

STATE OF VERMONT
VERMONT SUPREME COURT
AUGUST TERM, 2016

**Order Promulgating Addition of Comment 14 to Rule 1.2
of the Vermont Rules of Professional Conduct**

Pursuant to Chapter II, Section 37, of the Vermont Constitution, it is hereby ordered:

1. That Comment 14 to Rule 1.2 of Vermont Rules of Professional Conduct be added to read as follows (new matter underlined):

**RULE 1.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY
BETWEEN CLIENT AND LAWYER**

(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.

(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.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(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.

Comment

Allocation of Authority between Client and Lawyer

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[14] With respect to paragraph (d), a lawyer may counsel a client regarding the validity, scope, and meaning of Title 18, chapters 84, 84A, and 86 of the Vermont Statutes Annotated, and may assist a client in conduct that the lawyer reasonably believes is permitted by these statutes and the rules, regulations, orders, and other state and local provisions implementing the statutes. In these circumstances, the lawyer shall also advise the client regarding the potential consequences of the client's conduct under related federal law and policy.

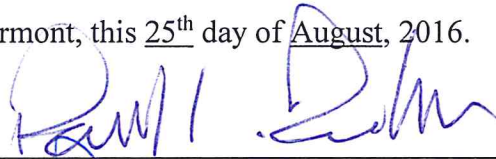
Board's Notes—2016 Amendment

Comment [14] is added to clarify that Rule 1.2(d) does not prohibit Vermont lawyers from providing legal advice and legal assistance to clients on matters related to Vermont's laws regulating marijuana and allowing some permissible uses. Rule 1.2(d) does not draw a distinction between state and federal law. Therefore, while the Department of Justice's current enforcement policy is to focus prosecutorial resources on activities other than those that are legal under state-approved regulatory schemes, marijuana remains an illegal controlled substance under the federal Controlled Substances Act. See 21 U.S.C. §§ 801-904. Arguably, a lawyer violates Rule 1.2(d) by providing a client with legal advice and legal assistance necessary to set up a dispensary of therapeutic cannabis that is legal under Vermont law. This amendment clarifies that such legal advice and assistance is not a violation of the rule.

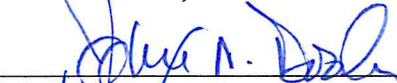
Given the conflict between state and federal law, and DOJ's current enforcement policy, this is an area in which advice from an attorney is critical and into which clients should not be forced to enter without counsel. Similarly, lawyers should not face professional discipline for providing legal advice and legal assistance on such an important issue, especially when the alternative is to leave clients to proceed at their own peril.

2. That this rule as amended is prescribed and promulgated, effective on October 31, 2016. The Board's Notes are advisory.
3. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

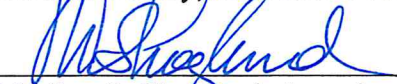
Dated in Chambers at Montpelier, Vermont, this 25th day of August, 2016.



Paul L. Reiber, Chief Justice



John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice