

**2024 - 2026 REPORT OF THE
PROFESSIONAL
RESPONSIBILITY RULES
COMMITTEE**



April 30, 2026

Chair: Ronald E. Bookbinder, A.J.S.C. (ret.)

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I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

**A. NEW JERSEY RULE OF PROFESSIONAL CONDUCT
1.8(K) (SEXUAL RELATIONS WITH A CLIENT)**

On July 18, 2025, the Hon. Ellen J. Koblitz, P.J.A.D. (ret.) wrote to the Hon. Ronald E. Bookbinder, A.J.S.C. (ret.), Chair of the Professional Responsibility Rules Committee (PRRC), requesting that the Committee consider a recommendation to the Court that RPC 1.8 be amended to add a provision similar or identical to American Bar Association (ABA) Model Rule 1.8(j),¹ which prohibits sexual relations between lawyers and clients unless such relationship preexisted the lawyer-client relationship. Judge Koblitz asserted that it was time for New Jersey to join the other 38+/- states that enacted some version of Model Rule 1.8(j) prohibiting sexual relations between a lawyer and a client unless a consensual relationship already existed when the lawyer-client relationship commenced. Judge Koblitz expressed concern with the current practice of regulating this conduct on a case-by-case basis resorting to existing conflict of interest rules. She requested the

¹ Model Rule 1.8 (j) provides that: A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

Committee recommend to the Court a bright-line rule prohibiting misconduct of this nature.

The Office of the Administrative Director (“AOC”) and the Supreme Court Clerk agreed that the PRRC could consider this proposal during the 2024-2026 reporting period.

On November 17, 2025, the PRRC met to discuss the proposal. In summary, the PRRC found that 40 states have adopted Model Rule 1.8(j) or a similar provision. Only ten states,² including New Jersey, have no such provision expressly prohibiting sexual relations between lawyers and clients.

Most of the states that have a RPC prohibiting a non-preexisting relationship follow Model Rule 1.8(j) and state plainly: “A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.”

At the November 17, 2025 meeting, the Committee discussed public policy objectives that would be served by rule amendment, including preserving public confidence in the bar and streamlining ethics prosecutions for violations. The Committee also considered arguments against rule amendment, including Disciplinary Review Board precedent that supported the

² Georgia, Louisiana, Maryland, Michigan, Mississippi, New Jersey, Rhode Island, Tennessee, Texas, and Virginia.

view that the existing conflict of interest rules were sufficiently addressing this type of misconduct. Several members noted that the adoption of the Model Rule was necessary to foster positive public perception of the bar. A few members expressed concern about over-regulation of the bar and the fact that the Court did not adopt the recommendation when it was before the Court following the 2002 Pollock Commission proposals.³ Before making a recommendation, the Committee requested feedback from the New Jersey State Bar Association (NJSBA) on an expedited basis.

On February 3, 2026, Christine A. Amalfe, Esq., President of the New Jersey State Bar Association (NJSBA), wrote to the Committee recommending against the proposal. The NJSBA agreed in concept that engaging in sexual relations with a current client could compromise the attorney-client relationship such that continuation of the professional relationship may result in an ethics violation. However, the NJSBA continued to cite the objections it

³ The Pollock Commission, an ad hoc Commission tasked with evaluating the necessity and desirability of rules amendments recommended by the ABA's Commission on the Evaluation of the Rules of Professional Conduct (the "Ethics 2000 Commission"), had recommended the Court adopt proposed Model Rule 1.8(j), which would have explicitly prohibited sexual relations between a lawyer and client in the absence of a preexisting consensual relationship. The Court rejected the proposal and noted in its September 10, 2003 "Administrative Determinations in Response to the Report and Recommendation of the Supreme Court Commission on the Rules of Professional Conduct" that it agreed with the NJSBA that the proposal was too broad and inappropriate sexual contact can be handled through existing ethics rules, such as RPC 8.4.

made when the proposal to adopt Model Rule 1.8(j) was recommended by the Pollock Commission, namely that a “broadly-worded bright line rule might go too far.” Instead, the NJSBA continued to favor a case-by-case approach that would require an analysis of the facts of each matter to determine whether any of the existing Rules of Professional Conduct had been violated during the representation. Citing In re Mourtos, 256 N.J. 500 (2024), the NJSBA noted that as recently as 2024 the Court suspended an attorney who was found to have created a conflict of interest by commencing and continuing a sexual relationship with a client who the attorney knew was vulnerable to manipulation due to psychological challenges she endured following a brain injury sustained in a 2009 car accident.

On February 17, 2026, the Committee met again to discuss the NJSBA input and decide whether it wanted to recommend the proposal to the Court. The Committee voted to recommend the amendment of RPC 1.8, to codify the prohibition of sexual relations between a client and the lawyer as a per se conflict of interest unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced. The Committee concluded that a bright-line rule would better protect clients and foster public confidence in the legal profession.

Clients often share intimate details of their lives with their lawyers. This confidential information is to be used by the lawyer only to further the legal objectives of the client. The innate power imbalance between most clients and their lawyers troubled the Committee. The Committee was concerned that permitting sexual relationships in matters where the disciplinary system may not be able establish “unique” client vulnerability did not serve the public interest. The Committee concluded that physical intimacy and emotional entanglement should, in most circumstances, not intrude upon the rational, fiduciary relationship that should exist between the lawyer and the client. The Committee ultimately favored a bright-line rule that would both serve as a deterrent to lawyers who might exploit their client and protect a lawyer from a client who may willingly engage in a sexual relationship until they become dissatisfied with the representation and attempt to use the relationship as a sword in a disciplinary, civil, or even criminal case against the lawyer.

The Committee recommends an amendment to RPC 1.8, adding a provision prohibiting sexual relations between a client and the lawyer at subparagraph (k), as follows:

RPC 1.8 Conflict of Interest: Current Clients; Specific Rules

- a. . . . no change
- b. . . . no change

c. . . . no change

d. . . . no change

e. . . . no change

f. . . . no change

g. . . . no change

h. . . . no change

i. . . . no change

j. . . . no change

k. A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced. When the client is an organization, a lawyer for the organization shall not have sexual relations with members of the organization's litigation control group as defined by RPC 1.13. For purposes of this paragraph, "lawyer" means any lawyer who assists in the representation of the client but does not include other firm members who provide no such assistance.

l. A lawyer employed by a public entity, either as a lawyer or in some other role, shall not undertake the representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit the lawyer's ability to provide independent advice or diligent and competent representation to either the public entity or the client.

m. A public entity cannot consent to a representation otherwise prohibited by this Rule.

All 11 members were present for voting. Eight members voted for adoption of RPC 1.8(k), as drafted above. One member abstained from the

vote concerned that she could be tasked with appellate review of disciplinary prosecution of alleged violations of the provision. One member voted against adoption of the provision but noted that if the Committee voted to recommend a proposal he would argue for adoption of a proposal similar to that adopted in New York,⁴ which does not outright ban sexual relations between a lawyer and client except in domestic relations matters or where coercion, intimidation or undue influence was involved. One member voted for adoption of a provision similar to that of New York but against the language in proposed RPC 1.8(k) outlined above.

The Committee also recommends that the Court amend RPC 1.13(a) to add RPC 1.8(k) to the list of Rules of Professional Conduct where the organization's lawyer shall be deemed to represent the organizational entity and the members of its litigation control group, as follows:

A lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members,

⁴ New York RPC 1.8 (j) provides: (1) A lawyer shall not: (i) as a condition of entering into or continuing any professional representation by the lawyer or the lawyer's firm, require or demand sexual relations with any person; (ii) employ coercion, intimidation or undue influence in entering into sexual relations incident to any professional representation by the lawyer or the lawyer's firm; or (iii) in domestic relations matters, enter into sexual relations with a client during the course of the lawyer's representation of the client. (2) Rule 1.8(j)(1) shall not apply to sexual relations between lawyers and their spouses or to ongoing consensual sexual relationships that predate the initiation of the client-lawyer relationship.

shareholders or other constituents. For the purposes of RPC 1.8(k), RPC 4.2, and 4.3, however, the organization's lawyer shall be deemed to represent not only the organizational entity but also the members of its litigation control group. Members of the litigation control group shall be deemed to include current agents and employees responsible for, or significantly involved in, the determination of the organization's legal position in the matter whether or not in litigation, provided, however, that "significant involvement" requires involvement greater, and other than, the supplying of factual information or data respecting the matter. Former agents and employees who were members of the litigation control group shall presumptively be deemed to be represented in the matter by the organization's lawyer but may at any time disavow said representation.

This amendment is intended only to add RPC 1.8(k) to RPC 1.13, clarifying that sexual relations between the lawyer and members of the litigation control group are prohibited. No substantive amendments to RPC 1.13 have been recommended.

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. NEW JERSEY RULE OF PROFESSIONAL CONDUCT 1.2(D) (PSILOCYBIN)

On March 26, 2024, the New Jersey State Bar Association (NJSBA) wrote to then Acting Administrative Director Hon. Glenn A. Grant, J.A.D. (ret.) requesting that the Court amend RPC 1.2(d) to include reference to psychedelic drugs, including the drug psilocybin. The NJSBA noted that there

was a bill pending in the New Jersey Legislature that sought to legalize the manufacture and administration of psilocybin, a psychedelic drug that is currently a Schedule I controlled substance. The Court referred the matter to the PRRC and the Advisory Committee on Professional Ethics (ACPE).

RPC 1.2(d) provides:

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.

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 may 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 second paragraph of this RPC was amended in 2016 at the request of the Advisory Committee on Professional Ethics after the New Jersey Legislature passed the law authorizing medical cannabis. The Court further amended this second paragraph in 2020 after the New Jersey Legislature passed the law authorizing recreational cannabis; the NJSBA requested this amendment, which included the language about permitting lawyers to counsel clients about the laws of other states.

In a Memorandum dated July 16, 2024, addressed to the Hon. Glenn A. Grant, J.A.D., the PRRC recommended that the Court wait until a final version of the bill was passed before considering whether to amend RPC 1.2(d). While recognizing that the NJSBA presented proposed language which replaces “marijuana laws” with “controlled substance laws” and specifically refers to “cannabis and psychedelic drug laws,” the Committee suggested that any amendment to the Rule wait to match the language used by the legislature in the final version of the law.

The Advisory Committee on Professional Ethics was simultaneously studying the psilocybin legislation. On January 20, 2026, then Governor Phil Murphy signed S2283 into law as L. 2025 c. 296, the Psilocybin Behavioral Health Access and Therapy Pilot Program. The new law establishes a Psilocybin Behavioral Health Access and Therapy Pilot Program and a Psychedelic Therapy and Research Advisory Board. The new law took effect immediately and will expire upon completion of the two year pilot program.

Under the new law, the Department of Health (DOH) and Advisory Board will establish and oversee the pilot program. The DOH is to implement a process and issue a request for proposals by which hospitals may submit applications for participation in the pilot program. DOH is required to develop a set of criteria by which applying hospitals will be evaluated for participation

from each of the northern, central and southern regions of the state. Each participating hospital shall be required to collect and report data and information related to the pilot program and patient outcomes. Finally, the new law requires that DOH and the Advisory Board prepare and submit reports to the Governor and Legislature containing findings and recommendations.

The new law does not legalize recreational psilocybin use, create psilocybin dispensaries or cultivation licenses, or permit existing cannabis licensees to sell or distribute psilocybin products. Any expansion beyond hospital-based therapeutic access would require additional legislation.

Although the matter did not return to the PRRC agenda, the ACPE reviewed the topic at its September and December 2025 and March 2026 meetings. By letter dated March 26, 2026, the ACPE responded to Christine A. Amalfe, Esq., President of the New Jersey State Bar Association, regarding the NJSBA request for a rule amendment to RPC 1.2. The ACPE explained that it had determined that RPC 1.2(d) and RPC 3.1, as presently drafted, provide sufficient guardrails, guidance and protection to New Jersey lawyers offering legal guidance to clients on the implementation and effect of the pilot program. These Rules of Professional Conduct allow lawyers to “counsel or assist a client in a good faith effort to determine the validity, scope, meaning or application of the law” and to make “good faith argument for an extension,

modification, or reversal of existing law, or the establishment of new law.”

The ACPE determined that a recommendation for rule amendment should wait for more expansive legalization of psilocybin beyond the limited scope of the new law and its two year pilot program. Thus, the matter did not return to the PRRC agenda in this reporting period and the PRRC does not recommend amendment to RPC 1.2(d) at this time.

IV. CONCLUSION

The Chair and members of the Professional Responsibility Rules Committee appreciate the opportunity to serve the Supreme Court.

Respectfully submitted,

Hon. Ronald E. Bookbinder, A.J.S.C. (ret.), Chair
Jeffrey S. Apell, Esq.
Domenick Carmagnola, Esq.
John C. Connell, Esq.
Hon. Mary Catherine Cuff, P.J.A.D. (ret.)
Stephen V. Falanga, Esq.
Nilaja S. Ford, Esq.
William Harla, Esq.
Hon. Carmen Messano, P.J.A.D. (ret.)
Michelle Pallak, Esq.
Alicia F. Williams, Esq.

Committee Staff:
Hillary Horton, Esq.

Appendix A

Ellen L. Koblitz, P.J.A.D. (Ret.)
Special Counsel
ekoblitz@pashmanstein.com
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**PashmanStein
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A Professional Corporation

July 18, 2025

Via email: Ronald.Bookbinder@njcourts.gov
Hon. Ronald E. Bookbinder, A.J.S.C. (ret.), Chair
Professional Responsibility Rules Committee

Dear Judge Bookbinder:

I hope all is well. I write to you to suggest that it is time for New Jersey to join the other thirty-eight states that have enacted RPC 1.8(j), prohibiting sexual relations between a lawyer and client unless a pre-existing consensual relationship existed. (New York, which I have included in the thirty-eight states, limits the total prohibition to domestic relations matters.)

I recently joined the District IIA Ethics Committee and was assigned an investigation where this issue arose. More than forty years ago, I had also been asked to investigate and present the matter of Sheldon M. Liebowitz (In re Liebowitz, 104 N.J. 175 (1985)). I was a staff attorney at the New Jersey Public Defender's Office at the time, and not a member of the Bergen Ethics Committee, but was asked to take on the role of presenter before the Special Ethics Master. At that time such behavior was not generally prohibited, but an attorney sexually propositioning a pro bono client in danger of losing custody of her children the evening before the hearing seemed clearly wrong and was ultimately adjudged so by the Supreme Court.

I am aware that our Supreme Court rejected the proposed rule in 2003 (State v. Lasane, 371 N.J. Super 151, 162 (App. Div. (2004))). And that, even in the absence of such a rule, an attorney was disciplined recently for having sexual relations with his matrimonial client, as well as other infractions. In the matter of Nickolas C. Mourtos, (DRB 23-053, August 3, 2023).

A bright-line rule would obviate the need to determine in each instance whether the attorney improperly took advantage of the power imbalance to convince the client to engage in sexual activity. It would clarify acceptable behavior for all attorneys.

Thank you for your attention to this matter



Ellen L. Koblitz, PJAD (ret).

cc: Hillary K. Horton (via email: Hillary.Horton@njcourts.gov)

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NEW JERSEY STATE BAR ASSOCIATION

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February 3, 2026

Hon. Ronald E. Bookbinder, A.J.S.C. (ret.)
Chair, Supreme Court Professional Responsibility Rules Committee
c/o New Jersey Supreme Court
Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625

Re: Adoption of ABA Model Rule 1.8(j) Prohibiting Sexual Relations
with Clients

Dear Judge Bookbinder:

Thank you for seeking comments from the New Jersey State Bar Association (NJSBA) in connection with the review being undertaken by the Professional Responsibility Rules Committee (PRRC) about whether to recommend a new Rule of Professional Conduct (RPC) in New Jersey modeled after ABA Model Rule 1.8(j), which explicitly prohibits sexual relationships between lawyers and their clients. For all of the reasons outlined below, the NJSBA recommends against adoption of such a rule in New Jersey.

The NJSBA engaged in a robust discussion on the topic that included members of the organization who reflect various practice areas, geographic locations, firm sizes, years of practice and levels of experience on district ethics committees. All are in agreement with the concept that engaging in sexual relations with a current client could compromise an attorney's representation of that client which would justify some measure of discipline. However, there was also agreement that trying to capture all the numerous exceptions and nuances to that concept and develop an appropriate RPC is problematic.

The NJSBA considered whether to recommend adoption of the Model Rule when it was recommended by the “Pollock Commission” in 2001. At that time, the NJSBA recognized the need to protect clients for the potential for abuse that may result from an unequal power relationship between lawyer and client, but was concerned about a broadly-worded bright line rule that might go too far. The NJSBA has the same concerns now, favoring instead a continued case-by-case analysis of the impact of sexual relationships between lawyers and clients in the context of the existing RPCs governing the legal representation being provided.

Although a majority of other states have adopted some version of the Model Rule, the NJSBA does not believe it is necessary or would be useful to adopt the rule here. Ethics matters involving sexual relations with a client are very fact specific. The numerous versions of the rule adopted in other states, the number of exceptions, the various attempts to define key terms and the inclusion of explanatory language to limit the situations to which the rule’s prohibitions apply illustrate the difficulty in developing a comprehensive rule to address all the scenarios where this issue could arise. For example, who is the “client”? Some states differentiate corporate clients. But there may be circumstances where a relationship with a corporate officer clouds the objective judgment of the attorney, whether the corporate officer supervises, directs, oversees, regularly consults with the lawyer or is involved with the legal matter at issue or not. What about a former spouse, partner, or significant other? Should the previous relationship be an automatic bar to present representation? If so, for how long? Conversely, what about when the representation ends? May an attorney engage in a relationship with a client then? But who says when the representation has ended? An attorney may believe they have concluded the attorney-client relationship, but a client may believe the representation is continuing, as new legal issues for the client arise. And what constitutes “sexual relations”? Some states attempt to define the term, but should an ethics violation hinge on the specifics of one’s intimate interactions? The NJSBA believes a better alternative to a bright line rule with questionable definitions is a practice requiring a case-by-case examination into whether an attorney’s relationship with a client violates existing ethics rules by impacting the representation, presenting potential conflicts or resulting in harm to the client.

Support for that viewpoint can be found in the robust body of opinions amassed by Disciplinary Review Board (DRB) addressing the topic. Those opinions, approved by the New Jersey Supreme Court, provide fact-specific guidance to attorneys and the public about the ethics and disciplinary issues involved in situations where an attorney engages in a sexual relationship with a client. The Supreme Court, in accepting the DRB decision in *In re Liebowitz*, 104 N.J. 175 (1985), agreed that an

attorney-client relationship must be viewed from the perspective of the client and a determination made about what reasonable inferences can be drawn based on that perspective under the circumstances.

Examples of how the DRB has applied that type of individual analysis are cited in the *In re Mourtos* decision included in the PRRC materials. *In re Mourtos*, 256 N.J. 500 (2024). They include:

- *In re Mourtos*, where the DRB found that an attorney unethically engaged in a conflict of interest when the attorney was acutely aware of the client's mental health struggles but engaged in a sexual relationship with the client while continuing the legal representation anyway. *Id.*
- The *Liebowitz* decision noted above, where a law firm partner met with a court-assigned client and attempted to have a sexual relationship with the client after referring the case to an associate. The DRB concluded the client could reasonably infer that the partner was still the client's counsel and failing to succumb to the partner's wishes would adversely impact the legal representation being provided. *Liebowitz*, 104 N.J. 175.
- *In re Carroll*, 232 N.J. 111 (2018), where the DRB found respondent created "a significant risk" that the legal services being provided would be materially limited by the respondent's own interest where respondent engaged in a sexual relationship with an assigned client that respondent knew lacked the capacity to freely consent to the relationship due to alcohol use issues.
- *In re Warren*, 214 N.J. 1 (2013), where the DRB concluded respondent's knowledge of the client's prior suicide attempt, custody battle and treatment for drug dependence provided knowledge that the client was vulnerable, and the sexual relationship therefore created a conflict of interest.
- *In re Resnick*, 219 N.J. 620 (2013), where the DRB determined that an attorney who pursued a sexual relationship with a client knowing that the client was emotionally vulnerable after fleeing an abusive relationship created a conflict of interest, particularly where the client felt pressure to yield to the attorney's advances or face detrimental consequences to the legal representation being provided.

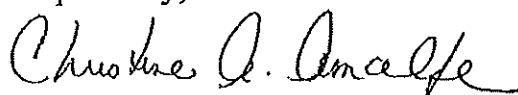
These cases are just a short sampling of the DRB decisions, approved by the Supreme Court, that put attorneys and the public on notice about the types of relationships that present ethical issues and should be avoided – not because of the relationship in each case *per se*, but because of the effect of the relationship on the representation.

The NJSBA believes that should continue to be the focus of the DRB's analysis of such situations. An explicit rule prohibiting sexual relationships will inevitably prove difficult to craft and even more difficult to determine when to apply. Such a rule will stunt an in-depth exploration of the particular circumstances and relationship of the parties and the effect on the actual legal services being provided, which should be the primary focus of an ethics inquiry.

In summary, the NJSBA believes that implementing a rule akin to ABA Model Rule 1.8(j) creating a *per se* ethics violation in situations where an attorney engages in a sexual relationship with a client is not necessary and will not be helpful in addressing unethical behavior. Instead, lawyers, their clients and the public are better served with a continuation of the current path where each situation is examined on a case-by-case basis and addressed through the existing ethics rules based upon the individual facts of the case and how those facts affected the legal services rendered.

Thank you again for the opportunity for the NJSBA to discuss and debate this important issue and provide a recommendation reflecting the collective viewpoint of our members. We appreciate the thoughtful consideration being given to the issue by members of the PRRC, and the continuing work of the Committee to ensure the utmost integrity in the practice of law in New Jersey. The NJSBA stands ready to provide any additional information or assistance that may be needed.

Respectfully,



Christine A. Amalfe, Esq.
President

cc: Norberto A. Garcia, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director

Appendix B



NEW JERSEY STATE BAR ASSOCIATION

TIMOTHY F. MCGOUGHAN, PRESIDENT
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March 26, 2024

Hon. Glenn A. Grant
Acting Administrative Director of the Courts
Hughes Justice Complex
25 W. Market Street/P.O. Box 037
Trenton, NJ 08625-0037

Re: Proposed Amendment to RPC 1.2 re: Psychedelics

Dear Judge Grant:

The New Jersey Psilocybin Behavioral Health Access and Services Act (the Act), which is currently pending in the Legislature, seeks to follow some other states in legalizing the manufacture and administration of psilocybin, a psychedelic drug that is currently a Schedule I drug under the Federal Controlled Substances Act (the CSA). Anticipating passage of the Act, a wide range of clients will need access to legal counsel about the how the Act will impact them and how they may be able to participate in new markets that may become available.

The legal ethics issues presented by the Act, however, resemble the complications that the bar encountered in the wake of cannabis legalization: the current Rules of Professional Conduct (RPCs) do not explicitly permit New Jersey attorneys to provide guidance on New Jersey laws or regulations relating to psychedelic drugs, which remain controlled by the CSA. Because there is no exception for psychedelics in the RPCs, New Jersey attorneys seeking to advise clients on the topic find themselves again on uncertain ground with respect to their professional ethical obligations.

To ensure individuals are able to receive the counsel they need in connection with this pending new law, the New Jersey State Bar Association asks that the Judiciary consider an amendment RPC 1.2(d) that will allow New Jersey attorneys to safely and competently represent a client with questions about the law in New Jersey and other states related to psychedelics.

The NJSBA proposes the following amendment to RPC 1.2(d):

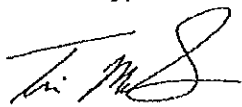
(d) A lawyer shall not counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent, or in the preparation of a written instrument containing terms the lawyer knows are expressly prohibited by law, but a lawyer may counsel or assist a client in a good faith effort to determine the validity, scope, meaning or application of the law. A lawyer may counsel a client regarding New Jersey's marijuana controlled substance laws or the marijuana controlled substance laws of other states including, but not limited to, cannabis and psychedelic drug laws, provided the lawyer meets the requirements of those states, and may 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. Just like the previously approved amendment to RPC 1.2(d) regarding cannabis, the modification will provide 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, while also advancing the public interest by allowing legal counsel to be available for those seeking to take action in anticipation of passage of the Act.

For these reasons, the NJSBA requests that the Judiciary consider the proposed rule modification.

Thank you for your consideration.

Sincerely,



Timothy F. McGoughran, Esq.
President

cc: William H. Mergner Jr., Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director



PROFESSIONAL RULES RESPONSIBILITY COMMITTEE

TO: Hon. Glenn A. Grant, J.A.D.
Acting Director, Administrative Office of the Courts

FROM: Ronald E. Bookbinder, A.J.S.C. (ret.)
Chair, Professional Rules Responsibility Committee

DATE: July 16, 2024

RE: Referral – NJSBA Proposal to Amend RPC 1.2(d) to Include
Reference to Psilocybin/Psychedelic Drugs

The New Jersey State Bar Association (NJSBA) wrote to Acting Administrative Director Grant by letter dated March 26, 2024, requesting that the Court amend RPC 1.2(d) to include reference to the drug psilocybin. The NJSBA states that there is a bill pending in the New Jersey Legislature that seeks to legalize the manufacture and administration of psilocybin, a psychedelic drug that is currently a Schedule I controlled substance. This matter was referred to both the Professional Responsibility Rules Committee and the Advisory Committee on Professional Ethics.

RPC 1.2(d) provides:

A lawyer shall not counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent, . . . 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.

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 may 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 second paragraph of this RPC was included in 2016 at the request of the Advisory Committee on Professional Ethics after the New Jersey Legislature passed the law authorizing medical cannabis. The Court further amended this second paragraph in 2020 after the New Jersey Legislature passed the law authorizing recreational cannabis; the NJSBA requested this amendment, which included the language about permitting lawyers to counsel clients about the laws of other states.

The Professional Responsibility Rules Committee suggests that the Court wait until the bill is passed before considering whether to amend RPC 1.2(d). While the NJSBA presented proposed language which replaces “marijuana laws” with “controlled substance laws” and specifically refers to “cannabis and psychedelic drug laws,” the Committee suggests that any amendment to the Rule should match the language in the new law legalizing psilocybin.

The Committee thanks the Court for the opportunity to serve.