



NEW JERSEY STATE BAR ASSOCIATION

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Hon. Stuart Rabner, Chief Justice
New Jersey Supreme Court
Hughes Justice Complex
25 West Market Street
Trenton, NJ 08625

Re: RPC Changes to Address Constitutional Amendment

Dear Chief Justice Rabner:

Now that New Jersey voters have overwhelmingly passed a constitutional amendment to legalize marijuana, action is underway in all quarters to make for a smooth transition. Legislators are working to craft the laws that will decriminalize marijuana and create an administrative and regulatory structure that will make this change a reality in New Jersey. As such, this issue presents a host of issues for the lawyers of the state and the New Jersey State Bar Association urgently renews its request for the Court to amend the Rules of Professional Conduct to address the ability of lawyers to counsel their clients on the new measure. Currently, RPC 1.2 only allows for counseling related to medical marijuana. It is critical that the Rule be expanded on an expedited basis to encompass all forms of marijuana to ensure attorneys can appropriately advise clients in this fast-changing area of the law without fear of facing a future ethics violation.

The Advisory Committee on Professional Ethics proposed language in 2016 to accomplish this, but the Court adopted a narrower version tailored to medical marijuana. Today, the NJSBA asks the Court to reconsider the language the ACPE proposed. In addition, we urge the adoption of 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.

This is one of the most significant changes to be announced that affects a wide range of legal issues and the NJSBA believes it is important to not only address the change in law in New Jersey, but to also address the likely need for attorneys to advise clients, particularly business clients, on the marijuana laws of other states.

Specifically, the NJSBA proposes the following amendment (language proposed to be deleted is struck-through like ~~this~~; language proposed to be added is underlined, like this):

RPC 1.2(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 ~~medical~~ 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.

Once again, with the passage of the constitutional amendment legalizing marijuana earlier this month, the NJSBA urges the Court to adopt this Rule amendment in an expedited fashion to ensure New Jersey's residents and businesses can obtain whatever legal assistance is needed in connection with the new measure, and New Jersey attorneys can serve those clients with a clear understanding of the ethics rules that guide them.

Thank you for your consideration.

Respectfully,



Kimberly A. Yonta
President

/sab

cc: Hon. Glenn A. Grant, Acting Administrative Director of the Courts
Domenick Carmagnola, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director