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May 19, 2016

VIA EMAIL

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments: ACPE/Medical Marijuana Law
Richard J. Hughes Justice Complex
PO Box 037
Trenton, NJ 08625-0037

Re: Amendment to Rule of Professional Conduct 1.2(Medical Marijuana Laws)

Dear Judge Grant:

I write to respectfully express my concern with regard to the proposed modification to Rule of Professional Conduct 1.2(d). The proposed language reads:

> A lawyer may counsel a client regarding New Jersey's marijuana laws and assist the client to engage in conduct that the lawyer reasonably believes is authorized by those laws. The lawyer shall also advise the client regarding related federal law and policy.

Last year, I raised with the Advisory Committee on Professional Ethics the concern that lawyers advising licensed medical marijuana company (LMMC) need clarity as to the scope of that lawyer's ability to advise and represent a New Jersey LMMC. The proposed language authorizes a lawyer representing a New Jersey LMMC to "counsel" a client "regarding New Jersey's marijuana laws," which presumably means the New Jersey Compassionate Use Act, N.J.S.A. §§ 24:61-1 et seq. **First**, may a lawyer represent that client in Court or merely provide legal advice (counsel)? A review of RPC 1.2(b) and RPC 1.2(c) show that RPC 1.2

contemplates a distinction between counseling a client and representation. I submit that counseling is a narrower term (meaning providing advice) whereas representation is broader (and incorporates both providing advice and representing in Court or administrative proceedings). For this reason, the phrase "may counsel" is unnecessarily restrictive and should instead be "may represent."

Second, the proposed language is ambiguous and could be construed narrowly to permit a lawyer to advise an LMMC solely regarding New Jersey's medical marijuana laws. New Jersey LMMC's require advice well beyond the Compassionate Use Act. The proposed language does not appear to authorize a lawyer to provide advice on laws regarding taxation, labor and employment, real estate, corporate form, Directors & Officers, insurance, litigation, and the plethora of other related laws necessary to the operation of a business in New Jersey. LMMC's do not exist in a vacuum but rather they need to purchase land, pay utility bills, have employees (and therefore employee disputes), appoint directors and officers, and engaged in all aspects of commerce of any other corporation in the State of New Jersey. For that reason, I am concerned that the language "regarding New Jersey's marijuana laws" would overly restrict the lawyers to simply advising regarding the medical marijuana law, but regarding all other laws necessary for the ability of a company to function.

To clarify the proposed amendment to RPC 1.2, I respectfully propose the following language:

> RPC 1.2(d) notwithstanding a~~A~~ lawyer may represent ~~counsel~~ a client authorized pursuant to New Jersey's Marijuana laws. The lawyer's representation of such a client is to be limited in scope to the extent that the lawyer would be able in the ordinary course to represent any other licensed business in New Jersey. ~~a client regarding New Jersey's marijuana laws and assist the client to engage in conduct that the lawyer reasonably believes is authorized by those laws.~~ The lawyer shall also advise the client regarding related federal law and policy.

Respectfully,

JEFFREY M. POLLOCK

From: Pollock, Jeffrey M. <JMPollock@foxrothschild.com>
Sent: Tuesday, May 24, 2016 11:02 AM
To: Comments Mailbox
Cc: Carol Johnston
Subject: FW: Proposed Amendment to RPC 1.2(d) (New Jersey's Medical Marijuana Laws)

Dear Judge Grant,

I write to supplement my earlier correspondence. I just received the Pennsylvania proposed language—which accomplishes the goal I am concerned about, namely giving clear authority to a lawyer to both counsel and advise. Please see the proposed Pennsylvania language below. **"A lawyer may counsel or assist a client regarding conduct expressly permitted by the law of the state where it takes place or has its predominant effect, provided that the lawyer counsels the client about the legal consequences, under other applicable law, of the client's proposed course of conduct."**

I remain deeply concerned that the proposed language in New Jersey completely fails to accomplish the very purpose it is intended to serve.

Respectfully, Jeff

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Disciplinary Board Proposes "Marijuana Amendment" to Rules of Professional Conduct

The Disciplinary Board has published a notice of proposed rulemaking, seeking comments on a possible amendment to **Rule 1.2 of the Rules of Professional Conduct**, regarding scope of representation. According to the preface, the proposal responds to numerous inquiries received regarding advice to clients regarding the marijuana business.

Marijuana laws across the United States have been changing rapidly. To date, over 20 states and the District of Columbia have enacted laws relating to marijuana. Pennsylvania's **Medical Marijuana Act** was signed into law on April 17, 2016.

The proposed amendment would modify Subsection (d) of Rule 1.2, which prohibits a lawyer to counsel or assist a client in criminal conduct. An exception would be established in a new Subsection (e), stating: **"A lawyer may counsel or assist a client regarding conduct expressly permitted by the law of the state where it takes place or has its predominant effect, provided that the lawyer counsels the client about the legal consequences, under other applicable law, of the client's proposed course of conduct."**

The preface notes that the Federal Controlled Substances Act, **21 U.S.C. § 811** et. seq, still classifies marijuana as a Schedule I drug, and thus its manufacture, distribution, dispensing, or possession are still illegal under Federal law. Under the current language of Rule 1.2(d), a Pennsylvania lawyer arguably is prohibited from assisting a client in various activities such as drafting or negotiating contracts that may relate to the purchase, distribution or sale of marijuana, even where such activities may be legal under state law.

Interested persons may submit written comments by mail or facsimile regarding the proposed amendments. Address comments to the Office of the Secretary, the Disciplinary Board of the Supreme Court of Pennsylvania, as follows:

- By mail:

  PO Box 62625
  Harrisburg, PA 17106-2625

- By delivery:

  601 Commonwealth Avenue
  Suite 5600
  Harrisburg, PA

- By facsimile to 717-231-3382; or
- By email to **Dboard.comments@pacourts.us** [please DO NOT send comments to the "comments" email at the end of this newsletter].

Comments are due on or before **June 3, 2016.**

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(215)-299-2167 or notify us by e-mail at helpdesk@foxrothschild.com. Also, please mail a hardcopy of the e-mail to Fox Rothschild LLP, 2000 Market Street, Philadelphia PA 19103-3222 via the U.S. Postal Service. We will reimburse you for all expenses incurred. Thank you.