

VIRGINIA:

**IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND**

**IN THE MATTER OF
Rule of Professional Conduct 1.2**

APPENDIX TO PETITION OF THE VIRGINIA STATE BAR

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Karen A. Gould, Executive Director
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**VIRGINIA STATE BAR
COUNCIL MEETING
HOT SPRINGS, VIRGINIA
FRIDAY, October 29, 2021**

AGENDA

**9:00 a.m. Council Meeting – Ballroom East
The Omni Homestead Resort, Hot Springs, VA**

I. Reports and Information Items

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| A. President's report – Jay B. Myerson, President | 1 |
| B. Executive Director's report – Karen A. Gould, Executive Director | 2 |
| C. Financial report – Crystal T. Hendrick, Finance/Procurement Director | |
| -- Financial Report for FY 21 | 3 |
| -- Current Financial Report | 4 |
| D. Bar Counsel's report – Renu M. Brennan, Bar Counsel | 5 |
| E. Conference of Local and Specialty Bar Associations report –
Roy V. Creasy, chair | 6 |
| F. Diversity Conference report – David D. Masterman, chair | 7 |
| G. Senior Lawyers Conference report – Peter C. Burnett, chair | 8 |
| H. Young Lawyers Conference report – Kristopher R. McClellan, president | 9 |
| I. Access to Legal Services Committee report – Ali Silva, chair | 10 |
| J. Lawyer Referral Committee report – Jack L. Harris, chair | 11 |
| K. Laywer Insurance Committee report – David D. Hudgins, chair | 12 |
| L. Opportunity for questions and comments | 13 |

II. Action Items

- | | |
|--|----|
| A. Approval of minutes of June 18, 2021 meeting | 14 |
| B. Proposed LEO 1896 – Dennis J. Quinn, chair, Standing Committee
on Legal Ethics | 15 |
| C. Proposed amendments to Rule 1.2 – Dennis J. Quinn, chair,
Standing Committee on Legal Ethics | 16 |

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|---|----|
| D. Proposed amendments to Paragraph 13-6.H – William H. Atwill, Jr.,
chair, Standing Committee on Lawyer Discipline | 17 |
| E. Proposed amendments to Clients’ Protection Fund Rules –
Phillip V. Anderson, vice chair, Clients’ Protection Fund Board | 18 |
| F. Disciplinary District Committee appointments – Karen A. Gould | 19 |

III. Notice of Upcoming Receptions, Dinners & Meetings¹

12 noon, Friday, February 25, 2022, lunch and Executive Committee meeting,
Bank of America Building, 3rd Floor Conference Room, 1111 E. Main St., Richmond.

6:30 p.m., Friday, February 25, 2022, Council reception and dinner,
Virginia Museum of Fine Arts, 200 N. Arthur Ashe Blvd., Richmond.

9:00 a.m., Saturday, February 26, 2022, Council meeting, Omni Richmond Hotel,
100 S. 12th Street, Richmond.

2:00 p.m., Wednesday, April 20, 2022, Executive Committee meeting, 1111 E. Main St.,
3rd Floor Conference Room, Bank of America Building, Richmond.

12:30 p.m., Wednesday, June 15, 2022, lunch and Executive Committee meeting,
Sheraton Virginia Beach Oceanfront Hotel, 3501 Atlantic Ave, Virginia Beach.
(*location tentative*)

6:30 p.m., Wednesday, June 15, 2022, Council reception and dinner, Sheraton Virginia
Beach Oceanfront Hotel, 3501 Atlantic Avenue, Virginia Beach.

9:00 a.m., Thursday, June 16, 2022, Council meeting, Sheraton Virginia Beach
Oceanfront Hotel, 3501 Atlantic Ave, Virginia Beach. (*location tentative*)

12:00 noon, Thursday, September 8, 2022, lunch and Executive Committee meeting,
3rd Floor Conference Room, Bank of America Building, 1111 E. Main St., Richmond.

12:30 p.m., Thursday, October 20, 2022, Executive Committee meeting, The Boar’s
Head Resort, 200 Ednam Dr., Charlottesville.

6:30 p.m., Thursday, October 20, 2022, Council dinner, The Boar’s Head Resort,
200 Ednam Dr., Charlottesville.

9:00 a.m., Friday, October 21, 2022, Council meeting, The Boar’s Head Resort,
200 Ednam Dr., Charlottesville.

¹ All meeting dates and locations are subject to change or cancellation, dependent upon the course of the pandemic.

**Marijuana Laws, Rule or Comment Changes, Ethics Opinions, and Discipline: by Jurisdiction
(12/20/2019 Update)**

State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
AL			X					
AK	1998	2014		<u>Rule 1.2(f) (2015)</u> (lawyer may counsel and assist in conduct lawyer reasonably believes is authorized by AK law and shall advise re: federal law and policy)	<u>Comment [5] to R. 8.4 (2015)</u> (“[5] Although assisting a client under Rule 1.2(f) may violate federal drug laws, it is not a violation of Rule 8.4(b).”)			
AZ	2010					<u>Op. 11-01: Scope of Representation</u> (lawyer may counsel or assist client re: conduct expressly permitted under AZ Med MJ Act only if no court decisions have held the Act preempted, void, or invalid; lawyer reasonably believes client conduct complies fully with state law; and lawyer advises client re: federal law, refers client to other counsel for those issues, or limits scope of rep.)		
AR	2016							

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
CA	1996	2016		<u>Rule 1.2.1 (2018)</u> (lawyer may not counsel or assist in conduct lawyer knows is criminal or fraudulent, but may discuss legal consequences of any proposed conduct and counsel or assist client to make good faith effort to determine validity, scope, meaning, or application of law)	<u>Comment [6] to R. 1.2.1 (2018)</u> (lawyer may advise client re: validity, scope, and meaning of CA laws that may conflict with federal or tribal law and may assist client in drafting, administering, interpreting, or complying with CA law, even if client's conduct may violate federal or tribal law; must inform client of related federal or tribal law and may be required to advise client re: the conflict)	<u>Bar Assoc. of SF Ethics Op. 2015-1</u> ; (lawyer may represent client re: conduct permissible under state law; should advise client re: federal law.) <u>LA County Bar Assoc. Op. 527 (2015)</u> (lawyer may advise and assist re: conduct permitted under state law provided lawyer does not advise or assist client in violating federal law in manner that would enable client to evade arrest or prosecution; must limit scope of representation to exclude assistance or advice to violate federal law with impunity; must advise re: federal law and penalties)		

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
CO	2000	2012			<u>Comment [14] to Rule 1.2 (2014)</u> (lawyer may counsel and assist client re: conduct lawyer reasonably believes is permitted by state law and shall advise client re: federal law and policy)	<u>Formal Op. 124 (April 2012, addendum Dec. 2012): A Lawyer's Medical Use of Marijuana</u> (lawyer's medical (addendum: or recreational) use of MJ per CO law does not violate R. 8.4(b) absent additional evidence use adversely implicates honesty, trustworthiness, or fitness)	<u>People v. Furtado, 2015 WL 7574128 (CO 2015) (Gen. Counsel for MJ dispensaries publicly censored for violating 8.4(c) where lawyer opened two trust accounts with bank under his own name, did not inform bank purpose of accounts was to pay bills for med. MJ dispensaries, and where bank did not allow MJ-related businesses to open accounts.)</u>	<u>Judicial Ethics Op. 2014-01</u> (judge's use of med. or rec. MJ impermissible as it is a federal crime)

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
CT	2012, 2016			<u>Rule 1.2(d)(3), 2015</u> (lawyer may counsel or assist client re: conduct expressly permitted by CT law if lawyer counsels re: legal consequences under federal law)		<u>Inf. Op. 2013-02</u> (lawyer may advise client re: requirements of state law and must inform client of conflict between state and federal law, regardless of federal enforcement policy; may advise clients re: CT Palliative Use of MJ Act but may not assist in violation of federal law)		
DE	2011							
DC	2011	2015						Sale, purchase, and public consumption of MJ in DC remains illegal; federal govt. controls 29% of DC land and still enforces fed. prohibition of MJ possession

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
FL	2014							<u>FL Bar Board of Governors Policy 2014</u> (lawyers will not be prosecuted solely for advising or assisting client re: conduct lawyer reasonably believes is permitted by FL law if lawyer also advises re: federal law and policy)

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
GA	CBD oil 2019			New 1.2(e) being proposed: "A lawyer may counsel a client re: conduct expressly permitted by GA or other applicable law, even if such conduct would be criminal under other law, provided that the lawyer counsels the client about the legal consequences of the client's proposed course of conduct."				
HI	2015			<u>Rule 1.2(d), 2015</u> (lawyer may advise and assist re: conduct permitted by state law; must advise re: other applicable law)		FO 49, withdrawn after amendment of 1.2(d) (not available online)		
ID			X					

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
IL	2014	2020		<u>Rule 1.2(d), 2015</u> (lawyer may counsel or assist in conduct expressly permitted by IL law; must advise about federal law)	<u>Comment [10] to Rule 1.2</u> (allows lawyer to provide advice and assistance to client re: conduct permitted by IL Med. MJ law; should advise about federal law and policy; should be especially careful about counseling or assisting re: conduct in context other than MJ law that violates or conflicts with federal, state, or local law.)	<u>Advisory Op. 14-07</u> (lawyer may advise and assist in conduct permitted by IL MJ law; recommends rule change)		
IN	CBD Oil, 2018							
IA	CBD Oil, 2014							
KS			X					
KY	CBD Oil, 2014							
LA	2015							

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
ME	1999	2016				<p><u>Opinion 199 (2010)</u> (urges caution; case by case determination as to where the line is drawn; significant risk)</p> <p><u>Opinion 215 (2017)</u> (lawyer may advise re: conduct permitted by state law but must advise re: federal law and policy)</p>		
MD	2014				<p><u>Comment 12 to Rule 1.2 (MD 19-301.2) (2017)</u> (Given 2014 federal govt. policy not to interfere with state-compliant retail sales, atty may counsel client and provide legal services in connection with business activities permitted by state law, provided atty advises about federal law.)</p>	<p><u>Ethics Op. 2016-10</u> (lawyer may advise and assist compliance with state law; lawyer may have ownership interest in med. MJ business; based in part on federal enforcement policy)</p>		

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
MA	2012	2016						<u>Board of Bar Overseers/Office of Bar Counsel Joint Policy on Legal Advice on MJ (2017)</u> (no prosecution for advising or assisting in conduct permitted by MA law)
MI	2008	2019						
MN	2004					<u>MN Ethics Op 23 (2015)</u> (lawyer may advise and assist re: conduct permissible under state law; must advise clients re: federal law)		
MS			X					

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
MO	CBD Oil 2014; Med MJ 2018					<p><u>Inf. Op. 2014-04:</u> (whether lawyer's MJ-related counseling and/or assistance would violate R. 4-1.2(f) is question of law and fact)</p> <p><u>Inf. Op. 2019-09:</u> (whether assisting client in MJ licensure process or providing corporate legal services for state-law-compliant MJ entity violates R. 4-1.2(f) or 4-8.4 are questions of fact and law)</p> <p><u>Inf. Op. 2019-10</u> (Attorney may provide legal services from MO office to MJ-related business in another state if attorney has reasonable belief attorney's conduct will conform to rules and laws in the other state and that predominant effect of conduct will be in the other state.)</p>		

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
MT	2004						<i>In the Matter of Christopher J. Lindsey</i> , PR 13-0025 (6-month suspension and five years' probation; followed guilty plea in federal court in 2012 to Conspiracy to Maintain Drug-Involved Premises in violation of 21 USC § 846	Preamble paragraph (6) effective 1/1/20: [lawyer may counsel and assist client re: MT cannabis laws; must advise of any conflict with federal or tribal law]
NE			X					
NV	2001, 2013	2016			<u>Comment [1] to Rule 1.2, 2014</u> (lawyer may counsel or assist re: conduct that is consistent with NV law; should advise about federal law) <u>Comment [1] to 8.4, 2017</u> (federal prosecution of lawyer for use, possession, or distribution of MJ in violation of federal law may trigger disciplinary proceedings)			

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
NH	2013			<u>Rule 1.2(e)</u> (lawyer may counsel or assist conduct expressly permitted by state law if lawyer counsels client re: consequences under federal law)	<u>Comment [4] to Rule 1.2</u> (Rule 1.2(e) allows lawyer to counsel or assist in state-law compliant conduct without violating NH RPCs, despite conflict with federal law, if lawyer also counsels re: federal law)			
NJ	2010			<u>Rule 1.2(d), 2016</u> (lawyer may counsel and assist client in conduct lawyer reasonably believes authorized by NJ MJ law; should advise client about federal law and policy)				
NM	2007				<u>Comment [11] to NMRA 16-102 (amended re: MJ in 2017)</u> (lawyer may counsel and assist in conduct expressly permitted by NM MJ Act and assist in conduct lawyer reasonably believes permitted by the Act)			

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State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
NY	2014					<p><u>NY Ethics Op. 1024, 2014</u> (In light of current federal enforcement policy, lawyer may assist client in conduct designed to comply with state law, notwithstanding federal law prohibiting the conduct.)</p> <p><u>NY State Bar Assoc. Ethics Op. 1177 (2019)</u> (reaffirming conclusion from Op. 1024, notwithstanding rescission of the Cole Memo, because in light of Rohrabacher Amendment, federal policy continues to permit NY to implement its med. MJ law)</p>		
NC			X					

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
ND	2016			<u>Rule 1.2(e), 2017</u> (lawyer may counsel or assist conduct expressly permitted by ND law; shall counsel client about legal consequences under other law)		<u>Ethics Op. 14-02</u> (Lawyer licensed in ND violates ND R. 8.4(b) if lawyer moves to MN to participate in medical MJ treatment program legal under MN law because conduct would be illegal under ND and federal law.)		
OH	2016			<u>Rule 1.2(d)(2), 2016</u> (lawyer may counsel or assist in conduct expressly permitted by state law and shall advise client re: federal law)		<u>Ethics Op. 2016-6</u> (Aug. 5, 2016) (superseded in part by amendment of Rule 1.2, Sep. 20, 2016) (lawyer may not advise or assist client in conduct that violates federal law, even if conduct complies with state law; lawyer's personal use/investment re: medical MJ in compliance with state law can reflect adversely on lawyer's fitness to practice)		

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
OK	2018, 2019							OK House of Delegates proposed in 2018 OK House of Delegates Res. No. One (page 4 of link) (1.2(e): atty may counsel and assist re: OK MJ law; shall advise re: federal and tribal law); Bd. of Governors did not recommend passage. Supreme Court did not adopt. Federal prosecutors in OK opposed rule change.

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State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
OR	1988 et seq.	2015		<u>Rule 1.2(d), 2015</u> (lawyer may counsel and assist in conduct re: OR MJ laws, but shall advise client about federal and tribal law and policy)			(5 disciplinary cases from 1993 – 2012; 4 for conduct related to MJ but violating RPCs or laws other than the Fed. CSA) <u>In re Conduct of Taylor, 851 P.2d 1138 (Or. 1993)</u> (lawyer disbarred following federal conviction for 2 MJ-related felonies (conspiracy to mfr., possess, and distribute and for possession with intent to distribute) and conviction for federal tax evasion; lawyer also charged with misappropriating funds from decedents' estates.)	

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State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
PA	2016			<u>Rule 1.2(e), 2017</u> (lawyer may counsel or assist regarding conduct expressly permitted by state law, provided lawyer counsels client re: consequences under other law)		<u>PA Bar Assoc. and Phil. Bar Assoc. Joint Formal Opinion 2015-100</u> (R. 1.2(d) forbids counseling or assisting regarding conduct permitted by state law that violates federal law, even if federal enforcement policy does not target such conduct; recommends amendment of Rule 1.2(d))		
RI	2012					<u>Ethics Op. 2017-01 (2017)</u> (lawyer may advise and assist in complying with state med. MJ law and shall advise re: federal law and policy)		
SC			X			<u>Ethics Op. 19-03</u> (lawyer's ownership interest in MJ-related business illegal under federal or state law may violate SC R. 8.4; lawyers cautioned about participating in activities illegal under state or federal law)		
SD			X					
TN			X					

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State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
TX	CBD Oil 2017						<u>In re Jose Luis Palacios, 54410, 2014</u> (disbarred after pleading guilty to knowingly and intentionally conspiring to possess with intent to distribute a controlled substance in violation of 21 USC §§ 846 , 841); <u>In re Damon Dean Robertson, 54411, 2014</u> (suspended after pleading guilty in AZ state court to violation of AZ law for Transportation of MJ for Sale)	
UT	2018							
VT	2003 or 2004	2018 limited adult possession and cultivation)			<u>Comment [14] to Rule 1.2, 2016</u> (lawyer may counsel and assist client in conduct lawyer reasonably believes permitted by state law and shall advise client re: consequences under federal law and policy)			

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State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
VA	CBD Oil							

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

WA	2012, 2014				<p><u>Comment [18] to Rule 1.2, 2014; amended 2018</u> (lawyer may counsel and assist conduct lawyer reasonably believes permitted by state law and shall advise client re: federal or tribal law and policy)</p> <p><u>Comment [8] to Rule 8.4, 2018</u> (lawyer who counsels or assists conduct lawyer reasonably believes is permitted by state law does not violate 8.4)</p>	<p><u>WA Bar. Assoc. Op. 201501 (2015)</u> (advice and assistance in compliance with state law is permissible; lawyer may own and operate state-law compliant MJ business, consume MJ if fitness to practice not affected, and engage in implementation of state law. Issued prior to Obama-era DOJ guidelines' withdrawal)</p> <p>(Revision of opinion is under consideration to reflect amended Comments to Rules 1.2 and 8.4)</p> <p><u>King County Bar Assoc. Op. I-502 (2013)</u> (lawyer should not be subject to discipline for advising re: compliance with state MJ law, for lawyer ownership of med. MJ dispensary, or for lawyer's personal use of MJ complying with state law)</p>		
WV	2017			<u>Rule 1.2(e), 2018</u> (lawyer may counsel and assist conduct				

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State	Permitted MJ use:			New or amended Rule?	New or amended Comment?	Ethics opinions	Disciplinary cases	Misc.
	Med.	Rec.	N/A					
	not yet implemented			lawyer reasonably believes authorized by state law and shall advise re: federal law and consequences)				
WI			X					
WY			X					

Based on information received from NOBC survey or gathered from other sources, Nov. – Dec., 2019

	<p style="text-align: center;">American Bar Association CPR Policy Implementation Committee</p> <p style="text-align: center;">Variations of the ABA Model Rules of Professional Conduct</p> <p style="text-align: center;">RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER</p> <p>(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p> <p>(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.</p> <p>(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.</p> <p>(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.</p> <p>Variations from ABA Model Rule are noted.</p> <p>Comments not included.</p>
<p>Alabama</p>	<p>(a) A lawyer shall abide by a client’s decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p> <p>(b) Same as MR.</p> <p>(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.</p> <p>(1) The client’s informed consent must be confirmed in writing unless:</p>

As of September 20, 2021

	<p>(i) the representation of the client consists solely of telephone consultation;</p> <p>(ii) the representation is provided by a lawyer employed by a nonprofit legal-services program or participating in a pro bono program approved by the Alabama State Bar pursuant to Rule 6.6 and the lawyer's representation consists solely of providing information and advice or the preparation of legal documents; or</p> <p>(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.</p> <p>(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:</p> <p>(i) the representation is limited to the attorney and the services described in the writing; and</p> <p>(ii) the attorney does not represent the client generally or in matters other than those identified in the writing.</p> <p>(d) Same as MR.</p> <p>(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.</p> <p>Last accessed 1/24/2020 here: http://judicial.alabama.gov/docs/library/rules/cond1_2.pdf</p>
Alaska	<p>(a) Subject to paragraphs (c), (d), and (e), a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to offer or accept a settlement. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, whether the client will testify, and whether to take an appeal.</p> <p>(b) Same as MR.</p> <p>(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client consents after consultation.</p> <p>(1) If a written fee agreement is required by Rule 1.5, the agreement shall describe the limitation on the representation.</p> <p>(2) The lawyer shall discuss with the client whether a written notice of representation should be provided to other interested parties.</p> <p>(3) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with this rule is considered to be unrepresented for purposes of Rules 4.2 and 4.3 unless the opposing lawyer knows of or has been provided with:</p>

As of September 20, 2021

	<p>(A) a written notice stating that the lawyer is to communicate only with the limited representation lawyer as to the subject matter of the limited representation; or (B) a written notice of the time period during which the lawyer is to communicate only with the limited representation lawyer concerning the subject matter of the limited representation.</p> <p>(d) Except as provided in paragraph (f), a lawyer shall not counsel or assist a client to engage in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.</p> <p>(e) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.</p> <p>(f) A lawyer may counsel a client regarding Alaska's marijuana laws and assist the client to engage in conduct that the lawyer reasonably believes is authorized by those laws. If Alaska law conflicts with federal law, the lawyer shall also advise the client regarding related federal law and policy.</p> <p>Last accessed 1/24/2020 here: https://public.courts.alaska.gov/web/rules/docs/prof.pdf</p>
Arizona	<p>Same as MR.</p> <p>Last accessed 1/24/2020 here: https://www.azbar.org/Ethics/RulesofProfessionalConduct/ViewRule?id=4</p>
Arkansas	<p>(a) Same as MR.</p> <p>(b) Same as MR.</p> <p>(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.</p> <p>(1) The client's informed consent must be confirmed in writing unless: (A) the representation of the client consists solely of a telephone consultation; (B) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a program authorized by Rule 6.5 and the lawyer's representation consists solely of providing information and advice or the preparation of legal documents; or (C) the court appoints the attorney for a limited purpose that is set forth in the appointment order.</p> <p>(2) If the client gives informed consent as required by this rule, there shall be a presumption that: (A) the representation is limited to the attorney and the services as agreed upon; and (B) the attorney does not represent the client generally or in matters other than those as agreed upon.</p>

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	<p>(d) Same as MR.</p> <p>Last accessed on 1/27/20 here: https://www.arcourts.gov/rules-and-administrative-orders/%5Bcurrent%5D-arkansas-rules-of-professional-conduct</p>
California	<p>(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p> <p>(b) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.</p> <p>Last accessed on 1/27/20 here: http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules</p>
Colorado	<p>(a) Same as MR.</p> <p>(b) Same as MR.</p> <p>(c) A lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. A lawyer may provide limited representation to pro se parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b).</p> <p>(d) Same as MR.</p> <p>Last accessed on 1/27/20 here: https://www.cobar.org/For-Members/Opinions-Rules-Statutes/Rules-of-Professional-Conduct/Rule-12-Scope-of-Representation-and-Allocation-of-Authority-Between-Client-and-Lawyer</p>
Connecticut	<p>(a) Subject to subsections (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify. Subject to revocation by the client and to the terms of the contract, a client's decision to settle a matter shall be implied where the lawyer is retained to represent the client by a third party obligated under the terms of a contract to provide the client with a defense</p>

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	<p>and indemnity for the loss, and the third party elects to settle a matter without contribution by the client.</p> <p>(b) Same as MR.</p> <p>(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. Such informed consent shall not be required when a client cannot be located despite reasonable efforts where the lawyer is retained to represent a client by a third party that is obligated by contract to provide the client with a defense.</p> <p>(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may (1) discuss the legal consequences of any proposed course of conduct with a client; (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law; or (3) counsel or assist a client regarding conduct expressly permitted by Connecticut law, provided that the lawyer counsels the client about the legal consequences, under other applicable law, of the client's proposed course of conduct.</p> <p>Last accessed on 1/27/20 here: https://www.jud.ct.gov/Publications/PracticeBook/PB.pdf</p>
Delaware	<p>Same as MR.</p> <p>Last accessed on 1/27/20 here: https://www.jud.ct.gov/Publications/PracticeBook/PB.pdf</p>
District of Columbia	<p>(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d), and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.</p> <p>(b) Same as MR.</p> <p>(c) Same as MR.</p> <p>(d) A government lawyer's authority and control over decisions concerning the representation may, by statute or regulation, be expanded beyond the limits imposed by paragraphs (a) and (c).</p> <p>(e) Same as MR 1.2(d).</p>

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	<p>(f) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.</p> <p>Last accessed 1/27/20 here: https://www.dcbbar.org/bar-resources/legal-ethics/amended-rules/rule1-02.cfm</p>
Florida	<p>(a) Lawyer to Abide by Client's Decisions. Subject to subdivisions (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, shall reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.</p> <p>(b) Same as MR.</p> <p>(c) Limitation of Objectives and Scope of Representation. If not prohibited by law or rule, a lawyer and client may agree to limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing. If the attorney and client agree to limit the scope of the representation, the lawyer shall advise the client regarding applicability of the rule prohibiting communication with a represented person.</p> <p>(d) Criminal or Fraudulent Conduct. A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent. However, a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.</p> <p>Last accessed 1/27/20 here: https://www-media.floridabar.org/uploads/2019/02/Ch-4-Dec-14-2018-RRTFBb.pdf</p>
Georgia	<p>Same as MR.</p> <p>Adds sentence to end: The maximum penalty for a violation of this rule is disbarment.</p> <p>Last accessed 1/27/20 here: https://www.gabar.org/Handbook/index.cfm#handbook/rule145</p>
Hawaii	<p>(a) Same as MR.</p> <p>(b) Same as MR.</p> <p>(c) Same as MR.</p> <p>(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences</p>

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	<p>of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law, and may counsel or assist a client regarding conduct expressly permitted by Hawai'i law, provided that the lawyer counsels the client about the legal consequences, under other applicable law, of the client's proposed course of conduct.</p> <p>(e) When a lawyer knows or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct. <i>See</i> Rule 1.4(a)(5) of these Rules.</p> <p>Last accessed 1/27/20 here: https://www.courts.state.hi.us/docs/court_rules/rules/hrpcond.htm#Rule%207.2</p>
Idaho	<p>Same as MR.</p> <p>Last accessed 1/27/20 here: https://isb.idaho.gov/wp-content/uploads/irpc.pdf</p>
Illinois	<p>(a) Same as MR.</p> <p>(b) Same as MR.</p> <p>(c) Same as MR.</p> <p>(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may (1) discuss the legal consequences of any proposed course of conduct with a client, (2) counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning or application of the law, and (3) counsel or assist a client in conduct expressly permitted by Illinois law that may violate or conflict with federal or other law, as long as the lawyer advises the client about that federal or other law and its potential consequences.</p> <p>(e) After accepting employment on behalf of a client, a lawyer shall not thereafter delegate to another lawyer not in the lawyer's firm the responsibility for performing or completing that employment, without the client's informed consent.</p> <p>Last accessed 1/27/20 here: http://www.illinoiscourts.gov/supremecourt/rules/art_viii/default_new.asp</p>
Indiana	<p>Same as MR.</p> <p>Last accessed on 1/27/20 here: https://www.in.gov/judiciary/rules/prof_conduct/#_Toc532909543</p>
Iowa	<p>(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 32:1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter.</p>

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	<p>In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.</p> <p>(b) Same as MR.</p> <p>(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. (1) The client’s informed consent must be confirmed in writing unless: (i) the representation of the client consists solely of telephone consultation; (ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit or court-annexed legal services program and the lawyer’s representation consists solely of providing information and advice or the preparation of court-approved legal forms; or (iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order. (2) If the client gives informed consent in a writing signed by the client, there shall be a presumption that: (i) the representation is limited to the attorney and the services described in the writing; and (ii) the attorney does not represent the client generally or in any matters other than those identified in the writing.</p> <p>(d) Same as MR.</p> <p>Last accessed 1/27/20 here: https://www.legis.iowa.gov/docs/ACO/CourtRulesChapter/12-31-2012.32.pdf</p>
Kansas	<p>(a) A lawyer shall abide by a client’s decisions concerning the lawful objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means which the lawyer shall choose to pursue. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p> <p>(b) Same as MR.</p> <p>(c) Same as MR.</p> <p>(d) Same as MR.</p> <p>(e) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer’s conduct.</p> <p>Last accessed 1/27/20 here: http://www.kscourts.org/rules/Rule-List.asp?r1=Rules+Relating+to+Discipline+of+Attorneys</p>
Kentucky	Same as MR.

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	<p>Last accessed 1/27/20 here: https://www.kybar.org/page/scr3#Professional%20Conduct%20Rules</p>
Louisiana	<p>Same as MR.</p> <p>Last accessed 1/27/20 here: https://www.ladb.org/Material/Publication/ROPC/ROPC.pdf</p>
Maine	<p>(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. Subject to the Rules with respect to Declining or Terminating Representation (Rule 1.16), a lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p> <p>(b) Same as MR.</p> <p>(c) A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client provides informed consent after consultation. If, after consultation, the client consents, an attorney may enter a limited appearance on behalf of an otherwise unrepresented party involved in a court proceeding. A lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto that is filed with the court, may not thereafter limit representation as provided in this rule, without leave of court.</p> <p>(d) A lawyer, who under the auspices of a non-profit organization or a court-annexed program provides limited representation to a client without expectation of either the lawyer or the client that the lawyer will provide continuing representation in the matter, is subject to the requirements of Rules 1.7, 1.9, 1.10 and 1.11 only if the lawyer is aware that the representation of the client involves a conflict-of-interest.</p> <p>(e) Same as MR 1.2(d).</p> <p>Last accessed 1/27/20 here: http://mebaroverseers.org/regulation/bar_rules.html?id=87817</p>
Maryland	<p>(a) Subject to sections (c) and (d) of this Rule, an attorney shall abide by a client's decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued. An attorney may take such action on behalf of the client as is impliedly authorized to carry out the representation. An attorney shall abide by a client's decision whether to settle a matter. In a criminal case, the attorney shall abide by the client's decision, after consultation with the attorney, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p>

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	<p>(b) An attorney's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.</p> <p>(c) An attorney may limit the scope of the representation in accordance with applicable Maryland Rules if (1) the limitation is reasonable under the circumstances, (2) the client gives informed consent, and (3) the scope and limitations of any representation, beyond an initial consultation or brief advice provided without a fee, are clearly set forth in a writing, including any duty on the part of the attorney under Rule 1-324 to forward notices to the client.</p> <p>(d) An attorney shall not counsel a client to engage, or assist a client, in conduct that the attorney knows is criminal or fraudulent, but an attorney may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.</p> <p>Last accessed 1/27/2020 here: https://www.courts.state.md.us/attygrievance/rules</p>
Massachusetts	<p>(a) A lawyer shall seek the lawful objectives of his or her client through reasonably available means permitted by law and these Rules. A lawyer does not violate this Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his or her client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.</p> <p>(b) Same as MR.</p> <p>(c) Same as MR.</p> <p>(d) Same as MR.</p> <p>Last accessed 1/27/20 here: https://www.mass.gov/supreme-judicial-court-rules/rules-of-professional-conduct-rule-12-scope-of-representation-and</p>
Michigan	<p>(a) A lawyer shall seek the lawful objectives of a client through reasonably available means permitted by law and these rules. A lawyer does not violate this rule by acceding to reasonable requests of opposing counsel that do not prejudice the rights of the client, by being punctual in fulfilling all professional commitments, or by avoiding offensive tactics. A lawyer shall abide by a client's decision whether to accept an offer of settlement or mediation evaluation of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, with respect to a plea to be entered, whether to waive jury trial, and whether the client will testify. In</p>

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	<p>representing a client, a lawyer may, where permissible, exercise professional judgment to waive or fail to assert a right or position of the client.</p> <p>(b) A lawyer licensed to practice in the State of Michigan may limit the scope of a representation, file a limited appearance in a civil action, and act as counsel of record for the limited purpose identified in that appearance, if the limitation is reasonable under the circumstances and the client gives informed consent, preferably confirmed in writing.</p> <p>(1) A lawyer licensed to practice in the State of Michigan may draft or partially draft pleadings, briefs, and other papers to be filed with the court. Such assistance does not require the signature or identification of the lawyer, but does require the following statement on the document: "This document was drafted or partially drafted with the assistance of a lawyer licensed to practice in the State of Michigan, pursuant to Michigan Rule of Professional Conduct 1.2(b)."</p> <p>(2) The filing of such documents is not and shall not be deemed an appearance by the lawyer in the case. Any filing prepared pursuant to this rule shall be signed by the party designated as "self-represented" and shall not be signed by the lawyer who provided drafting preparation assistance. Further, the lawyer providing document preparation assistance without entering a general appearance may rely on the client's representation of the facts, unless the lawyer has reason to believe that such representation is false, seeks objectives that are inconsistent with the lawyer's obligation under the Rules of Professional Conduct, or asserts claims or defenses pursuant to pleadings or papers that would, if signed by the lawyer, violate MCR 1.109, or which are materially insufficient.</p> <p>(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning, or application of the law.</p> <p>(d) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.</p> <p>Last accessed 1/27/20 here</p>
Minnesota	<p>Same as MR.</p> <p>Last accessed 02/07/20 at https://www.revisor.mn.gov/court_rules/pr/subtype/cond/id/1.2/</p>
Mississippi	<p>(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, a</p>

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	<p>lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p> <p>(b) Same as MR.</p> <p>(c) Same as MR.</p> <p>(d) Same as MR.</p> <p>(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.</p> <p>Last accessed 1/27/20 here: https://courts.ms.gov/research/rules/msrulesofcourt/rules_of_professional_conduct.pdf</p>
Missouri	<p>(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to Rule 4-1.2(c), (f) and (g), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p> <p>(b) Same as MR.</p> <p>(c) A lawyer may limit the scope of representation if the client gives informed consent in a writing signed by the client to the essential terms of the representation and the lawyer's limited role. Use of a written notice and consent form substantially similar to that contained in the comment to this Rule 4-1.2 creates the presumptions: (1) the representation is limited to the lawyer and the services described in the form, and (2) the lawyer does not represent the client generally or in any matters other than those identified in the form.</p> <p>(d) The requirement of a writing signed by the client does not apply to: (1) an initial consultation with any lawyer, or (2) pro bono services provided through a nonprofit organization, a court-annexed program, a bar association, or an accredited law school, (3) services provided by a not-for-profit organization funded in whole or in part by the Legal Services Corporation established by <u>42 USC Sec. 2996b</u>.</p> <p>(e) An otherwise unrepresented party to whom limited representation is being provided or has been provided is considered to be unrepresented for purposes of communication under <u>Rule 4-4.2</u> and <u>Rule 4-4.3</u> except to the extent the lawyer acting within the scope of limited representation provides other counsel with a written notice of a time period within which other counsel shall communicate only with the lawyer of the party who is otherwise self-represented.</p> <p>(f) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the</p>

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	<p>lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.</p> <p>(g) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.</p> <p>Last accessed 1/27/20 here</p>
Montana	<p>Same as MR.</p> <p>Last accessed 1/27/20 here</p>
Nebraska	<p>(a) Subject to paragraphs (b), (c), (d), (e), and (f), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p> <p>(b) A lawyer may limit the scope of his or her representation of a client if the limitation is reasonable in the lawyer's judgment under the circumstances and the client gives informed consent to such limited representation.</p> <p>(c) A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that said filings are "Prepared By" and the name, business address, and bar number of the lawyer preparing the same. Such actions by the lawyer shall not be deemed an appearance by the lawyer in the case. Any filing prepared under this rule shall be signed by the litigant designated as "pro se," but shall not be signed by the lawyer preparing the filing.</p> <p>(d) If, after consultation, the client consents in writing, a lawyer may enter a "Limited Appearance" on behalf of an otherwise unrepresented party involved in a court proceeding, and such appearance shall clearly define the scope of the lawyer's limited representation.</p> <p>(e) Upon completion of the "Limited Representation," the lawyer shall within 10 days file a "Certificate of Completion of Limited Representation" with the court. Copies shall be provided to the client and opposing counsel or opposing party if unrepresented. After such filing, the lawyer shall not have any continuing obligation to represent the client. The filing of such certificate shall be deemed to be the lawyer's withdrawal of appearance which shall not require court approval.</p>

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	<p>(f) Same as MR 1.2(d).</p> <p>Last accessed 1/27/20 here: https://supremecourt.nebraska.gov/supreme-court-rules/chapter-3-attorneys-and-practice-law/article-5-nebraska-rules-professional</p>
Nevada	<p>Same as MR.</p> <p>Last accessed on 1/27/20 here: https://www.leg.state.nv.us/CourtRules/RPC.html</p>
New Hampshire	<p>(a) Subject to paragraphs (c), (d), and (e), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.</p> <p>(b) Same as MR.</p> <p>(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. In providing limited representation, the lawyer's responsibilities to the client, the court and third parties remain as defined by these Rules as viewed in the context of the limited scope of the representation itself; and court rules when applicable.</p> <p>(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, except as stated in paragraph (e), but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.</p> <p>(e) A lawyer may counsel or assist a client regarding conduct expressly permitted by state or local law that conflicts with federal law, provided that the lawyer counsels the client about the potential legal consequence of the client's proposed course of conduct under applicable federal law.</p> <p>(f) It is not inconsistent with the lawyer's duty to seek the lawful objectives of a client through reasonably available means, for the lawyer to accede to reasonable requests of opposing counsel that do not prejudice the rights of the client, avoid the use of offensive or dilatory tactics, or treat opposing counsel or an opposing party with civility.</p> <p>(g) In addition to requirements set forth in Rule 1.2(c),</p> <p>(1) a lawyer may provide limited representation to a client who is or may become involved in a proceeding before a tribunal (hereafter referred to as litigation), provided that the limitations are fully disclosed and explained, and the client gives informed consent to the limited representation. The form set forth in section (g) of this Rule has been created to facilitate disclosure and explanation of the limited nature of representation in litigation. Although not prohibited, the provision of limited</p>

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	<p>representation to a client who is involved in litigation and who is entitled as a matter of law to the appointment of counsel is discouraged.</p> <p>(2) a lawyer who has not entered an applicable limited appearance, and who provides assistance in drafting pleadings, shall advise the client to comply with any rules of the tribunal regarding participation of the lawyer in support of a pro se litigant.</p> <p>(h) Sample form</p> <p>Last accessed 1/27/20 here: https://www.courts.state.nh.us/rules/pcon/pcon-1_2.htm</p>
New Jersey	<p>(a) A lawyer shall abide by a client's decisions concerning the scope and objectives of representation, subject to paragraphs (c) and (d), and as required by RPC 1.4 shall consult with the client about the means to pursue them. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall consult with the client and, following consultation, shall abide by the client's decision on the plea to be entered, jury trial, and whether the client will testify.</p> <p>(b) Same as MR.</p> <p>(c) Same as MR.</p> <p>(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.</p> <p>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.</p> <p>Last accessed 08/02/21</p>
New Mexico	<p>Same as MR.</p> <p>Last accessed 1/27/20 here: https://casetext.com/rule/new-mexico-court-rules/new-mexico-rules-of-professional-conduct/article-1-client-lawyer-relationship/rule-16-102-scope-of-representation-and-allocation-of-authority-between-client-and-lawyer</p>
New York	<p>(a) Subject to the provisions herein, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall</p>

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	<p>abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p> <p>(b) Same as MR.</p> <p>(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed consent and where necessary notice is provided to the tribunal and/or opposing counsel.</p> <p>(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, except that the lawyer may discuss the legal consequences of any proposed course of conduct with a client.</p> <p>(e) A lawyer may exercise professional judgment to waive or fail to assert a right or position of the client, or accede to reasonable requests of opposing counsel, when doing so does not prejudice the rights of the client.</p> <p>(f) A lawyer may refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal.</p> <p>(g) A lawyer does not violate these Rules by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, and by treating with courtesy and consideration all persons involved in the legal process.</p> <p>Last accessed 1/27/20: https://www.nysba.org/DownloadAsset.aspx?id=50671</p>
North Carolina	<p>(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.</p> <p>(1) A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p> <p>(2) A lawyer does not violate this rule by acceding to reasonable requests of opposing counsel that do not prejudice the rights of a client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.</p> <p>(3) In the representation of a client, a lawyer may exercise his or her professional judgment to waive or fail to assert a right or position of the client.</p> <p>(b) Same as MR.</p> <p>(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances.</p>

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	<p>(d) Same as MR.</p> <p>Last accessed 1/27/20 here: https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-12-scope-of-representation-and-allocation-of-authority-between-client-and-lawyer/</p>
North Dakota	<p>(a) Same as MR.</p> <p>(b) Same as MR.</p> <p>(c) A lawyer may limit the scope of the representation if the client consents in writing after consultation.</p> <p>(d) Same as MR.</p> <p>(e) A lawyer may counsel or assist a client regarding conduct expressly permitted by North Dakota law. To the extent required by Rule 1.1, a lawyer shall counsel such a client about the legal consequences, under other applicable law, of the client's proposed course of conduct.</p> <p>Last accessed 09/27/20 here: https://www.ndcourts.gov/legal-resources/rules/ndrprofconduct/1-2</p>
Ohio	<p>(a) Subject to divisions (c), (d), and (e) of this rule, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer does not violate this rule by acceding to requests of opposing counsel that do not prejudice the rights of the client, being punctual in fulfilling all professional commitments, avoiding offensive tactics, and treating with courtesy and consideration all persons involved in the legal process. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision as to a plea to be entered, whether to waive a jury trial, and whether the client will testify.</p> <p>(b) [RESERVED]</p> <p>(c) A lawyer may limit the scope of a new or existing representation if the limitation is reasonable under the circumstances and communicated to the client, preferably in writing.</p> <p>(d)(1) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client in making a good faith effort to determine the validity, scope, meaning, or application of the law.</p> <p>(2) A lawyer may counsel or assist a client regarding conduct expressly permitted under Sub. H.B. 523 of the 131st General Assembly authorizing the use of marijuana</p>

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	<p>for medical purposes and any state statutes, rules, orders, or other provisions implementing the act. In these circumstances, the lawyer shall advise the client regarding related federal law.</p> <p>(e) Unless otherwise required by law, a lawyer shall not present, participate in presenting, or threaten to present criminal charges or professional misconduct allegations solely to obtain an advantage in a civil matter.</p> <p>Last accessed 1/27/20 here</p>
Oklahoma	<p>(a) Same as MR.</p> <p>(b) The substance of (b) is in modified Comment at [5]. [Comment [5] reads: “Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client, including representation by appointment, does not constitute approval or endorsement of the client's political, economic, social or moral views or activities.”</p> <p>(c) Same as MR.</p> <p>(d) Same as MR.</p> <p>Last accessed 1/27/20 here: http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=448831</p>
Oregon	<p>(a) Subject to paragraphs (b) and (c), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p> <p>(b) Same as MR.</p> <p>(c) Same as MR.</p> <p>(d) Notwithstanding paragraph (c), a lawyer may counsel and assist a client regarding Oregon’s marijuana-related laws. In the event Oregon law conflicts with federal or tribal law, the lawyer shall also advise the client regarding related federal and tribal law and policy.</p> <p>Last accessed 1/28/20 here: https://www.osbar.org/docs/rulesregs/orpc.pdf</p>
Pennsylvania	<p>(a) Same as MR.</p> <p>(b) Same as MR.</p> <p>(c) Same as MR.</p>

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	<p>(d) Same as MR.</p> <p>(e) A lawyer may counsel or assist a client regarding conduct expressly permitted by Pennsylvania law, provided that the lawyer counsels the client about the legal consequences, under other applicable law, of the client’s proposed course of conduct.</p> <p>Last accessed 1/28/20 here: https://www.padisiplinaryboard.org/for-attorneys/rules/rule/3/the-rules-of-professional-conduct#</p>
Rhode Island	<p>(a) Same as MR.</p> <p>(b) Same as MR.</p> <p>(c) Same as MR 1.2(d).</p> <p>(d) Limited Scope Representation. A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. The client must provide knowing and informed consent as part of the written limited scope representation engagement or retainer agreement. Upon entering into a written limited scope representation engagement or retainer agreement, an attorney/client relationship arises between the client and lawyer.</p> <p>(1) For limited scope representation matters involving only the provision of drafting services, such as drafting a pleading, motion, or other written submission. The lawyer shall sign the document(s) and disclose thereon his or her identity and the nature and extent of the assistance that he or she is providing to the tribunal and to all parties to the litigation. The lawyer shall also indicate on the written document that his or her signature does not constitute an entry of appearance or otherwise mean that the lawyer represents the client in the matter beyond assisting in the preparation of the document(s). The attorney/client relationship between the client and the lawyer engaged to provide limited scope drafting services shall terminate in accordance with Rule 1.16(d) upon the filing of all document(s) the lawyer was engaged to draft.</p> <p>(2) For limited scope representation matters involving court proceedings in connection with, in addition to, or independent of the provision of drafting services. The lawyer shall make a limited appearance on behalf of the otherwise unrepresented client by filing an Entry of Limited Appearance. This Entry of Limited Appearance cannot be filed until the otherwise unrepresented client also files a pro se appearance in the case. The Entry of Limited Appearance shall state precisely the court event to which the limited appearance pertains. A lawyer may not file an Entry of Limited Appearance for more than one court event in a civil case without leave of the court and the written consent of the client. A lawyer may not enter a limited appearance for the sole purpose of making evidentiary objections. A limited appearance also shall not allow both a lawyer and a litigant to argue at the same court event during the period of the limited appearance.</p> <p>(3) Termination of Limited Scope Representation. Upon completion of a limited scope representation conducted pursuant to Rule 1.2(d)(2), a lawyer shall withdraw by filing a Notice of Withdrawal of Limited Appearance in the court in which the appearance was made, with written notice to the client. No formal motion to withdraw is required</p>

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	<p>and the Notice of Withdrawal of Limited Appearance when filed will be treated as a withdrawal as a matter of course when the lawyer certifies that the purpose for which the appearance was entered has been accomplished and that written notice of the withdrawal has been given to the client. The Notice of Withdrawal of Limited Appearance shall include the client's name, address, and telephone number, unless otherwise provided by law. The lawyer must file a Notice of Withdrawal of Limited Appearance for each court event for which the lawyer has filed an Entry of Limited Appearance. Such withdrawal shall be done as soon as practicable. A lawyer who seeks to withdraw before the purpose of the limited appearance has been accomplished may do so only on motion and with notice. Upon the submission of the Notice of Withdrawal of Limited Appearance in accordance with this subsection, the representation of the client is terminated in accordance with Rule 1.16(d).</p> <p>(4) A pleading, motion, Entry of Limited Appearance, Notice of Withdrawal of Limited Appearance, or any other document filed by a lawyer making a limited appearance under subsections 1 through 3 shall comply with the requirements of Rule 1.2(d).</p> <p>Last accessed 1/28/20 here: https://www.courts.ri.gov/publicresources/disciplinaryboard/pdf/article5.pdf</p>
South Carolina	<p>Same as MR.</p> <p>Last accessed 1/28/20 here</p>
South Dakota	<p>(a) – (d) Same as MR.</p> <p>(e) Notwithstanding subsection (d), a lawyer may counsel or assist a client regarding conduct expressly permitted by South Dakota Cannabis laws, even if the same conduct violates federal law, but the lawyer must inform the client that the conduct violates federal law and advise the client about the legal consequences under federal law of the client's proposed course of conduct.</p> <p>Last accessed 09/20/21</p>
Tennessee	<p>Same as MR.</p> <p>Last accessed 1/28/20 here: http://www.tsc.state.tn.us/rules/supreme-court/8</p>
Texas	<p>a) Subject to paragraphs (b), (c), (d), and (e), (f), and (g), a lawyer shall abide by a client's decisions: (1) concerning the objectives and general methods of representation; (2) whether to accept an offer of settlement of a matter, except as otherwise authorized by law; (3) In a criminal case, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.</p> <p>(b) A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation.</p> <p>(c) Same as MR 1.2(d).</p>

As of September 20, 2021

	<p>(d) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.</p> <p>(e) When a lawyer has confidential information clearly establishing that the lawyer's client has committed a criminal or fraudulent act in the commission of which the lawyer's services have been used, the lawyer shall make reasonable efforts under the circumstances to persuade the client to take corrective action.</p> <p>(f) When a lawyer knows that a client expects representation not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct. (g) A lawyer shall take reasonable action to secure the appointment of a guardian or other legal representative for, or seek other protective orders with respect to, a client whenever the lawyer reasonably believes that the client lacks legal competence and that such action should be taken to protect the client. Last accessed 1/28/20 here</p>
Utah	<p>(a) – (d) Same as MR.</p> <p>(e) A licensed paralegal practitioner shall conspicuously display in the licensed paralegal practitioner's office a notice that shall be at least 12 by 20 inches with boldface type or print with each character at least one inch in height and width that contains a statement that the licensed paralegal practitioner is not a lawyer licensed to provide legal services without limitation. Last accessed 07/21/21</p>
Vermont	<p>Same as MR. Last accessed 1/28/20 here</p>
Virginia	<p>(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p> <p>(b) A lawyer may limit the objectives of the representation if the client consents after consultation.</p> <p>(c) Same as MR 1.2(d).</p> <p>(d) A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.</p>

As of September 20, 2021

	<p>(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.</p> <p>Last accessed 1/28/20 here: http://www.vsb.org/pro-guidelines/index.php/rules/client-lawyer-relationship/rule1-2/</p>
Washington	<p>(a) Same as MR.</p> <p>(b) Same as MR.</p> <p>(c) Same as MR.</p> <p>(d) Same as MR.</p> <p>(e) [Reserved.]</p> <p>(f) A lawyer shall not purport to act as a lawyer for any person or organization if the lawyer knows or reasonably should know that the lawyer is acting without the authority of that person or organization, unless the lawyer is authorized or required to so act by law or a court order.</p> <p>Last accessed 1/28/20 here: https://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=RPC</p>
West Virginia	<p>(a) Same as MR.</p> <p>(b) Same as MR.</p> <p>(c) Same as MR.</p> <p>(d) Same as MR.</p> <p>(e) A lawyer may counsel a client regarding West Virginia law and assist the client to engage in conduct that the lawyer reasonably believes is authorized by those laws. If West Virginia law conflicts with federal law, the lawyer shall also advise the client regarding related federal law and its potential consequences.</p> <p>Last accessed 1/28/20 here: http://www.courts.wv.gov/legal-community/court-rules/professional-conduct/rule1.html#rule1.2</p>
Wisconsin	<p>(a) Subject to pars. (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by SCR 20:1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case or any proceeding that could result in deprivation of liberty, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p>

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	<p>(b) Same as MR.</p> <p>(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. The client's informed consent must be in writing except as set forth in sub. (1).</p> <p>(1) The client's informed consent need not be given in writing if: a. the representation of the client consists solely of telephone consultation; b. the representation is provided by a lawyer employed by or participating in a program sponsored by a nonprofit organization, a bar association, an accredited law school, or a court and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms; c. the court appoints the lawyer for a limited purpose that is set forth in the appointment order; d. the representation is provided by the state public defender pursuant to Ch. 977, stats., including representation provided by a private attorney pursuant to an appointment by the state public defender; or e. the representation is provided to an existing client pursuant to an existing lawyer-client relationship.</p> <p>(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that: a. the representation is limited to the lawyer and the services described in the writing, and b. the lawyer does not represent the client generally or in matters other than those identified in the writing.</p> <p>Last accessed 1/28/20 here: https://www.wicourts.gov/courts/offices/docs/olrscr20annotated.pdf</p>
WY	<p>(a) Subject to paragraphs (c), (d), and (e), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.</p> <p>(b) Same as MR.</p> <p>(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with this rule is considered to be unrepresented for purposes of Rules 4.2 and 4.3 unless the opposing lawyer knows of or has been provided with: (1) a written notice stating that the lawyer is to communicate only with the limited representation lawyer as to the subject matter of the limited representation; or (2) a written notice of the time period during which the lawyer is to communicate only with the limited representation lawyer concerning the subject matter of the limited representation.</p> <p>(d) Same as MR.</p>

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	<p>(e) When a lawyer is appointed to act as a guardian ad litem, the lawyer shall represent what he or she reasonably believes to be in the best interests of the individual. The lawyer shall not, therefore, be bound by the individual's objectives for the representation. The lawyer shall, however, consult with the individual, in a manner appropriate to the age and/or abilities of the individual, as to the objectives the lawyer intends to pursue, as well as the means by which those objectives will be pursued.</p>
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Last accessed 1/28/20 [here](#)

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**VIRGINIA STATE BAR
STANDING COMMITTEE ON LEGAL ETHICS**

Thursday, June 24, 2021
9:00 a.m.

AGENDA

I. APPROVAL OF MINUTES

II. LEGAL ETHICS OPINIONS

- A. LEO 1893 – Conflicts in representation of parent and minor child
- B. LEO 1894 – Conflicts in joint representation of multiple minor children; aggregate settlements
- C. LEO 1896 – Lawyers working from home/remotely in Virginia
- D. LEO 1895 – Communication with victim/witness represented by counsel
- E. LEO Review – Application of Rule 1.8(e)(1)/client's responsibility for costs advanced

III. RULES OF PROFESSIONAL CONDUCT

- A. Rule 1.2 – Advising clients about cannabis activities legal under state law

IV. ADJOURNMENT



Virginia State Bar
Seeking Public Comment
1111 East Main Street, Suite 700
Richmond, Virginia 23219-0026
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD (804) 775-0502

MEDIA CONTACT: James M. McCauley, Ethics Counsel

RELEASE DATE: June 29, 2021

**VIRGINIA STATE BAR'S
STANDING COMMITTEE ON LEGAL ETHICS
SEEKING PUBLIC COMMENT ON PROPOSED AMENDMENTS
TO RULE OF PROFESSIONAL CONDUCT 1.2**

RICHMOND - Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar's Standing Committee on Legal Ethics ("Committee") is seeking public comment on proposed amendments to Rule 1.2 of the Rules of Professional Conduct.

The proposed amendment addresses the dilemma faced by lawyers who are asked to advise clients about cannabis- or marijuana-related activities that are legal under applicable state law but are illegal under federal law. The proposed amendment would allow lawyers to advise clients on how to comply with state law as long as the clients are also cautioned about the application of federal law. The proposal also includes proposed new Comment [13] to further explain the purpose of the rule and the content of the advice that must be provided to the client.

Inspection and Comment

The proposed rule amendments may be inspected below or by contacting the Office of Ethics Counsel at 804-775-0557.

Rule 1.2

Page 2

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than **July 30, 2021**. Comments may be submitted via email to publiccomment@vsb.org.

NOTICES TO LAWYERS

Comments Sought on Plan to Raise Cap on Refunds to Clients Harmed by Lawyers to \$100,000

The purpose of the amendments is to raise the per-petitioner cap from \$75,000 to \$100,000 for losses incurred on or after July 1, 2021. The amendments will be presented to Bar Council on October 29, 2021.

Any individual, business, or other entity may file written comments in support of or in opposition to the proposed changes with Vivian R. Byrd, Clients' Protection Fund Administrator, not later than September 30, 2021. Comments may be submitted by mail to 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026 or by email to cpf@vsb.org.
www.vsb.org/site/news/item/comments_sought_CPF

Comments Sought on Proposed Changes to Rules of Court

The Advisory Committee on Rules of Court seeks comments from the Bench and Bar concerning proposed revisions to Part One, Part Five, and Part Five A Rules of Court, which include amendments to accommodate the changed appellate jurisdiction of the Court of Appeals of Virginia.

Comments must be sent before August 10, 2021, to Steven Dalle Mura, Director of Research, Office of the Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, Richmond, VA 23219.

Or by email to: proposedrules@vacourts.gov.

www.vsb.org/site/news/item/comments_sought_rules_of_court1

Comments Sought on a Proposed LEO and One RPC Change

The Virginia State Bar's Standing Committee on Legal Ethics is seeking public comment on proposed Legal Ethics Opinion 1896 and proposed amendments to Rule 1.2 of the Rules of Professional Conduct.

The proposed opinion may be inspected at the below link, or by contacting the Office of Ethics Counsel at (804) 775-0557. Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than August 30, 2021. Comments may be submitted via email to publiccomment@vsb.org.
www.vsb.org/site/news/item/two_leos_one_rule_change

Supreme Court of Virginia Seeks Public Comment on Amendments to Canons of Judicial Conduct

On July 1, 2021, the Supreme Court of Virginia requested public comment on the results of its four-year study to amend the Canons of Judicial Conduct. According to the Court, the revised Canons do not "...adopt the 2007 ABA Model Code of Judicial Conduct or retain the structure of the current Canons." Comments on the proposed amendments to the Rules of Court,

Part Six, Section III, Canons of Judicial Conduct, must be received by September 29, 2021, and must be addressed to:
www.vsb.org/site/news/item/scv_canons

Bar Office Remains Closed to the Public

If you need to reach a staff person, please send an email or call the appropriate contact person. We will provide additional updates on our website. We urge the use of electronic communication to assist us in providing services to protect the public.

www.vsb.org/site/news/item/vsb_remains_closed

VSF Offices to Fully Reopen to the Public September 7th

After partially closing to the public in 2020 due to the COVID pandemic, the Virginia State Bar will fully reopen its offices at 1111 E. Main Street in Richmond on Tuesday, September 7, 2021.

www.vsb.org/site/news/item/vsb_offices_to_fully_reopen_to_the_public_september_7th

Notice: Lawyers Receive Emails from Impostor Account Posing as VSB

Some lawyers in the Commonwealth received phony emails from an email ending in vastatebar.org, which is a fake account registered in Arizona that has spoofed the Virginia State Bar in the past.

Lawyers are asked not to interact with this email or click on any links in the email as it may contain malware, spyware, worms, or other damaging cyber security software.

www.vsb.org/site/news/item/vsb_impostor

Court of Appeals of Virginia Issues Sixth COVID-19 Order

On June 29, 2021, the Court of Appeals of Virginia issued a sixth order extending its February 22, 2021, order until further notice because of the COVID-19 pandemic.

The Court of Appeals of Virginia stated in the Order that as of September 21, 2021, efforts will be made to conduct the Court's oral argument merit dockets in person, as practicable. Oral argument writ dockets will be held virtually through December 31, 2021.

www.vsb.org/site/news/item/CAV_sixth_covid_order

Supreme Court of Virginia Issues Twenty-Fifth Emergency Order Due to COVID

On July 7, 2021, the Supreme Court of Virginia issued a twenty-fifth judicial emergency order in response to the COVID pandemic, extending its existing Order through August 11, 2021.

The Order applies to all circuit and district courts in the Commonwealth and keeps in effect the safety protocols, courthouse admission screenings, tolling of speedy trial act deadlines, and electronic signature provisions of its prior orders.

www.vsb.org/site/news/item/SCV_twenty_fifth_covid

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Governance

Jay B. Myerson of Reston has been inducted as VSB president for 2021-22

Stephanie E. Grana has become VSB president elect.



Read highlights of the June 18 **VSB Council Meeting** [here](#).

Virginia's seventh Constitution, crafted by 11 Virginia lawyers in 1971, celebrates its **50th Anniversary today**.

The Standing Committee on Legal Ethics is seeking public comment on two LEOs and one rule change: Legal Ethics Opinion 1893, LEO 1896, and proposed amendments to Rule 1.2 of the Rules of Professional Conduct.

The **Advisory Committee on Rules of Court** is seeking comments from the Bench and Bar on revisions to Part One, Part Five, and Part Five A Rules of Court, which include amendments to accommodate the changed appellate jurisdiction of the Court of Appeals of Virginia.

The VSB proposes changes to review of agreed disciplinary dispositions.

VSB offices to fully reopen to the public on September 7. The latest emergency orders from the Supreme Court of Virginia and the Court of Appeals of Virginia, as well as other COVID updates, are [here](#).

The Bar will be closed on July 5 for Independence Day.

Discipline

Recent disciplinary actions:

Daniel Robert Goodwin, license revoked, effective June 22, 2021.

Jason Edward Rheinstein, license revoked, effective June 25, 2021.

OlaDipo Akinwunmi AkinDeko, license suspended, effective June 25, 2021.

Alfred Lincoln Robertson Jr., license suspended, effective on June 25, 2021.

Philip John Geib, public reprimand, effective June 11, 2021.

Private discipline: 2 private reprimands and 2 private admonitions.

Compliance



You should have received your **dues statement** in the mail in June. Be sure to complete the requirements for license renewal by July 31. You may pay your dues and fees, certify your liability insurance coverage, report pro bono, and join VSB sections **online**.

What's new on your dues statement this year? Find out **here**.

Need to change your status? Check the appropriate box under Status Change Request on your **dues statement**. More information on status changes can be found **here**.

Pro Bono / Access to Justice



Virginia Free Legal Answers Summer Associate Challenge!

Free Legal Answers helps low-income people with civil legal needs. Virginia lawyers are among the most prolific answerers in the country. Consider helping even more people by asking your summer associates to work with you to answer questions. All law firms that participate and report doing so to Crista Gantz **by July 31, 2021** will be recognized by the ABA and the VSB. Questions? cgantz@vsb.org

Pro Bono Reporting

We want to hear from you! Please report your pro bono hours and financial contributions made over the past 12 months when you renew your membership. The deadline to renew is July 31.

Opportunities, Awards, and Events

Edward L. Chambers Jr. was the posthumous recipient of the inaugural memorial award in his name honoring longstanding and exemplary bar service.



The Conference of Local and Specialty Bar Associations (CLSBA) **Awards of Merit** recognized 12 bars and seven projects for service to the profession and the people of the Commonwealth. Thank you to the many lawyers who donated their time.



Jeannie P. Dahnk received the Rakes Leadership in Education Award at the hybrid VSB Annual Meeting in Virginia Beach for her unwavering dedication to improving the quality of lawyer education in the Commonwealth via teaching, writing, and the promotion of quality CLE.

Need CLE?

VSB Annual Meeting CLEs are now available for on-demand MCLE credit. From celebrating the **100th Anniversary of the 19th Amendment to learning about new marijuana laws**, there is something for everyone in these virtual CLEs. Only \$95.00 for 12.5 hours (5.5 ethics hours) of on-demand learning available through September 15, 2021. **Register here.***

**NOTE: If you registered for the live Annual Meeting, don't register again. Use the link you received for the live program to watch any sessions you missed. If you no longer have that link, please contact annualmeeting@vsb.org.*

FREE CLSBA SOLO & SMALL FIRM EVENTS

Solo & Small-Firm Practitioner Forums are going live again! The first program will take place on October 15, 2021, in Danville. **The Hon. William C. Mims** will lead a town hall meeting. **Register here** for this informative event.

Solo Webinar – On Tuesday, September 14, 2021, 1-2 pm – join us for ***Avoiding Ethical Pitfalls as the Practice of Law Evolves***. ABA and VSB Techshow speakers Sharon Nelson, John Simek, and Davie Ries will present this Ethics/CLE. **Register here.**



The Virginia Lawyer Referral Service **NEEDS LAWYERS** throughout the state and for ALL areas of law practices that are active VSB members in good standing. Join today, and start getting prescreened referrals! Contact Toni Dunson at dunson@vsb.org for more information.

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Proposed | amendments to Rule 1.2 of the Rules of Professional Conduct. Comments due by July 30, 2021.

Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar's Standing Committee on Legal Ethics ("Committee") is seeking public comment on proposed amendments to Rule 1.2 of the Rules of Professional Conduct.

[View the Current Rule](#)

The proposed amendment addresses the dilemma faced by lawyers who are asked to advise clients about cannabis- or marijuana-related activities that are legal under applicable state law but are illegal under federal law. The proposed amendment would allow lawyers to advise clients on how to comply with state law as long as the clients are also cautioned about the application of federal law. The proposal also includes proposed new Comment [13] to further explain the purpose of the rule and the content of the advice that must be provided to the client.

Inspection and Comment

The proposed rule amendments may be inspected below or by contacting the Office of Ethics Counsel at (804) 775-0557.

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than **July 30, 2021**. Comments may be submitted via email to publiccomment@vsb.org.

proposed amendments underlined

RULE 1.2 Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the objectives of the representation if the client consents after consultation.

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may

(1) discuss the legal consequences of any proposed course of conduct with a client; and

(2) may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law; and

(3) may counsel or assist a client regarding conduct expressly permitted by state or other applicable law that conflicts with federal law, provided that the lawyer counsels the client about the potential legal consequence of the client's proposed course of conduct under applicable federal law.

(d) A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

Comment

Scope of Representation

[1] Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by the law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. In that context, a lawyer shall advise the client about the advantages, disadvantages, and availability of dispute resolution processes that might be appropriate in pursuing these objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. These Rules do not define the lawyer's scope of authority in litigation.

[2-3] *ABA Model Rule* Comments not adopted.

[4] In a case in which the client appears to be suffering mental disability, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, a lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Services Limited in Objectives or Means

[6] The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is undertaken

may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent.

[7] An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1, or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

[8] *ABA Model Rule* Comment not adopted.

Criminal, Fraudulent and Prohibited Transactions

[9] A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted or required by Rule 1.6. However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. A lawyer shall not continue assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal or fraudulent. See Rule 1.16.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (c) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer should not participate in a sham transaction; for example, a transaction to effectuate criminal or fraudulent escape of tax liability. Paragraph (c) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. Paragraph (c)(2) last clause of paragraph (c) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities. See also Rule 3.4(d).

[13] Paragraph (c)(3) addresses the dilemma facing a lawyer whose client wishes to engage in a cannabis or marijuana business that is permitted by applicable state or other law. Conduct permitted by state law may be prohibited by the federal Controlled Substances Act, 21 U.S.C. §§ 801-904 and other law. The conflict between state and federal law makes it particularly important to allow a lawyer to provide legal advice and assistance to a client seeking to engage in conduct permitted by Virginia law. In providing such advice and assistance, a lawyer shall also advise the client about related federal law and policy. Paragraph (c)(3) is not restricted in its application to the marijuana law conflict.

Posted: June 29, 2021

Updated: June 29, 2021

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June 29, 2021

VSB Seeking Public Comment on Two Proposed LEOs and One Rule Change

The Virginia State Bar's Standing Committee on Legal Ethics is seeking public comment on proposed Legal Ethics Opinion 1893, proposed LEO 1896, and proposed amendments to Rule 1.2 of the Rules of Professional Conduct.

LEO 1893 (update 7/2/21: The proposed draft Legal Ethics Opinion 1893 has been withdrawn pending further review by the Standing Committee on Legal Ethics.)

[LEO 1896](#) addresses the issues of out-of-state lawyers working remotely in Virginia. The opinion explores the remote work questions sparked by the COVID-19 pandemic and discusses opinions on the questions from other states and the ABA.

The [amendments to Rule 1.2](#) addresses the dilemma faced by lawyers advising clients about cannabis- or marijuana-related activities that are legal under state law but are illegal under federal law. The proposed amendment would allow lawyers to advise clients on how to comply with state law as long as the clients are also cautioned about the application of federal law.

Inspection and Comment

The proposed opinions may be inspected at the above links, or by contacting the Office of Ethics Counsel at 804-775-0557.

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than August 30, 2021. Comments may be submitted via email to publiccomment@vsb.org.

Posted 6/29/21

Updated 7/2/21

Updated 7/12/21 to extend comment deadline.

Updated: Jul 12, 2021



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From: [Hall, Kristi](#)
To: "aherrick@albemarle.org"
Cc: [publiccomment](#); [Gould, Karen](#); [McCauley, Jim](#); [Hedrick, Emily](#); [Hall, Kristi](#)
Subject: FW: EXTERNAL SENDER Proposed amendments to Rule 1.2 of the Rules of Professional Conduct
Date: Wednesday, August 4, 2021 10:11:38 AM

Dear Mr. Herrick:

Thank you for your comment regarding the Standing Committee on Legal Ethics' proposed amendments to Rule 1.2. The Legal Ethics Committee will consider your comment at its next regularly scheduled meeting.

Please feel free to call with any questions.

Regards,



Kristi R. Hall
Executive Assistant/Paralegal
 Virginia State Bar
 1111 East Main Street, Ste. 700 | Richmond, VA 23219-0026
 804/775.0557 | Fax 804/775.0597 | hall@vsb.org | www.vsb.org

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From: Andy Herrick <aherrick@albemarle.org>
Sent: Thursday, July 1, 2021 11:56 AM
To: publiccomment <PublicComment@vsb.org>
Subject: EXTERNAL SENDER Proposed amendments to Rule 1.2 of the Rules of Professional Conduct

Ms. Gould,

I have no comments on the merits of the proposed amendments to Rule 1.2 of the Rules of Professional Conduct. However, from a drafting standpoint, please note that Rules 1.2(c)(2) and (c)(3) each contain a redundant double "may." Because the body of Rule 1.2(c) already ends with a "may," subsections (c)(2) and (c)(3) need not also begin with a "may." That was my only suggestion. Thank you.

Andy Herrick
 Deputy County Attorney
 Albemarle County
aherrick@albemarle.org
 434-972-4067
 401 McIntire Road, Suite 325, Charlottesville, VA 22902

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JORDAN C. HEATH

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Fax No.: (757) 599-0735

September 1, 2021

VIA EMAIL: publiccomment@vsb.org

Karen A. Gould – Gould@vsb.org

Executive Director

Virginia State Bar

RE: Proposed amendments to Rule 1.2 of the Rules of Professional Conduct

Dear Karen:

I hope that you are doing well. I have reviewed the proposed amendment of Rule 1.2 of the Rules of Professional Conduct and have the following observations and comments. First, I agree that Virginia lawyers need guidance regarding how to represent clients given the current conflict between federal and state law, in light of the Virginia General Assembly's recent enactment of laws allowing cannabis and marijuana businesses. I commend the ethics committee for addressing this important topic.

Second, as written, my initial reaction goes back to my high school civics class in which we were taught that federal law is supreme over state law. I have a concern about the public perception of the proposed Rule 1.2(c)(3) as currently drafted. The impression may be that the Virginia State Bar and Virginia attorneys believe that state law, or at least Virginia state law, is superior to that of federal law, which of course is not the case.

Finally, if we are going to address this issue, the rule should work on other levels too. For example, what about conflicts between state and local government law, which is currently occurring in other states dealing with pandemic related issues.

I would propose a more generic provision, which addresses what many lawyers and their clients deal with on a more regular basis where competing laws provide different results. That proposal would be as follows:

- (3) Counsel or represent a client regarding conduct where a conflict exists in applicable law as to whether such conduct is permitted or prohibited, provided that the lawyer counsels the client about the legal consequences of the client's proposed course of conduct.

You will note that I also changed the proposed word "assist" to "represent." While I believe that an attorney should be able to counsel and represent a client with regard to the competing sets of law regarding the cannabis industry in the Commonwealth of Virginia, I would have great concern if our RPC stated that it is alright for a Virginia lawyer to assist the client in that business. For example, I do not believe that the

Heath, Old & Verser, P.L.C.

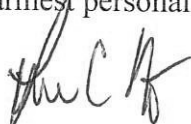
Page 2

VSB intends to grant permission to a lawyer to work in the cannabis business in a position of buying, selling, or transporting cannabis. The word "assist" is currently used in Rule 1.2 in two places. It is used in Rule 1.2(c) specifying that "a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent..." I believe that the word "assist" in that prohibitive context is more expansive than the word "represent", and rightly so. The second reference to the word "assist" is in Rule 1.2(c)(2) which states that a lawyer "may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law." There, the word "assist" is used in the permitted context and seems to be more expansive than the word "represent," and rightly so. In contrast, and for the reasons I have already stated, I do not believe that Rule 1.2(c)(3), which is permissive in nature, should contain the more expansive word "assist."

I have great concern about adding a provision to the RPC to address one narrow area where a conflict exists as to the application of law, especially when the proposed rule seems to imply that state law can trump federal law. I believe the VSB has to be concerned about the old saying that "hard facts make bad law." Further, I am concerned about unintended consequences. While the rule, as proposed, may solve the dilemma faced by lawyers dealing with the dispute between federal and state law regarding marijuana business, what impact might this rule, as currently drafted and proposed, have in the future where a dispute in two sets of substantive laws ...particularly state versus federal... may have for more important implications touching on Constitutional rights or other civil liberties.

Finally, on a much more minor observation, the proposed rule contains repetitive use of the word "may." And Section 1.2(c)(2) should conclude after the word "law" with "; and".

With my warmest personal regards



Leonard C. Heath, Jr.

LCH:alb

From: [Hall, Kristi](#)
To: spudner@bakerdonelson.com
Cc: [McCauley, Jim](#); [Hedrick, Emily](#); [Hall, Kristi](#); [publiccomment](#)
Subject: FW: EXTERNAL SENDER Rule 1.2(c) comment
Date: Wednesday, September 1, 2021 4:51:15 PM

Dear Mr. Pudner:

Thank you for your comment regarding the Standing Committee on Legal Ethics' proposed amendments to Rule 1.2. The Legal Ethics Committee will consider your comment at its next regularly scheduled meeting.

Please feel free to call with any questions.

Regards,



Kristi R. Hall
Executive Assistant/Paralegal
 Virginia State Bar
 1111 East Main Street, Ste. 700 | Richmond, VA 23219-0026
 804/775.0557 | Fax 804/775.0597 | hall@vsb.org | www.vsb.org

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From: Pudner, Stephen <spudner@bakerdonelson.com>
Sent: Wednesday, September 1, 2021 4:15 PM
To: publiccomment <PublicComment@vsb.org>
Subject: EXTERNAL SENDER Rule 1.2(c) comment

Following up on Virginia Lawyer article, I think the comment needs to be revised to the expressly say after "conduct" in 2nd line "relating to cannabis (and acronyms/synonyms, etc)" or something like that.

How currently drafted now that comment opens the door to a while bunch of shenanigans under the cover is the rule. Draft narrowly for the issue you intend to address, not broadly to capture a whole lot of issues you haven't even thought about yet.

Thank you!

Stephen K Pudner
 Shareholder
 Baker Donelson

From: [Hall, Kristi](#)
To: Agustin.Rodriguez@troutman.com
Cc: [McCauley, Jim](#); [Hedrick, Emily](#); [Hall, Kristi](#); [publiccomment](#)
Subject: FW: Comment to VSB Rule Amendment re counseling clients re marijuana
Date: Wednesday, September 1, 2021 4:53:53 PM
Attachments: [VSB Comment to Rule Amendment \(signed\).pdf](#)

Dear Mr. Rodriguez:

Thank you for your comment regarding the Standing Committee on Legal Ethics' proposed amendments to Rule 1.2. The Legal Ethics Committee will consider your comment at its next regularly scheduled meeting.

Please feel free to call with any questions.

Regards,



Kristi R. Hall
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From: Rodriguez, Agustin E. <Agustin.Rodriguez@troutman.com>
Sent: Thursday, August 19, 2021 3:58 PM
To: publiccomment <PublicComment@vsb.org>
Subject: Comment to VSB Rule Amendment re counseling clients re marijuana

Please see the attached comments on the proposed amendments to Rule 1.2 of the Virginia Rules of Professional Conduct. Thank you very much for your consideration, and please do not hesitate to reach out with any questions.

Agustin E. Rodriguez

Partner

troutman pepper

Direct: 804.697.1381 | Mobile: 804.629.0669 | Internal: 15-1381
agustin.rodriguez@troutman.com

From: McCauley, Jim <mccauley@vsb.org>
Sent: Wednesday, June 30, 2021 3:09 PM
To: Rodriguez, Agustin E. <Agustin.Rodriguez@troutman.com>
Subject: Counseling clients re marijuana

EXTERNAL SENDER

Here is a link to our proposed amendment that is published for comment: https://www.vsb.org/pro-guidelines/index.php/rule_changes/item/prop_RPC_1.2

Contact me if you have any questions.



James McCauley, Ethics Counsel

Virginia State Bar

1111 East Main Street, Suite 700 | Richmond, Virginia 23219-0026

(804) 775-0565

www.vsb.org | mccauley@vsb.org

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Agustin E. Rodriguez

Partner

D 804.697.1381

agustin.rodriguez@troutman.com

August 19, 2021

Virginia State Bar
Standing Committee on Legal Ethics
1111 East Main Street, Suite 700
Richmond, VA 23219-0026

Re: Comments to the Proposed Amendments to Rule 1.2 of the Rules of Professional Conduct

Ladies and Gentlemen:

On April 28 of this year, our office submitted a request for an advisory opinion from the Virginia State Bar addressing whether attorneys licensed to practice in the Commonwealth of Virginia may provide legal advice and assistance to clients engaged in, or seeking to engage in, the legal Virginia marijuana industry despite the fact that the client's conduct, although legal under Virginia law, might violate federal law (our original request is attached to this letter). We now write in support of the Standing Committee on Legal Ethics' proposed amendments to Rule 1.2 of the Rules of Professional Conduct, clarifying that a lawyer may counsel or assist clients regarding state-legal conduct which conflicts with federal law, provided that the lawyer counsels the client as to the potential legal consequences of the client's proposed course of conduct. This Rule amendment comes at a critical time, as Virginia entrepreneurs will soon need reliable counsel to advise them on opening and operating state-legal cannabis businesses pursuant to the new Virginia Cannabis Control Act.

We further write to provide comments as to the wording of the Rule amendment and suggest a change to proposed new Comment 13.

First, we note that the use of the word "may" at the beginning of existing Rule 1.2(c)(1) and proposed Rule 1.2(c)(2) is redundant and we suggest removing the word from paragraphs (c)(2)-(c)(3):

Rule 1.2

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may...

(2) ~~may~~ counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.; and

(3) ~~may~~ counsel or assist a client regarding conduct expressly permitted by state or other applicable law that conflicts with federal law,

Second, we suggest that the wording of proposed new Comment 13 be modified to more closely parallel the wording and permissions given by the Rule amendment itself. Currently, proposed new Comment 13 reads:

[13] Paragraph (c)(3) addresses the dilemma facing a lawyer whose client wishes to engage in a cannabis or marijuana business that is permitted by applicable state or other law. Conduct permitted by state law may be prohibited by the federal Controlled Substances Act, 21 U.S.C. §§ 801-904 and other law. The conflict between state and federal law makes it particularly important to allow a lawyer to provide legal advice and assistance to a client seeking to engage in conduct permitted by Virginia law. In providing such advice and assistance, a lawyer shall also advise the client about related federal law and policy. Paragraph (c)(3) is not restricted in its application to the marijuana law conflict.

We suggest that the first sentence be modified as follows:

Paragraph (c)(3) addresses the dilemma facing a lawyer whose client wishes to engage in a ~~cannabis or~~ marijuana ~~or other~~ business that is permitted by applicable state or other law.

(~~striketrough~~ to be eliminated and double underlined words to be added)

We suggest removing “cannabis or” because there is no legal distinction between a cannabis or marijuana business. Both terms are often used interchangeably in the industry and across the country to refer to the same thing. The Virginia Cannabis Control Act (Va. Code Ann. § 4.1-600 et seq.) uses primarily the term “marijuana” throughout the law, although the law is titled the Virginia Cannabis Control Act, and it creates the Virginia Cannabis Control Authority and the Cannabis Public Health Advisory Council. Simply using the term “marijuana” in proposed Comment 13 is consistent with the Virginia Code and does not exclude any relevant business. Including the term “cannabis” is redundant.

We suggest adding “or other” before “business” to make the comment consistent with the Rule amendment and the rest of the comment, both of which refer to conduct expressly permitted by state or other applicable law, but not specifically to marijuana laws.¹ Adding “or other” also makes

¹ We note that states and localities have been passing laws to decriminalize, and, in some cases, regulate, substances other than marijuana that remain illegal under federal law. For instance, Denver, Colorado’s Ordinance 301 was approved in May 2019 and made the adult possession and use of psilocybin mushrooms the lowest law enforcement priority in Denver, and prohibited the city from spending resources on enforcing related penalties. See Ballotpedia, *Denver, Colorado, Initiated Ordinance 301, Psilocybin Mushroom Initiative (May 2019)*, [https://ballotpedia.org/Denver,_Colorado,_Initiated_Ordinance_301,_Psilocybin_Mushroom_Initiative_\(May_2019\)](https://ballotpedia.org/Denver,_Colorado,_Initiated_Ordinance_301,_Psilocybin_Mushroom_Initiative_(May_2019)). In addition, Oregon’s Measure 109 passed in 2020 and directs the Oregon Health Authority to license and regulate the manufacturing, transportation, delivery, sale and purchase of psilocybin products

the sentence consistent with the rest of the comment, including the last sentence, which explicitly provides that “[p]aragraph (c)(3) is not restricted in its application to the marijuana law conflict.”

Lastly, we suggest replacing “Virginia” with “state” in the third sentence of the comment:

The conflict between state and federal law makes it particularly important to allow a lawyer to provide legal advice and assistance to a client seeking to engage in conduct permitted by Virginia state law.

This change makes the sentence internally consistent, and consistent with the rest of the comment and paragraph (c)(3) of amended Rule 1.2.

Thank you for your consideration of these comments. Please do not hesitate to contact us should you have any questions or need any further information.

Sincerely,

/s/ Agustin E. Rodriguez

Agustin E. Rodriguez

and the provision of psilocybin services. See Oregon Psilocybin Services Act (Measure 109), <https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/Pages/psilocybin-services-act.aspx>.

If Virginia follows this trend, the Rule amendment as currently worded will ensure that clients can obtain competent legal advice regarding state or other applicable law with respect to those newly-regulated substances. Adding “or other” before “business” in the comment would reflect and parallel the Rule amendment’s broader applicability.

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April 28, 2021

Virginia State Bar
Standing Committee on Legal Ethics
1111 East Main Street, Suite 700
Richmond, VA 23219-0026

Re: Legal Ethics Opinion Request

Ladies and Gentlemen:

Enclosed please find our legal ethics opinion request form in which we request an advisory opinion from the Virginia State Bar addressing whether attorneys licensed to practice in the Commonwealth of Virginia may provide legal advice and assistance to clients engaged in, or seeking to engage in, the legal Virginia marijuana industry, including, but not limited to, advice and assistance related to business activities, business formation, financing, supply chain contracts, real estate, employment law, advertising and marketing, permitting and licensing, taxation, regulatory compliance, and representation in litigation, despite the fact that the client's conduct, although legal under Virginia law, might violate federal law. Such an opinion would clarify that the provision of such advice and assistance does not violate the Virginia State Bar's Rules of Professional Conduct.

In support of this opinion request, we are also enclosing examples of opinions issued by a number of other U.S. jurisdictions on this topic.

Please do not hesitate to contact us should you have any questions or need any further information to address this request.

Sincerely,

Agustin E. Rodriguez

Enclosures

LEGAL ETHICS OPINION REQUEST FORM

VIRGINIA STATE BAR STANDING COMMITTEE ON LEGAL ETHICS

1111 East Main Street, Suite 700
 Richmond, VA 23219-0026
 (804) 775-0564
 ethics hotline@vsb.org

1. Name: Agustin E. Rodriguez

Firm: Troutman Pepper Hamilton Sanders LLP

Address: 1001 Haxall Point, Richmond, VA, 23219

Telephone: (804) 697-1381 **VSB Membership Number:** #37254

2. Pursuant to Part Six: Section IV: Paragraph 10-2(A) of the Rules of the Supreme Court of Virginia, an advisory legal ethics opinion may be requested by any member of the Virginia State Bar concerning contemplated or actual professional conduct which may be violative of the Virginia Rules of Professional Conduct. Please indicate the nature of your inquiry.

We request an advisory opinion from the Virginia State Bar addressing whether attorneys licensed to practice in the Commonwealth of Virginia may provide legal advice and assistance to clients engaged in, or seeking to engage in, the legal Virginia marijuana industry, including, but not limited to, advice and assistance related to business activities, business formation, financing, supply chain contracts, real estate, employment law, advertising and marketing, permitting and licensing, taxation, regulatory compliance, and representation in litigation, despite the fact that the client's conduct, although legal under Virginia law, might violate federal law. Such an opinion would clarify that the provision of such advice and assistance does not violate the Virginia State Bar's Rules of Professional Conduct.

3. The Rules of Court require that requests for advisory opinions shall state in detail all operative facts, in the hypothetical, upon which the request is based. Please provide a brief and concise statement of the facts with no identifying information as to persons or entities involved.

In 2015, Virginia authorized the use of cannabidiol (CBD) oil or Tetrahydrocannabinol-A (THC-A) oil (marijuana-derived products) to treat certain medical conditions. See Va. Code Ann. § 54.1-3408.3. Since 2015, Virginia's medical marijuana program has evolved to include a comprehensive regulatory framework. See Va. Code Ann. § 54.1-3442.5, *et seq.*; 18 Va. Admin. Code § 110-60-10, *et seq.*

Most recently, Governor Northam signed legislation on April 7, 2021 that, among other things, creates a new agency, the Virginia Cannabis Control Authority, and establishes a regulatory framework for the cultivation, manufacture, wholesale, and retail sale of retail marijuana and retail marijuana products. See 2021 Va. ALS 550, 2021 Va. Acts 550, 2021 Va. Ch. 550, 2020 Va. SB 1406.

Thus, to-date, Virginia has passed legislation that establishes a comprehensive regulatory framework governing the legal use, production, and sale of marijuana for both medical and adult uses.

Virginia is not alone in legalizing medical and adult use marijuana. "Seventeen states have already passed laws to legalize and regulate cannabis (two of which did so this year): Alaska, Arizona, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Montana, Nevada, New Jersey, New York, Oregon, South Dakota, Vermont, Virginia, and Washington." The Marijuana Policy Project, *2021 Marijuana Policy Reform Legislation* 3 (April 9, 2021). In addition, 36 states "have effective marijuana laws" while another three "states—Georgia, Iowa, and Texas—have more limited laws that allow regulated access to low-THC medical cannabis preparations. *Id.* at 5.

As with any rapidly evolving legal framework, individuals and businesses currently operating in, or looking to establish and operate in, the growing U.S. marijuana industry need legal advice and assistance. This advice and assistance would address client issues similar to those that arise in other heavily regulated consumer goods industries such as alcohol and tobacco. For example, clients need advice and assistance with respect to related business activities, including business formation, financing, supply chain contracts, real estate, employment law, advertising and marketing, permitting and licensing, taxation, general regulatory compliance and representation in litigation arising from any of these issues.

Despite the growing legalization of marijuana throughout the country at the state level, and the public's need for legal advice and assistance, it remains federally illegal under the federal Controlled Substance Act (CSA) to manufacture, distribute, or dispense marijuana, or to possess a marijuana with intent to do any of those things. See 21 U.S.C. § 801, *et seq.*

The tension between state legalization of marijuana and the illegal status of marijuana under federal law creates ethical issues for Virginia-licensed attorneys interested in providing legal advice and assistance to the public. Ethical concerns may arise under the Virginia Rules of Professional Conduct including, but not limited to:

- Rule 1.2(c);
- Rule 1.4(b);
- Rule 1.6(c);
- Rule 1.7(b)(2);
- Rule 1.13(b);
- Rule 1.15;
- Rule 4.1; and
- Rule 8.4.

In line with the U.S. marijuana legalization trend, a number of jurisdictions have issued ethical opinions or statements, or even changed their rules of professional conduct, to allow attorneys licensed in their jurisdictions to provide advice and assistance to clients in their legal marijuana industries. For your consideration, we have enclosed examples of these opinions from other jurisdictions.

Additional narrative and exhibits may be attached if necessary. If a request for an opinion regards the propriety of lawyer advertising or solicitation, a copy of the specific advertisement or solicitation in question may be included.

4. State specific issue(s)/question(s) regarding ethical conduct you wish answered by the Committee.

Whether under the Virginia Rules of Professional Conduct, Virginia-licensed attorneys may provide legal advice and assistance to clients engaged in, or seeking to engage in, the legal Virginia marijuana industry, including, but not limited to, advice and assistance related to business activities, business formation, financing, supply chain contracts, real estate, employment law, advertising and marketing, permitting and licensing, taxation, regulatory compliance, and representation in litigation, despite the fact that the client's conduct, although legal under Virginia law, might violate federal law.

5. I certify that I have researched the Virginia State Bar's Rules of Professional Conduct, prior Legal Ethics Opinions and appropriate case law and believe the following to be relevant:

Rules: Please see the answer to Question 3 above

Comments: _____

Prior LEOs: _____

Case Law: _____

6. Why do you believe the proposed conduct would or would not violate the Rules of Professional Conduct?

Please see the answer to Question 3 above.

7. Please note that in accordance with Part Six: Section IV: Paragraph 10-2(A) of the Rules of the Supreme Court of Virginia, the Committee may in its discretion decline to render an opinion regarding any matter which is currently the subject of any disciplinary proceeding or litigation. Please indicate if the inquiry concerns:

- _____ Pending Litigation
- _____ Civil _____ Criminal
- _____ Pending Disciplinary Proceeding

8. _____ 9. _____

Signature Date



2021 Marijuana Policy Reform Legislation

Last updated: April 9, 2021

Only 23 states allow citizen-initiated ballot initiatives, meaning in most states the only way to reform marijuana laws is via the legislature. With polls showing that **68% of Americans support making marijuana use legal** and around **90% support allowing medical marijuana**, lawmakers are finally starting to get the message that constituents want them to act on sensible and humane marijuana policies.

Two states have already legalized cannabis in 2021 via the legislative process — New York and Virginia. In a third state, New Mexico, a legalization bill was approved and will be signed by the governor any day. As many as three more states could follow suit this year — Connecticut, Delaware, and Rhode Island, and dozens of other cannabis policy reform bills have been proposed. Click on the state names below to learn more about efforts in your state and to take action in support of marijuana policy reform.

The crises our country is grappling with underscore the urgent need to end cannabis prohibition. As part of our national reckoning with racism and violent policing, it is essential that we end the war on cannabis, which includes hundreds of thousands of arrests each year and even more traumatizing searches based on the real or alleged smell of cannabis. Despite nearly identical use rates, Black Americans are 3.6 times as likely to be arrested for cannabis as whites.

In addition, in times of this pandemic, it is all the more apparent that finite government resources shouldn't be wasted on cannabis prohibition. In these challenging times, states desperately need the good jobs, small businesses, and hundreds of millions in tax revenue that come with marijuana legalization.

Marijuana Legalization Legislation

States where 2021 bills were proposed to legalize marijuana for adults: **29**, including two that are now law

- **Connecticut** — S.B. 888 is Gov. Lamont's bill to legalize and regulate cannabis for adults. It was amended to improve equity provisions and advanced out of the Judiciary Committee on April 6 in a 22-16 vote. It is headed to the Senate floor, but it could be referred to another committee. H.B. 5853 is a shorter bill focused on equity and labor peace in legalization.
- **Delaware** — HB 150 would legalize and regulate cannabis for adults. On March 24, the House Health and Human Development Committee approved HB 150 in a 10-5 vote. It is now in the

House Appropriations Committee.

- **Florida** — H 291, H 343, H 1361, H 1597, S 664, and S 710 would legalize and regulate cannabis for adults.
- **Georgia** — SB 263 would have legalized and regulated cannabis for adults; HR 281 and SR 165 would have referred a constitutional amendment on legalizing cannabis to voters. None advanced before the crossover deadline.
- **Hawaii** — SB 767, HB 1202, HB 238, SB 1376, SB 704, and HB 7 would legalize and regulate cannabis for adults. The Senate approved SB 767 in a 20-5 vote on March 9, but included an effective date more than 100 years in the future. However, the chair of the House Health, Human Services, & Homelessness Committee failed to grant the bill a hearing before a legislative deadline, thus killing it for the year. The bills carry over to 2022.
- **Indiana** — HB 1154 and SB 87 would have legalized and regulated cannabis for adults; SB 223 would have legalized possession only; and HB 1117 would have removed penalties for possession or cultivation of up to two ounces of marijuana. None advanced before the crossover deadline.
- **Iowa** — SF 83 would legalize adults' possession of up to an ounce; HF 751 would legalize and regulate cannabis and expunge convictions.
- **Kansas** — HB 2430 would have legalized and regulated cannabis for adults. It did not advance before a crossover deadline, but it carries over to 2022.
- **Kentucky** — HB467 and HB461 would have legalized and regulated cannabis for adults. The legislature adjourned without acting on the bills.
- **Louisiana** — HB 637, a pre-filed bill, would legalize and regulate cannabis for adults; HB 264 would refer a constitutional amendment on legalizing cannabis to voters, if it is approved by legislators.
- **Maryland** — HB 32 and SB 708 would have legalized and regulated cannabis for adults. HB 32 received a hearing in the House Judiciary Committee on February 16, and SB 708 received a hearing in Senate Finance on March 4, but neither advanced before a legislative deadline.
- **Minnesota** — SF 757, HF 151, and HF 600 would legalize and regulate cannabis for adults. HF 600 has passed out of four committees as of April 9 — Finance and Policy; Labor, Industry, Veterans and Military Affairs; Workforce and Business Development; and Agriculture Finance and Policy.
- **Mississippi** — SB 2768 would have legalized and regulated cannabis for adults; SB 2164 would have legalized cannabis; and SB 2585 would have legalized possession of up to 2.5 ounces. The legislature adjourned without acting on the bills.
- **Missouri** — HB 325 and HB 263 would legalize and regulate cannabis for adults; HJR 30 would refer a constitutional amendment on legalizing cannabis to voters.
- **Nebraska** — LB5 46 would legalize and regulate cannabis for adults; LR2CA, if approved by the legislature, would refer a constitutional amendment on legalizing cannabis to voters.
- **New Hampshire** — HB 237 would legalize and regulate cannabis for adults; HB 629 would legalize personal possession and cultivation of cannabis. On January 27, 2021, the Criminal Justice and Public Safety Committee recommended retaining both bills, which would kill them for the year.
- **New Jersey** — A. 21, S. 21, and A. 1897 implement legalization (which more than two-thirds of voters approved in November 2020). The bills were signed by Gov. Murphy on February 22, 2021, along with a companion bill to set penalties for minors in possession of cannabis.
- **New Mexico** — HB 2 (special session), HB 12, HB 17, SB 13, SB 288, and SB 363 — On March 31, the Senate and the House both approved HB 2 (22-15 and 38-32), which legalizes and regulates marijuana for adults 21 and older. It now heads to Gov. Michelle Lujan Grisham's desk

for her signature.

- **New York** — S.854, A.1248 — S.854-A legalizes adult-use cannabis in New York and will set up a system for regulated sales. Gov. Cuomo signed it into law on March 31, 2021. The Assembly passed S.854-A in a 94-56 vote on March 30, and the Senate approved it the same day in a 40-23 vote.
- **North Dakota** — HB 1420 would have legalized and regulated cannabis for adults; HCR 3031, if approved by the legislature, would refer a constitutional amendment on legalizing cannabis to voters. The House of Representatives approved HB 1420 in a 56-38 vote on February 23, but the Senate voted the bill down, 10-37, on March 25.
- **Oklahoma** — HB 1961, if approved by the legislature, would have referred a constitutional amendment on legalizing cannabis to voters. It did not advance before crossover.
- **Ohio** — HB 210 would legalize personal possession of marijuana and cultivation of up to 12 plants.
- **Rhode Island** — S0568 would legalize and regulate cannabis for adults.
- **South Carolina** — S 335 would legalize and regulate cannabis for adults; also, S 268 would create an advisory referendum on legalization in 2022. It did not advance before crossover, but the legislative session carries over to 2022.
- **Tennessee** — HB 413 and SB 1439 would remove all penalties for possession of up to an ounce of cannabis. They would not legalize sales or manufacture.
- **Texas** — HB 447, SB 140, and SB 269 would legalize and regulate cannabis for adults; SJR 16 and HJR 13, if approved by the legislature, would refer a constitutional amendment on legalizing cannabis to voters.
- **Virginia** — SB 1406, HB 2312, SB 1243, HB 1815, and HB 269 would legalize and regulate cannabis for adults; SB 1406 and HB 2312 passed both chambers in their final form on February 27. Gov. Northam has formally requested amendments — including moving up legal possession and cultivation to July 1, 2021 instead of 2024. The legislature accepted them on April 7, and the bill is now law.
- **West Virginia** — HB 2291 and HB 2912 would legalize and regulate cannabis for adults. They did not advance before a crossover deadline, but they carry over to 2022.
- **Wisconsin** — AB68 and SB111 are budget bills that include the governor’s legalization proposals.
- **Wyoming** — HB 209 would have legalized and regulated cannabis for adults. It advanced out of the House Judiciary Committee in a 6-3 vote, but did not get a House floor vote before a deadline.

In addition, in **Pennsylvania**, a bipartisan legalization bill was announced but has not yet been introduced.

Seventeen states have already passed laws to legalize and regulate cannabis (two of which did so this year): Alaska, Arizona, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Montana, Nevada, New Jersey, New York, Oregon, South Dakota, Vermont, Virginia, and Washington. All but four — Illinois, New York, Vermont, and Virginia — were by ballot initiative.

Bills to Remove Possible Jail Time — Often Imposing a Fine — for Simple Possession (“Decriminalization”)

States with decriminalization bills: **10**

- **Alabama** — SB 149 reduces the penalty for cannabis possession to a fine; for up to two ounces, the penalty would be a civil fine of up to \$250; it advanced out of the Senate Judiciary Committee on March 3.
- **Arkansas** — SB 499 would reduce the penalty for up to an ounce to a \$200 fine.
- **Florida** — H 1215 would impose a civil fine of \$100 or 10 hours of community service, plus court costs, for possession of up to 20 grams.
- **Indiana** — HB 1028 would have made up to 30 grams a Class D infraction. It did not advance before a crossover deadline.
- **Iowa** — HF 648 would remove jail time for possession, but would impose a misdemeanor conviction and a hefty fine of between \$105 and \$855; SB 407 would reduce various penalties involving cannabis, including reducing the penalty for adults 21 and older possessing up to a half ounce of cannabis to a \$100 civil fine.
- **Pennsylvania** — SB 107 would reclassify possession of a small amount of marijuana from a misdemeanor to a summary offense carrying a \$25 fine. Public use would be a \$100 fine.
- **South Carolina** — H 3228 (civil citation for up to 28 grams) and H 3571 (civil citation for up to 28 grams, penalty decrease for other drug offenses). The bills did not advance before a crossover deadline, but they carry over to 2022.
- **Texas** — HB 169 and HB 99 (make possession of up to two ounces a fine-only misdemeanor not subject to arrest); HB 585 and HB 616 (make possession of up to two ounces a fine-only misdemeanor not subject to arrest, unless it's a fourth or subsequent offense in 24 months); HB 441 and HB 498 (make possession of up to an ounce a fine-only misdemeanor). The House Judiciary Committee held a hearing on HB 99 and HB 441 on April 7.
- **West Virginia** — SB 26 does not yet have text, but its summary says, "limiting penalty for possession of marijuana to no more than \$1,000 without confinement." It did not advance before a crossover deadline, but it carries over to 2022.
- **Wisconsin** — AB 130 and SB 164 would reduce the penalty for up to 10 grams of cannabis to a fine of up to \$100.

Thirty-one states and Washington, D.C. have decriminalized or legalized marijuana possession.

Effective Medical Marijuana Bills

States with bills to create comprehensive medical cannabis programs: **13**

- **Alabama** — SB 46; the Senate approved the bill on February 24 in a 21-8 vote; the House Judiciary Committee amended and advanced the bill on April 7. It is now pending in the House Health Committee.
- **Georgia** — HB 738, SB 264; the legislature adjourned without action on either bill.
- **Idaho** — H 108
- **Indiana** — HB 1026, HB 1214, HB 1547, and SB 321; the bills did not advance before crossover.
- **Kansas** — SB 92, HB 2184, and SB 287; on March 29, the House Federal and State Affairs Committee advanced HB 2184 in a 13-8 vote.
- **Kentucky** — HB 136 and SB 92 did not advance. The legislature adjourned without the bills even being assigned to committee.
- **Nebraska** — LB 474; the Judiciary Committee advanced the bill in a 5-2 vote on March 30, sending it to the floor of the unicameral legislature.
- **North Carolina** — S 669, S 711

- **South Carolina** — S. 150, H. 3361; on March 18, the Senate Medical Affairs Committee advanced S. 150 to the floor in a 9-5 vote. Sen. Hembree objected to the bill on the floor, meaning a “special order” vote would be required for it to pass. The crossover deadline has passed, making it more difficult to pass into law in 2021. It will carry over to 2022.
- **Tennessee** — SB 25, HB 601, HB 621, HB 666, SB 25, and SB 854; on March 4, the Senate Government Operations Committee advanced SB 854 in a 6-2 vote. On March 23, SB 854 was defeated in committee.
- **Texas** — HB 43, HB 809, HB 94, SB 250, SB 90; also HJR 11 and HJR 28, if enacted by the legislature, would refer constitutional amendments on medical cannabis to voters.
- **Wisconsin** — AB 68 and SB 111 are the governor's budget bills, which propose a medical cannabis program.
- **Wyoming** — HB 209 would have legalized and regulated cannabis both for adults and for medical use. It advanced out of the House Judiciary Committee in a 6-3 vote, but did not get a House floor vote before a deadline.

Thirty-six states, D.C., Puerto Rico, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands have effective medical marijuana laws. Three additional states — Georgia, Iowa, and Texas — have more limited laws that allow regulated access to low-THC medical cannabis preparations.

Don't see your state?

If you live in a state that still prohibits marijuana and no lawmakers have taken the lead to change that, send your state legislators a note to ask them to stand up for humane and sensible marijuana policies. Take a few moments to email them in support of **medical marijuana**, **decriminalization**, or **legalizing and regulating marijuana**.

CHAPTER 550

An Act to amend and reenact §§ 2.2-221, 2.2-507, 2.2-511, 2.2-1119, 2.2-2818, 2.2-2905, 2.2-3114, 2.2-3705.3, 2.2-3711, 2.2-3802, 2.2-4024, 3.2-1010, 3.2-3906, 3.2-4112, 3.2-4113, 3.2-4114, 3.2-4114.2, 3.2-4116, 4.1-100, as it is currently effective and as it shall become effective, 4.1-101.01, 4.1-101.02, 4.1-101.07, 4.1-101.09, 4.1-101.010, 4.1-101.1, 4.1-103, as it is currently effective and as it shall become effective, 4.1-104, 4.1-105, 4.1-106, 4.1-107, 4.1-111, as it is currently effective and as it shall become effective, 4.1-112.2, 4.1-113.1, 4.1-115, 4.1-116, 4.1-118, 4.1-119, as it is currently effective and as it shall become effective, 4.1-122, 4.1-124, as it is currently effective and as it shall become effective, 4.1-128, 4.1-200, 4.1-201, as it is currently effective and as it shall become effective, 4.1-202, 4.1-205, as it is currently effective and as it shall become effective, 4.1-206, 4.1-206.1, 4.1-206.2, 4.1-206.3, 4.1-207, 4.1-207.1, 4.1-208, 4.1-212, as it is currently effective and as it shall become effective, 4.1-213, 4.1-215, as it is currently effective and as it shall become effective, 4.1-216.1, 4.1-222, 4.1-224, 4.1-225, 4.1-227, as it is currently effective and as it shall become effective, 4.1-230, as it is currently effective and as it shall become effective, 4.1-231, 4.1-240, 4.1-300, 4.1-302, 4.1-303, 4.1-310, as it is currently effective and as it shall become effective, 4.1-310.1, as it is currently effective and as it shall become effective, 4.1-320, 4.1-323, 4.1-324, 4.1-325, as it is currently effective and as it shall become effective, 4.1-325.2, as it is currently effective and as it shall become effective, 4.1-329, 4.1-336, 4.1-337, 4.1-338, 4.1-348, 4.1-349, 4.1-350, 4.1-351, 4.1-352, 4.1-353, 4.1-354, 5.1-13, 9.1-101, as it is currently effective and as it shall become effective, 9.1-400, 9.1-500, 9.1-801, 9.1-1101, 15.2-1627, 15.2-2820, 16.1-69.40:1, 16.1-69.48:1, as it is currently effective and as it shall become effective, 16.1-228, 16.1-260, 16.1-273, 16.1-278.8:01, 16.1-278.9, 17.1-276, 18.2-46.1, 18.2-57, 18.2-247, 18.2-248, 18.2-248.01, 18.2-251, 18.2-251.02, 18.2-251.03, 18.2-251.1:1, 18.2-251.1:2, 18.2-251.1:3, 18.2-252, 18.2-254, 18.2-255, 18.2-255.1, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, 18.2-265.1, 18.2-265.2, 18.2-265.3, 18.2-287.2, 18.2-308.03, 18.2-308.09, 18.2-308.012, 18.2-308.016, 18.2-308.1:5, 18.2-308.4, 18.2-371.2, 18.2-460, 18.2-474.1, 19.2-66, 19.2-81, 19.2-81.1, 19.2-83.1, 19.2-188.1, 19.2-303, 19.2-303.01, 19.2-386.22 through 19.2-386.25, 19.2-389, as it is currently effective and as it shall become effective, 19.2-389.3, 19.2-392.02, as it is currently effective and as it shall become effective, 19.2-392.1, 19.2-392.4, 22.1-206, 22.1-277.08, 23.1-609, 23.1-1301, 24.2-233, 33.2-613, 46.2-105.2, 46.2-347, 48-17.1, 51.1-212, 53.1-231.2, 54.1-2903, 54.1-3408.3, 54.1-3442.6, 54.1-3442.8, 58.1-3, 59.1-148.3, 65.2-107, 65.2-402, and 65.2-402.1 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 24 of Title 2.2 an article numbered 29, consisting of sections numbered 2.2-2499.1 through 2.2-2499.4, by adding sections numbered 3.2-4117.1 and 3.2-4117.2, by adding in Chapter 41.1 of Title 3.2 a section numbered 3.2-4122, by adding in Chapter 51 of Title 3.2 an article numbered 6, consisting of sections numbered 3.2-5145.6 through 3.2-5145.9, by adding in Title 4.1 a subtitle numbered II, consisting of chapters numbered 6 through 15, consisting of sections numbered 4.1-600 through 4.1-1503, by adding in Article 2 of Chapter 1 of Title 6.2 a section numbered 6.2-107.1, and by adding sections numbered 19.2-392.2:1, 19.2-392.2:2, and 46.2-341.20:7; and to repeal §§ 18.2-248.1, 18.2-250.1, and 18.2-251.1 of the Code of Virginia, relating to marijuana; legalization of simple possession; penalties.

[S 1406]

Approved April 7, 2021

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-221, 2.2-507, 2.2-511, 2.2-1119, 2.2-2818, 2.2-2905, 2.2-3114, 2.2-3705.3, 2.2-3711, 2.2-3802, 2.2-4024, 3.2-1010, 3.2-3906, 3.2-4112, 3.2-4113, 3.2-4114, 3.2-4114.2, 3.2-4116, 4.1-100, as it is currently effective and as it shall become effective, 4.1-101.01, 4.1-101.02, 4.1-101.07, 4.1-101.09, 4.1-101.010, 4.1-101.1, 4.1-103, as it is currently effective and as it shall become effective, 4.1-104, 4.1-105, 4.1-106, 4.1-107, 4.1-111, as it is currently effective and as it shall become effective, 4.1-112.2, 4.1-113.1, 4.1-115, 4.1-116, 4.1-118, 4.1-119, as it is currently effective and as it shall become effective, 4.1-122, 4.1-124, as it is currently effective and as it shall become effective, 4.1-128, 4.1-200, 4.1-201, as it is currently effective and as it shall become effective, 4.1-202, 4.1-205, as it is currently effective and as it shall become effective, 4.1-206, 4.1-206.1, 4.1-206.2, 4.1-206.3, 4.1-207, 4.1-207.1, 4.1-208, 4.1-212, as it is currently effective and as it shall become effective, 4.1-213, 4.1-215, as it is currently effective and as it shall become effective, 4.1-216.1, 4.1-222, 4.1-224, 4.1-225, 4.1-227, as it is currently effective and as it shall become effective, 4.1-230, as it is currently effective and as it shall become effective, 4.1-231, 4.1-240, 4.1-300, 4.1-302, 4.1-303,

4.1-310, as it is currently effective and as it shall become effective, 4.1-310.1, as it is currently effective and as it shall become effective, 4.1-320, 4.1-323, 4.1-324, 4.1-325, as it is currently effective and as it shall become effective, 4.1-325.2, as it is currently effective and as it shall become effective, 4.1-329, 4.1-336, 4.1-337, 4.1-338, 4.1-348, 4.1-349, 4.1-350, 4.1-351, 4.1-352, 4.1-353, 4.1-354, 5.1-13, 9.1-101, as it is currently effective and as it shall become effective, 9.1-400, 9.1-500, 9.1-801, 9.1-1101, 15.2-1627, 15.2-2820, 16.1-69.40:1, 16.1-69.48:1, as it is currently effective and as it shall become effective, 16.1-228, 16.1-260, 16.1-273, 16.1-278.8:01, 16.1-278.9, 17.1-276, 18.2-46.1, 18.2-57, 18.2-247, 18.2-248, 18.2-248.01, 18.2-251, 18.2-251.02, 18.2-251.03, 18.2-251.1:1, 18.2-251.1:2, 18.2-251.1:3, 18.2-252, 18.2-254, 18.2-255, 18.2-255.1, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, 18.2-265.1, 18.2-265.2, 18.2-265.3, 18.2-287.2, 18.2-308.03, 18.2-308.09, 18.2-308.012, 18.2-308.016, 18.2-308.1:5, 18.2-308.4, 18.2-371.2, 18.2-460, 18.2-474.1, 19.2-66, 19.2-81, 19.2-81.1, 19.2-83.1, 19.2-188.1, 19.2-303, 19.2-303.01, 19.2-386.22 through 19.2-386.25, 19.2-389, as it is currently effective and as it shall become effective, 19.2-389.3, 19.2-392.02, as it is currently effective and as it shall become effective, 19.2-392.1, 19.2-392.4, 22.1-206, 22.1-277.08, 23.1-609, 23.1-1301, 24.2-233, 33.2-613, 46.2-105.2, 46.2-347, 48-17.1, 51.1-212, 53.1-231.2, 54.1-2903, 54.1-3408.3, 54.1-3442.6, 54.1-3442.8, 58.1-3, 59.1-148.3, 65.2-107, 65.2-402, and 65.2-402.1 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 24 of Title 2.2 an article numbered 29, consisting of sections numbered 2.2-2499.1 through 2.2-2499.4, by adding sections numbered 3.2-4117.1 and 3.2-4117.2, by adding in Chapter 41.1 of Title 3.2 a section numbered 3.2-4122, by adding in Chapter 51 of Title 3.2 an article numbered 6, consisting of sections numbered 3.2-5145.6 through 3.2-5145.9, by adding in Title 4.1 a subtitle numbered II, containing chapters numbered 6 through 15, consisting of sections numbered 4.1-600 through 4.1-1503, by adding in Article 2 of Chapter 1 of Title 6.2 a section numbered 6.2-107.1, and by adding sections numbered 19.2-392.2:1, 19.2-392.2:2, and 46.2-341.20:7 as follows:

SEE CHAPTER FULL TEXT IN LINK IN BILL SUMMARY.

From: [Hall, Kristi](#)
To: amy.mcdougal@clearesources.com
Cc: [publiccomment](#); [McCauley, Jim](#); [Hall, Kristi](#)
Subject: FW: EXTERNAL SENDER Comments on Proposed Rule 1.2 (c) (3) and comment 13
Date: Wednesday, September 8, 2021 12:07:47 PM
Importance: High

Dear Ms. McDougal:

Thank you for your comments to the Standing Committee on Legal Ethics' proposed Rule 1.2(c)(3) and comment [13]. The committee will consider your comments at its next meeting on September 16, 2021.

Please let me know if you have any questions.

Best,



Kristi R. Hall
Executive Assistant/Paralegal
 Virginia State Bar
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The Virginia State Bar is a state agency that protects the public by educating and assisting lawyers to practice ethically and competently, and by disciplining those who violate the Supreme Court's Rules of Professional Conduct, all at no cost to Virginia taxpayers. The VSB continues to provide essential services to Virginia's lawyers and the public. However, we have taken steps to keep the health and safety of our members, employees, and the general public at the forefront of our actions during this rapidly changing situation. The VSB office at 1111 E. Main Street is closed to visitors. If you need to reach a staff person, please send an email or call the appropriate [contact person](#). Many of our staff are teleworking and responses may be delayed. Thank you for your understanding.

From: Amy McDougal <amy.mcdougal@clearesources.com>
Sent: Tuesday, September 7, 2021 3:52 PM
To: publiccomment <PublicComment@vsb.org>
Cc: McCauley, Jim <mccauley@vsb.org>
Subject: EXTERNAL SENDER Comments on Proposed Rule 1.2 (c) (3) and comment 13

I fully support and am pleased to offer my comments on proposed subparagraph 3 to Rule 1.2 (c) of the Virginia Rules of Professional Conduct, and proposed comment 13 to the same. I am an attorney licensed in Virginia, Georgia, and the District of Columbia. I serve as a board member of the International Cannabis Bar Association and the chair of its Ethics Committee. My comments are my own and not those of the International Cannabis Bar Association.

As most other states that have legalized cannabis have recognized, there is friction between state and federal law when it comes to cannabis law and policy. Thus, it is critically important for the Virginia Supreme Court and the State Bar to acknowledge that friction and pave a safe path for Virginia's attorneys to advise, assist, consume, and invest in the emerging cannabis industry. Absent such a path forward, attorneys are left without ethical guidance on the limits of their professional conduct, and

clients are left without adequate legal counsel for their cannabis business ventures. This would frustrate the state's interest in compliance with new and emerging state cannabis laws and regulations.

I recommend only a small edit in subparagraph c to the word "consequence" to make it "consequences." Although comment 13 specifically references only the Controlled Substances Act, there are many other consequences that have arisen out of federal law and policy from a client's participation in the cannabis industry. We have seen clients denied benefits under the Department of Veterans Affairs (such as home loans). We have seen immigration status affected by participation in the legalized cannabis industry. We have seen the Federal Aviation Administration revoke pilot licenses for knowing transportation of state-legal cannabis products. We have seen cannabis businesses denied disaster relief funding through the Small Business Administration. We have seen the Internal Revenue Service refuse otherwise deductible business expenses when arising out of a legalized cannabis business enterprise. While I do not recommend instructing attorneys on precisely what portions of federal law on which they must advise their clients, I do feel by using the plural "consequences," it may cue attorneys to ensure that they cover the portions of federal law relevant to their clients, as opposed to solely advising on potential criminal liability under the Controlled Substances Act.

Further, many states have avoided addressing two other issues arising from state legalization of cannabis: whether attorneys may lawfully consume cannabis on the same terms as non-attorneys in the state and whether attorneys may lawfully invest in the cannabis industry. We have seen some differentiation in states on this issue particularly when it comes to the judiciary. For example, California and Maryland judicial opinions have declared consumption of cannabis as off-limits for members of the judiciary. California has also stated that judges and their staff may not invest in the cannabis industry. Recently, New York was the first state to go the full distance in the opposite direction for attorneys when it issued ethics opinion 1225 on July 8, 2021. That opinion permits New York attorneys to advise and assist cannabis industry clients, whether for medical or recreational cannabis, to consume cannabis, and to invest in cannabis companies, including accepting an equity interest in a client's company in lieu of fees, if consistent with other existing ethics rules. While the current proposed amendments to Virginia's Rule 1.2 (c) do not reach all of these issues, I still firmly believe that the proposed amendments are vital to Virginia's emerging cannabis industry, serve to provide clear guidance to Virginia attorneys on the proper scope of representation of their clients, and preserve and promote public trust in the bar as the cannabis legal landscape continues to evolve.

Amy E. McDougal, Esq., CCEP, CA

AFFIDAVIT

I, Karen A. Gould, Executive Director at the Virginia State Bar, do hereby swear and affirm that the foregoing documents are true copies of the original documents on file in the offices of the Virginia State Bar regarding amendments to Rule 1.2.

Given under my hand this 4th day of November, 2021.

Karen A. Gould
Karen A. Gould

STATE OF VIRGINIA
CITY OF RICHMOND, to-wit:

I, a Notary Public in and for the Commonwealth of Virginia, do hereby certify that Karen A. Gould, personally known to me, appeared in person before me and was by me duly sworn and thereupon executed in my presence and acknowledged to me the truth and voluntariness of the foregoing Affidavit.

Given under my hand this 4th day of November, 2021.

Asha B. Holloway
Notary Public

My Commission Expires: December 31, 2025.

