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Bars Urge Rule Change on Marijuana Industry

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October 12, 2015

The Pennsylvania Supreme Court should adopt an amendment to the Rules of Professional Conduct to allow for lawyers to ethically represent clients in the medical marijuana industry, the Pennsylvania and Philadelphia bar associations have jointly recommended.

The PBA's Legal Ethics and Professional Responsibility Committee issued a report Monday in conjunction with the Philadelphia Bar Association's Professional Guidance Committee. It was in response to several inquiries from bar members about the propriety of providing legal services from Pennsylvania law firms to clients interested in operating under another state's marijuana laws or in preparation for the possible legalization of medical marijuana in Pennsylvania.

The trouble under either scenario is that regardless of what an individual state's law says, federal law still deems marijuana growth and distribution illegal. That has created an "ethical conundrum" for Pennsylvania lawyers, the committees said.

The committees' solution took the more conservative of the approaches followed by other state bar associations that have addressed the issue. All of the findings surround Rule of Professional Conduct 1.2(d), which forbids a lawyer from counseling a client to engage in illegal activities.

Some states, such as Arizona, have read Rule 1.2(d) to allow for the provision of legal services to the cannabis industry if the activities in question comport with state law and the lawyer advises the client of the possible implications under federal law. The Pennsylvania and Philadelphia bars, however, take the approach used in Michigan, where the rules were amended to protect lawyers advising in this space.

"To address the existing, and growing, need for legal assistance with respect to marijuana-related activities that are authorized, or will, in the future, become authorized under various states' laws, it is recommended that Rule 1.2(d) be amended to authorize lawyers to provide legal assistance with respect to conduct that is expressly permitted by the law of the state where it takes place or has its predominant effect, provided that the lawyer counsels the client about the legal consequences, under other applicable law, of the client's proposed course of conduct," the joint ethics opinion said.

Andrew Sacks of Philadelphia's Sacks Weston Millstein Diamond is active in lobbying for the passage of a medical marijuana bill in Pennsylvania and sought the advisory opinion from the Philadelphia Bar Association.

Sacks said he didn't like the opinion because he "would like to start representing people right now," but he said he respected it. Sacks said he expected this approach from bar associations in a relatively conservative state like Pennsylvania and gave the bar associations credit for coming out with an opinion before the law is even passed. He said that shows the bars recognize this is a growing area of law and a significant ethical concern.

"What they did is they threw a fireball into the Supreme Court of Pennsylvania's lap," Sacks said, adding that maybe the court could address the issue before the legislation is passed.

A fuller version of this article will be posted when it is completed.

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