



*Pacific County*  
**PROSECUTING ATTORNEY**

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Mark McClain, Prosecutor

July 3, 2017

Susan L. Carlson  
Clerk of the Washington State Supreme Court  
c/o Washington State Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929  
(Via email: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov))

RE: Comment on Proposed Rule ER 413

Dear Ms. Carlson,

I write in support of ER 413, specifically making ones immigration status inadmissible at trial. As a prosecutor I have certainly seen a number of defense attorneys intimidate, in a no so subtly way, witnesses based on their immigration status. This conduct is repugnant and has no place in our jurisprudence. I applaud courts like *State v. Streepy* (No. 7475-2-1 (July 2, 2017) who make it clear immigration status is not a relevant issue; however, I believe a rule would greatly assist. I understand the ACLU stands in opposition to this rule. I hope wisdom and the rule of law will overcome what appears to be a grossly inconsistent position.

Respectfully,

Mark McClain

**Tracy, Mary**

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Monday, July 03, 2017 2:25 PM  
**To:** Tracy, Mary  
**Subject:** FW: Comment on ER 413  
**Attachments:** 20170703\_132732.pdf

Forwarding.

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**From:** Mark McClain [mailto:[mmcclain@co.pacific.wa.us](mailto:mmcclain@co.pacific.wa.us)]  
**Sent:** Monday, July 3, 2017 2:02 PM  
**To:** OFFICE RECEPTIONIST, CLERK <[SUPREME@COURTS.WA.GOV](mailto:SUPREME@COURTS.WA.GOV)>  
**Subject:** Comment on ER 413

Attach, please find my comment on the proposed ER 413 rule. Thank you.

**Tracy, Mary**

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Friday, June 16, 2017 1:36 PM  
**To:** Tracy, Mary  
**Subject:** FW: Proposed new Evidence Rule 413

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**From:** Christopher Dumm [mailto:chris@cjduddlaw.com]  
**Sent:** Friday, June 16, 2017 10:50 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Proposed new Evidence Rule 413

Justices,

I urge the Supreme Court to reject this proposed new rule of evidence, because it imposes unnecessary and significant barriers to criminal defendants' rights under the Confrontation Clause. When a prosecution witness has been offered free permanent residency in the United States in return for cooperation with the prosecution, in the form of a U-Visa, the defendant has a constitutional right to present evidence of this incentivized testimony. These U-Visas are extremely valuable and beneficial to the witnesses, and the defendant must be able to show this to the jury in order to effectively confront their accusers.

If the State were paying witnesses tens of thousands of dollars for their testimony, it would be outrageous to bar the defense from cross-examining the witness regarding such payment. Yet this proposed rule does exactly the same thing, under the guise of "protecting" immigrant witnesses from embarrassment or prejudice. This is not an unworthy goal in itself, but in a criminal trial it is the Defendant's rights that are of paramount importance. Immigrant-witnesses with U Visas will not lose their jobs, their homes, or their freedom if the jury disbelieves them.

The proponents of this rule compare it to the 'Rape Shield' statutes in Washington and other states, but this comparison is entirely inappropriate. Rape victims are not given an enormously valuable legal benefit by the State in return for their inculpatory testimony. It is not the immigrant-witness' status that is the goal of proper cross-examination: it is the quid pro quo by which they are being rewarded for the giving of particular testimony.

Please reject this proposed new rule, whose passage would only lead to years of criminal appeals at the state and federal level. The sponsors of this rule cannot point to any individual harm caused to any immigrant-witnesses in all the years that this rule has not been in place, but the harm to criminal defendants would be immediate and concrete.

Thank you for your time and consideration,

Christopher Dumm  
Attorney at Law  
WSBA #28555

**Tracy, Mary**

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Friday, June 16, 2017 10:05 AM  
**To:** Tracy, Mary  
**Subject:** FW: New Rule Of Evidence 413 — Immigration Status

Is this for you Mary?

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**From:** Angus Lee [mailto:angus@angusleelaw.com]  
**Sent:** Friday, June 16, 2017 9:39 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** New Rule Of Evidence 413 — Immigration Status

I oppose the proposed evidence rule 413.

The new evidence rule will only be used to create a procedural burden on criminal defendants who seek to impeach government witnesses who have been granted a U-Visa by the prosecution. The prosecutor, not the defense, has the ability to grant a U-Visa.

This proposed rule will serves only the interest of making defense impeachment of witnesses more difficult, and is not necessary. Issues of this nature can always be addressed in motions in limine.

Angus

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