



NEW JERSEY STATE BAR ASSOCIATION

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Hon. Glenn A. Grant
Acting Administrative Director of the Courts
Hughes Justice Complex
25 W. Market Street/P.O. Box 037
Trenton, NJ 08625-0037

Re: Proposed Amendment to RPC 1.2 re: Psychedelics

Dear Judge Grant:

The New Jersey Psilocybin Behavioral Health Access and Services Act (the Act), which is currently pending in the Legislature, seeks to follow some other states in legalizing the manufacture and administration of psilocybin, a psychedelic drug that is currently a Schedule I drug under the Federal Controlled Substances Act (the CSA). Anticipating passage of the Act, a wide range of clients will need access to legal counsel about the how the Act will impact them and how they may be able to participate in new markets that may become available.

The legal ethics issues presented by the Act, however, resemble the complications that the bar encountered in the wake of cannabis legalization: the current Rules of Professional Conduct (RPCs) do not explicitly permit New Jersey attorneys to provide guidance on New Jersey laws or regulations relating to psychedelic drugs, which remain controlled by the CSA. Because there is no exception for psychedelics in the RPCs, New Jersey attorneys seeking to advise clients on the topic find themselves again on uncertain ground with respect to their professional ethical obligations.

To ensure individuals are able to receive the counsel they need in connection with this pending new law, the New Jersey State Bar Association asks that the Judiciary consider an amendment RPC 1.2(d) that will allow New Jersey attorneys to safely and competently represent a client with questions about the law in New Jersey and other states related to psychedelics.

The NJSBA proposes the following amendment to RPC 1.2(d):

(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. A lawyer may counsel a client regarding New Jersey's marijuana controlled substance laws or the marijuana controlled substance laws of other states including, but not limited to, cannabis and psychedelic drug laws, 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.

The NJSBA believes the proposed rule modification advances the core purpose of the RPCs, which is to encourage lawyers to advise clients in a manner that comports with the law. Just like the previously approved amendment to RPC 1.2(d) regarding cannabis, the modification will provide attorneys with increased certainty and assurance that they can appropriately advise clients in this area of the law without fear of facing a future ethics violation, while also advancing the public interest by allowing legal counsel to be available for those seeking to take action in anticipation of passage of the Act.

For these reasons, the NJSBA requests that the Judiciary consider the proposed rule modification.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim McGoughran".

Timothy F. McGoughran, Esq.
President

cc: William H. Mergner Jr., Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director