

MEMO

To: Standing Committee on the Rules of Professional Conduct

From: Nancy L. Cohen

Re: Ethical Implications for Colorado lawyers who provide advice related to reproductive health issues based on state laws in effect after *Dobbs v. Jackson Women's Health Organization*

Date: January 20, 2023

The subcommittee met in mid-December 2022 to discuss a potential comment addressing a lawyer's obligation under Colo. RPC 1.2 when representing clients who provide, seek, or are indirectly involved with parties who provide or seek reproductive health care services. The subcommittee believes a comment is necessary and discussed the proposed comment and possible revisions.

The subcommittee wanted to know if any other states are studying the issue or considering a rule or comment to address the lawyer's obligations in these circumstances. N. Cohen contacted Ellyn Rosen of the ABA Center for Professional Responsibility. Ms. Rosen was unaware of any state specifically studying the issue although she had heard concerns raised by lawyers about whether disciplinary authorities may investigate and prosecute lawyers who provide legal services to clients involved in reproductive health services in states that allow reproductive health services and in states that recently enacted laws prohibiting certain types of reproductive health services. Ms. Rosen also has heard concerns from lawyers in firms that have offices in multi-state jurisdictions about what health benefits can or cannot be offered to the firm's employees. Ms. Rosen did further investigation and reported to Ms. Cohen that she is unaware of any state currently considering a rule or comment change.

The subcommittee recommends the following new comment to Rule 1.2 as follows:

Comment 15: A lawyer may counsel or assist a client rendering, seeking, or receiving reproductive health care, as defined in C.R.S. § 25-6-402(4), that the lawyer reasonably believes is not prohibited by the laws and regulations of Colorado. In these circumstances, if the lawyer also reasonably believes that the client's actions or proposed actions is likely to result in another jurisdiction finding that the client's conduct is prohibited, the lawyer should advise the client of the potential consequences regarding conduct that may be prohibited under another state's law.