

December 11, 2013

The Honorable Nathan B. Coats
Colorado Supreme Court
2 East 14th Avenue
Denver, CO 80203

The Honorable Monica Márquez
Colorado Supreme Court
2 East 14th Avenue
Denver, CO 80203

Re: Proposed New Comment [12A] to CRPC 1.2

Dear Justices Coats and Márquez:

I write on behalf of the Court's Standing Committee on the Colorado Rules of Professional Conduct (the Standing Committee), which is recommending an additional amendment to the Colorado Rules of Professional Conduct (CRPC) – a new Comment [12A] to CRPC 1.2 – to be considered in conjunction with the two marijuana-related amendments that the Standing Committee proposed in October 2013.

As you know, on October 18, 2013, I forwarded to your attention a proposed new Comment [2A] to CRPC 8.4 and a new CRPC 8.6, for the Court's consideration. Proposed CRPC 8.6 is intended to allow Colorado lawyers to provide legal services to clients on issues concerning marijuana-related activities that are lawful under Colorado law, even though those activities violate federal law. The proposed new rule is intended to override the application of CRPC 1.2(d), which provides that "[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal," under narrow circumstances.

When the Standing Committee approved proposed new Comment [2A] to CRPC 8.4 and new CRPC 8.6, at the October 11, 2013 meeting, it had previously approved in concept a proposed new comment to CRPC 1.2, which would cross-reference proposed new CRPC 8.6. However, the Standing Committee inadvertently failed to approve that proposed new comment to CRPC 1.2.

At its December 6, 2013 meeting, a majority of the Standing Committee approved for submission to the Court the following proposed Comment 12[A] to CRPC 1.2:

Comment [12A]. Paragraph (d) should be read in conjunction with Rule 8.6.

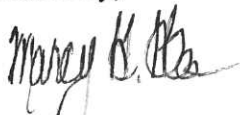
This proposed comment, if adopted by the Court, would alert the reader to the existence of proposed CRPC 8.6, which limits CRPC 1.2(d) in the context of advice on issues concerning

marijuana-related activities that are lawful under Colorado law. If the Court adopts CRPC 8.6, the Standing Committee believes that this cross-reference is non-controversial but important.

The Standing Committee is sensitive to the fact that its previously proposed marijuana-related amendments have already been posted on the Court's website, and that the Court has set a February 25, 2014 deadline for submission of comments, and a hearing on March 6, 2014. We do not believe that this relatively minor additional proposed amendment should impede the Court's consideration of all three proposed amendments on the current schedule.

I am enclosing the November 29, 2013 supplemental report prepared by the subcommittee that took the lead in drafting all the marijuana-related proposals, concerning proposed Comment [12A] to CRPC 1.2. I have separately emailed to you a Word version of the proposed comment, in accordance with the Court's Submission Policy for Committee Rule Changes (June 2012). The Standing Committee respectfully asks the Court to favorably consider the proposed changes.

Sincerely,



Marcy G. Glenn
of Holland & Hart LLP

MGG:dc

Enclosure

cc: Chris Markman, Esq. (via email, w/enclosures)
Jenny Moore, Esq. (via email, w/enclosures)

TO: MARCY GLENN

FROM: AMENDMENT 64 SUBCOMMITTEE

RE: CROSS REFERENCING COMMENT IN RULE 1.2

DATE: NOV. 29, 2013

The subcommittee's initial report mentioned the desirability of a comment in Rule 1.2 cross-referencing Proposed Rule 8.6, but did not suggest specific language. The subcommittee's supplemental reports did not reiterate this suggestion.

With apologies for having overlooked this detail, the subcommittee requests that the Standing Committee recommend to the Supreme Court approval of the following new comment to existing Rule 1.2:

Comment [12A] Paragraph (d) should be read in conjunction with Rule 8.6.

Members Berger, Blum, Alvarez, Nemirow, Squarrell, and Webb support this proposal. So do members Sudler and Rothrock, but reserving their prior objections to the proposed rule. Member Wald proposes the following language, as either a final sentence to existing Comment 12 (his preference) or a new Comment [12A]: "In

appropriate circumstances, paragraph (d) should be read in conjunction with Rule 8.6.”

At least two considerations favor adding such a comment. First, the need for proposed Rule 8.6 arises from the “assist a client” phrase in Rule 1.2(d), and existing Comment [12] addresses paragraph (d). Second, because Rule 8.6 would, if adopted by the Supreme Court, be unique to Colorado, uniformity favors alerting readers familiar with the ABA Model Rules of a local variation.

The majority does not believe that the phrase “In appropriate circumstances” adds anything, because proposed Rule 8.6 was narrowly drawn to reference the two marijuana amendments to our state constitution. The majority also believes that uniformity warrants a separate comment, rather than language in the existing comment, which might be overlooked.

Respectfully submitted,

_____/s/_____

John R. Webb

Colorado Rules of Professional Conduct

Rule 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer

COMMENT

[12A] PARAGRAPH (D) SHOULD BE READ IN CONJUNCTION WITH RULE 8.6.

Colorado Rules of Professional Conduct

Rule 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer

COMMENT

[12A] Paragraph (d) should be read in conjunction with Rule 8.6.