it finds that the evidence is reliable and relevant, and that its probative value outweighs the prejudicial nature of evidence of immigration status.
- (5) Nothing in this section shall be construed to exclude evidence if the exclusion of that evidence would ~~result in the violation of~~ violate a defendant's constitutional rights.

(b) Civil Cases; Evidence Generally Inadmissible. Except as provided in ~~subsection~~ subsection (b)(~~1~~1), evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of a party's cause of action.

(1) *Posttrial Proceedings.* Evidence of immigration status may be submitted to the court through a posttrial motion made under [CR 59\(h\)](#) or [CRLJ 59\(h\)](#):

- (A) ~~Where~~where a party who is subject to a final order of removal in immigration proceedings was awarded damages for future lost earnings; or
- (B) ~~Where~~where a party was awarded reinstatement to employment.

(2) *Procedure to review evidence.* Whenever a party seeks to use or introduce immigration status evidence, the court shall conduct an in camera review of such evidence. The motion, related papers, and record of such review may be sealed pursuant to [GR 15](#), and shall remain under seal unless the court orders otherwise. If the court determines that the evidence may be used, the court shall make findings of fact and conclusions of law regarding the permitted use of that evidence.

Credits

[Adopted effective September 1, 2018. Amended effective November 2, 2021.]