

## **NOTICE TO THE BAR**

### **ADVISORY COMMITTEE ON PROFESSIONAL ETHICS**

#### **PROPOSED AMENDMENT TO RULE OF PROFESSIONAL CONDUCT 1.2 TO PERMIT LAWYERS TO COUNSEL AND ASSIST CLIENTS WITH REGARD TO NEW JERSEY MEDICAL MARIJUANA LAWS**

The Advisory Committee on Professional Ethics received an inquiry from a New Jersey lawyer asking whether he may, consistent with the Rules of Professional Conduct, represent a client whose business includes growing marijuana pursuant to the New Jersey Compassionate Use Medical Marijuana Act, N.J.S.A. 24:6I-1 et seq. By a slight majority, the Committee found that lawyers may provide such services; it relied on public policy encouraging lawyers to provide legal services to businesses navigating the complex regulatory framework. But the Committee was vigorously divided – the minority asserted that the language of Rule of Professional Conduct 1.2(d) simply does not permit lawyers to provide legal services that assist a client in a business that is illegal under federal, though not state, law.

The Committee, however, unanimously agreed that New Jersey Rule of Professional Conduct 1.2 should be amended to expressly allow lawyers to counsel and assist clients with regard to the New Jersey marijuana laws, provided they also advise their clients about federal law. The Committee further agreed that, given the current uncertainty, lawyers who assist clients to comply with the State medical marijuana laws should not face discipline while the Court considers amending Rule of Professional Conduct 1.2.

The dilemma lawyers face arises from the fact that their client's business is illegal under federal law but permitted under State law. Rule of Professional Conduct 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 providing legal services to a client in the New Jersey medical marijuana business arguably counsels or assists the client in conduct that is illegal under federal law. Even assuming that the lawyer accurately conveys to the client the illegality of its activities under federal law and does not therefore “counsel” the client to engage in illegal activity, the provision of routine legal services, such as application for business permits or zoning variances, can be said to “assist” in an activity that the lawyer knows is illegal.

The Committee presented the matter to the New Jersey Supreme Court and respectfully requested the Court to adopt an amendment to New Jersey Rule of Professional Conduct 1.2(d) to provide:

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.

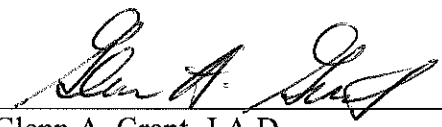
The Court hereby requests the legal community and interested members of the public to comment on this proposed amendment to Rule of Professional Conduct 1.2(d). Written comments should be sent by **June 20, 2016**, to:

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

Comments may also be submitted via Internet e-mail to the following address:  
[Comments.Mailbox@judiciary.state.nj.us](mailto:Comments.Mailbox@judiciary.state.nj.us).

The Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address and those submitting comments by e-mail should include their name and e-mail address. Comments submitted in response to this notice are subject to public disclosure.

Please note that the Court takes no position on the underlying federal law. The proposed RPC amendment merely states that lawyers will not violate RPC 1.2(d) if they counsel and assist clients with regard to the New Jersey medical marijuana laws, provided they also advise their clients about federal law.

  
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Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts

Dated: May 19, 2016