



WSBA

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May 9, 2014

The Honorable Charles W. Johnson  
Chair, Supreme Court Rules Committee  
Supreme Court of the State of Washington  
P.O. Box 40929  
Olympia, WA 98504-0929

Re: Washington's Rules of Professional Conduct and I-502  
Nevada Order Adopting Comment [1] to Nevada RPC 1.2

Dear Justice Johnson:

Thank you for inviting me to the informal meeting of the Rules Committee last Monday. I appreciate the Rules Committee's openness to hearing from interested stakeholders on this issue.

In thinking about the meeting, the questions asked, and the colloquy with the justices, I was motivated to develop a draft comment that in my view addresses many of the ideas and concerns that were discussed. I have enclosed that draft for your consideration.

Please bear in mind that I am addressing the Court in my role as Chief Disciplinary Counsel only; I am not authorized to speak for or take an official position on behalf of the Washington State Bar Association or its Board of Governors. I do not formally submit the draft as a suggested amendment under GR 9; rather, it is intended to promote further discussion and assist the Rules Committee in its deliberations about this important issue.

In addition, it has come to my attention that on May 7, 2014, the Supreme Court of the State of Nevada adopted, effective immediately, a new comment to Nevada's Rule of Professional Conduct 1.2, designed to address Nevada's constitutional and statutory amendments authorizing a regulatory system for medical marijuana dispensaries in that state. I have enclosed a copy of the Nevada Supreme Court's order.

Letter to Justice Johnson  
May 9, 2014  
Page 2 of 2

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Please let me know if I can provide the Court with any additional information.

Sincerely,

  
Douglas J. Ende  
Chief Disciplinary Counsel

Enclosures

cc: The Honorable Barbara A. Madsen, Chief Justice, Washington Supreme Court  
Nanette B. Sullins, Administrative Office of the Courts  
Patrick A. Palace, President, Washington State Bar Association  
Paula C. Littlewood, Executive Director, Washington State Bar Association  
Mark J. Fucile, Chair, WSBA Committee on Professional Ethics  
Anne M. Daly, President, King County Bar Association  
Andrew J. Prazuch, Executive Director, King County Bar Association ✓

**Rule 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY  
BETWEEN LAWYER AND CLIENT**

(a)-(f) [Unchanged.]

**Comment**

[1]-[13] [Unchanged.]

**Additional Washington Comments [14-178]**

[14]-[17] Unchanged.

*Special Circumstances Presented by Washington Initiative 502*

[18] A lawyer may counsel a client regarding the validity, scope, and meaning of Washington Initiative Measure 502 (approved by Washington voters on November 6, 2012), any subsequent amending legislation, its implementing regulations, related orders, and other state or local provisions implementing these laws, and may assist a client in conduct that the lawyer reasonably believes, after inquiry appropriate to the circumstances, is permitted by such laws and consistent with federal enforcement policy. If a lawyer forms such a reasonable belief, a lawyer's counseling or assistance to the client shall not in itself constitute a violation of this Rule or Rule 8.4(b), (i), (k), or (n), even if the lawyer subsequently becomes subject to federal enforcement action owing to a change in federal enforcement policy.