



# LOUISIANA ATTORNEY DISCIPLINARY BOARD

## OFFICE OF THE DISCIPLINARY COUNSEL

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May 15, 2017

W. Scott Keaty  
Kantrow, Spaht, Weaver & Blitzer  
445 North Blvd., Ste. 300  
Baton Rouge, Louisiana 70802

Re: Medicinal Marijuana/ RPC 1.2(d)

Dear Mr. Keaty:

I am aware that an issue has arisen affecting numerous attorneys who seek to provide legal guidance and advice as it relates to the recently approved medicinal marijuana law passed by the Louisiana legislature in May of 2016. Attorneys are struck by the dilemma created by Rule 1.2(d) which provides:

“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.”

For attorneys, the issue becomes acute because the possession and distribution of marijuana continues to be prohibited under federal criminal statutes. While the United States Department of Justice has traditionally left to local law enforcement the investigation and prosecution of low-level, localized activity, the fact remains that federal law still makes this activity a criminal offense. Moreover, under the former presidential administration, the “Cole Memorandum” was issued which reaffirmed that the federal government relies on state and local law enforcement agencies to address localized marijuana activity through the enforcement of state and local law. To my knowledge, the “Cole Memorandum” has not been withdrawn notwithstanding the recent presidential election and confirmation of the new attorney general. Moreover, as of this date the current U.S. Attorney General has not formally announced a departure from the Justice Department’s prior position on medicinal marijuana.

The public policy supporting a lawyer’s representation of clients in Louisiana is extraordinarily important. Louisiana clients should be able to avail themselves of a lawyer’s services when navigating the ever-changing landscape of issues that arise when establishing a medicinal

marijuana related activity or business; obtaining licensing and registration; and providing guidance on how to comply with the strict regulatory requirements of Louisiana state law applicable to medicinal marijuana. Moreover, in providing these legal services to clients, the lawyer helps to ensure the strong and effective state regulatory system that is required under current federal enforcement guidelines. Finally the lawyer also helps protect both the client and the public, which protections remain the primary purpose of the Louisiana Rules of Professional Conduct.

It falls to me in my capacity as the Chief Disciplinary Counsel to determine in the first instance whether to initiate disciplinary action against a lawyer for alleged violations of the Rules of Professional Conduct. To date, this office has not received a complaint by any individual or source suggesting that the attorneys who are currently assisting in the providing of legal advice to clients in the arena of medicinal marijuana (including Louisiana State University, Southern University, related entities such as the Board of Supervisors and Board of Regents, and others) have violated the Rules of Professional Conduct including but not limited to Rule 1.2(d). Nonetheless, there remains uncertainty for those attorneys who seek to strictly comply with their ethical obligations under the Rules of Professional Conduct, yet provide much needed legal advice and guidance to their clients in this arena.

It is my judgment that an appropriate course for this office to take is to acknowledge that Louisiana lawyers have a right and a duty to provide legal advice to clients on how best to comply with state law on the topic of medicinal marijuana. In all instances, the lawyer has a concomitant obligation to advise the client of the facial conflict which exists between Louisiana's medicinal marijuana law and federal law on the subject. Lawyers who, in good faith, attempt to provide legitimate legal advice and counsel on how best to comply with Louisiana's medicinal marijuana laws as passed by our state legislature should be permitted to do so. Because the facts and circumstances of every case can differ, however, I do not believe that it is prudent to suggest that a violation of Rule 1.2(d) can never occur. Such a determination can only be made depending upon the unique facts presented.

It is not the function of the Office of Disciplinary Counsel to provide ethics advice or advisory opinions. However, under the circumstances presented it is my judgment that lawyers should be notified of the position I have taken in the matter.

With kind regards and best wishes, I remain

Sincerely,

A handwritten signature in black ink that reads "Charles B. Plattsmier". The signature is written in a cursive style with a large initial "C" and "B".

Charles B. Plattsmier  
Chief Disciplinary Counsel

CBP/