



NEW JERSEY STATE BAR ASSOCIATION

THOMAS HOFF PROL, PRESIDENT
 Laddey Clark & Ryan, LLP
 60 Blue Heron Road, Suite 300
 Sparta, NJ 07871-2608
 973-729-1880 • FAX: 973-729-1224
 tprol@lcrilaw.com

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

Re: Comments on Proposed Amendment to RPC 1.2 Regarding Medical Marijuana Law

Dear Judge Grant:

Thank you for the opportunity afforded the New Jersey State Bar Association (NJSBA) to comment on the proposal by the Advisory Committee on Professional Ethics (ACPE) for amendments to RPC 1.2 regarding representing clients with regard to New Jersey's medical marijuana laws. The ACPE is to be commended for engaging in a rigorous debate of all of the issues involved, and for recommending a potential resolution. Our members have raised a number of concerns about how to adequately advise clients about New Jersey medical marijuana laws without running afoul of their ethics obligations, so this proposal is very timely.

The NJSBA supports the proposed amendatory language presented by the ACPE. It recommends additional language to address situations where New Jersey attorneys are called upon by their clients to provide advice relating to the marijuana laws of other jurisdictions and in which the attorney meets the requirements of those other states to provide advice. The precise additional recommended language is below. The language proposed by the ACPE is underlined, like this; the language proposed by the NJSBA to be added is double underlined, like this, and language proposed to be deleted is struck-through like ~~this~~:

RPC 1.2(d): Except as provided in paragraph (e), A a lawyer shall not counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent, or in the preparation of a written instrument containing terms the lawyer knows are expressly prohibited by law, but a lawyer may counsel or assist a client in a good faith effort to determine the validity, scope, meaning or application of the law.

RPC 1.2(e): A lawyer may counsel a client regarding New Jersey's marijuana laws or the marijuana laws of other states, provided the lawyer meets the requirements of those states, 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.

The NJSBA believes the proposed rule modification advances the core purpose of the RPCs, which is to encourage lawyers to advise clients in a manner that comports with the law. It would also advance the public interest by allowing legal counsel to be available for individuals and companies seeking to take action under local marijuana laws.

The language proposed by the NJSBA seeks to address the likelihood that New Jersey lawyers will be asked to advise their clients, particularly business clients, on the marijuana laws of other states. The NJSBA believes it is important to clarify that an attorney may ethically do so, as long as the attorney is permitted to do so under the requirements of those states.

Finally, the NJSBA notes that many other states are grappling with the same concerns. While there may be other ways to address the issue, such as a comment in the RPCs or an advisory ethics opinion, six other states (Alaska, Connecticut, Hawaii, Illinois, Nevada and Oregon) have adopted similar revisions to the rules of professional conduct, and three more (Maine, Pennsylvania and Vermont) are considering following suit.

The NJSBA believes a formal rule modification provides attorneys with increased certainty and assurance that they can appropriately advise clients in this area of the law without fear of facing a future ethics violation.

For these reasons, the NJSBA once again urges the Court to adopt the proposed rule modification, with the additional suggested language.

Thank you again for the opportunity to participate in the rule-making process. If you have any questions regarding our recommendations, please do not hesitate to contact me.

Respectfully,



Thomas H. Prol
President

/sab

cc: Robert B. Hille, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director