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Comment on proposed amendment to RPC 1.2(d)

Thank you for the opportunity to comment on the proposed amendment to RPC 1.2(d). I support the amendment.

Every now and then in history, we find ourselves at the crossroads of change. Some will agree with the change; others will not. Inasmuch as the law strives to serve the greater good, it is reasonable for a change in the law to recognize that public opinion is not always unanimous. Idealogues aside, this pause for comment is appropriate.

Sometimes, a reconciliation of different views emanates from the legislature; sometimes the courts. Regardless of one's positon, when the change in the law is viewed as having come from the courts, it may be objectionable as a violation of the separation of powers.

With respect to the medical marijuana laws in New Jersey, the legislature has already spoken, establishing that commerce in medical marijuana is a lawful activity. That it is illegal elsewhere is no different from once-upon-a-time advising an interracial couple on the legal implications of marriage in a jurisdiction where such marriage was legal while in some jurisdictions miscegeny remained illegal. The present federal/state dichotomy may complicate the analysis, but it does not alter the fact that we are talking about a lawful activity in New Jersey.

Promulgation, interpretation, and enforcement of the Rules of Professional Conduct are within the exclusive province of the New Jersey Supreme Court. Our Supreme Court may soundly adopt the proposed amendment in light of the legislature's legalization of medical marijuana without any fear of criticism that it is acting as a super-legislature. A decision on the proposed amendment does not call for the Court to decide whether we are on the right side of history in the evolution of marijuana acceptance. It calls merely for the Court to exercise its existing authority in regulating the practice of law in New Jersey. N.J. Const. art. IV, § 2, ¶ 3.

Lawyers advising clients on lawful activity should and must be protected, and the New Jersey Supreme Court has the absolute prerogative to do so.

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