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Subject: Providing Legal Advice and Assistance to Clients Under WA State Retail Marijuana Law, I-502, and the Cannabis Patient Protection Act; Lawyer Participation in Retail and Medical Marijuana Business; Lawyer Purchase of Marijuana in Compliance with State Law

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FACTS:

A. Background Facts Regarding I-502 and the Cannabis Patient Protection Act

In November 2012, Washington voters passed Washington Initiative Measure No. 502 ("I-502"), which allows creation of a system for the production, processing, and retail sale of marijuana for recreational use under state law.[n.1] As stated in Section 1 of I-502, one purpose of I-502 was "to stop treating adult marijuana use as a crime and to try a new approach that * * * (3) Takes marijuana out of the hands of illegal drug organizations and brings it under a tightly regulated, state-licensed system similar to that for controlling hard alcohol." Since 2012, much governmental and private effort has been devoted to the establishment of a licensing and regulatory system for the retail marijuana business under the jurisdiction of what is now known as the Washington State Liquor and Cannabis Board (the "WSLCB").

In April 2015, the Washington State Legislature passed and Governor Inslee signed the Cannabis Patient Protection Act (the "CPPA"), which substantially updated prior Washington law regarding medical uses of marijuana. [n.2] The CPPA is effective July 24, 2015.

Both I-502 and the CPPA were adopted in the shadow of the federal Controlled Substances Act, 21 USC §§ 801-904 (the "CSA"), which, on its face, prohibits the production, possession, sale, and use of marijuana for any purpose. [n.3] Under the CSA, and the "Supremacy Clause" contained in Article VI, Section 2 of the United States Constitution, federal authorities may prosecute people in Washington for violating the CSA, even if their conduct complies with state law, because a state law cannot override federal law. [n.4]

In spite of the tension between Washington state law on the one hand and the CSA on the other, both the Washington Attorney General and the United States Attorney General have devoted considerable time and effort to crafting Washington state law provisions regarding I-502 and what is now the CPPA subject to certain federal guidelines described further below. See, e.g., Press Release, Joint statement from Gov. Inslee and AG Ferguson regarding update from AG Eric Holder on implementation of Washington's voter-approved marijuana law (Aug. 29, 2013), available at http://www.atg.wa.gov/news/news-releases/joint-statement-gov-inslee-and-ag-ferguson-regarding-update-ag-eric-holder; Press Release, Justice Department Announces Update to Marijuana Enforcement Policy (Aug. 29, 2013), available at http://www.justice.gov/opa/pr/justice-department-announces-update-marijuana-enforcement-policy. In addition:

• The Washington Governor and Attorney General have testified about the care that will be taken to implement I-

502 in a way that will not conflict with federal priorities. See, e.g., Written Testimony of Washington Governor Jay Inslee and Washington Attorney General Bob Ferguson (Sep. 10, 2013), available at http://www.governor.wa.gov/sites/default/files/documents/testimony_20130910.pdf. In addition, one of the principal reasons for the adoption of the CPPA was to provide additional state-level regulation that was not present under prior Washington medical marijuana law. [n.5]

• The federal government has issued several public statements over the years to the effect that, while reserving ultimate federal authority, it does not wish to impede retail sales of medical or recreational marijuana pursuant to a state regulatory system unless the sales implicate other federal concerns such as money-laundering, sales to minors, sales outside of the state regulatory system and the like. See, e.g., Memorandum from David W. Ogden, Deputy Attorney General, to Selected United States Attorneys, re Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana (Oct. 19, 2009), available at http://www.justice.gov/sites/default/files/opa/legacy/2009/10/19/medical-marijuana.pdf (underlining in original); Memorandum from James M. Cole, Deputy Attorney General, to United States Attorneys, re Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use (June 29, 2011) (underlining in original), available at http://www.justice.gov/oip/docs/dag-guidance-2011-for-medical-marijuana-use.pdf; Memorandum from James M. Cole, Deputy Attorney General, to All United States Attorneys, re Guidance Regarding Marijuana Enforcement (Aug. 29, 2013), available at http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf (underlining in original) (“Cole Memorandum”).

• The executive branch of Washington State Government—including Washington’s Governor, Washington’s Attorney General, and the WSLCB—is actively involved in implementing both I-502 and what is now the CPPA.

• Since at least the adoption of I-502, neither the United States Attorney General nor any of the United States Attorneys in Washington have sought to impair or impede the operation of I-502 and what is now the CPPA. [n.6]

Although the CSA itself has not been amended insofar as medical and retail marijuana sales are concerned, there has been one additional federal development. Pursuant to the Consolidated and Further Continuing Appropriations Act, 2015, H.R. 83, 113th Cong. § 538 (2014), Congress has prevented the Justice Department from using any funds made available to the Department of Justice by the Act "to prevent [Washington or any other state with medical marijuana laws] from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.” In other words, it appears that Congress has, at least for the time being, prohibited the Department of Justice from enforcing the CSA in a manner that prevents implementation of state law-based medical marijuana provisions such as are reflected in the CPPA.

B. Proposed Lawyer Conduct

Lawyer A wishes to give Client A legal advice about how to comply with I-502 and/or the CPPA.

Lawyer B wishes to advise Client B to form a business entity and then provide legal advice and assistance to Client B in the formation and operation of that entity so as to comply with I-502 and/or the CPPA.

Lawyer C wishes personally to own and operate a business in compliance with I-502 and/or the CPPA and any regulations issued thereunder.

Lawyer D wishes to purchase marijuana in compliance with I-502 and/or the CPPA.

Lawyer E is a government lawyer engaged in the implementation of and I-502 and/or the CPPA. Lawyer E also

wishes to purchase marijuana in compliance I-502 and/or the CPPA.

QUESTIONS:

1. May Lawyer A advise Client A about the interpretation of and compliance with I-502 and the CPPA without violating the Washington Rules of Professional Conduct (the "RPCs")?

2. May Lawyer B provide legal advice and assistance to Client B in the formation and operation of a business entity so as to comply with I-502 and the CPPA without violating the RPCs?

3. May Lawyer C own and operate an independent business in compliance with I-502 and the CPPA without violating the RPCs?

4. Assuming that Lawyer D's need for and consumption of medical or retail marijuana do not otherwise affect Lawyer D's substantive competence or fitness to practice as a lawyer, may Lawyer D purchase and consume marijuana in compliance with I-502 and the CPPA without violating the RPCs?

5. May Lawyer E engage in the implementation of I-502 the CPPA and, if Lawyer E's competence and fitness to practice as a lawyer is not affected, purchase marijuana subject to I-502 and the CPPA without violating the RPCs?

CONCLUSIONS:

1. Yes, qualified.

2. Yes, qualified.

3. Yes, qualified.

4. Yes, qualified.

5. Yes, qualified.

DISCUSSION:

A. Lawyer A: Giving Legal Advice to Client A About I-502 and the CPPA

Pursuant to the RPCs, Lawyer A is entitled to advise Client A about whether particular conduct would or would not violate I-502 or the CPPA regardless of whether that conduct would violate the CSA. RPC 1.2(d) provides that:

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows [n.7] 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.

Absent a limiting construction or exception to this rule (such as is contained in Washington Comment [18] to RPC 1.2, which is discussed in Section B below), a lawyer cannot advise or recommend (i.e., counsel) a client to engage in any conduct that the lawyer knows is criminal or fraudulent and also cannot materially help the client engage in (i.e., assist) any conduct that the lawyer knows is criminal or fraudulent. In addition, it makes no difference whether the conduct in question is criminal or fraudulent at a federal level or at a state level. On the other hand, Client A is entitled to receive, and Lawyer A is entitled to give, advice about whether Client A's "proposed course of conduct" would violate Federal or state law even if it is a foregone conclusion that the conduct violates federal criminal law—as long as Lawyer A does not go further and advise or recommend that Client A engage in conduct that Lawyer A knows violates federal criminal law and does not help Client A violate federal criminal law. As noted in RPC 1.2 cmt. 9, RPC 1.2 does not prohibit analyzing the consequences of a client's proposed course of conduct:

Paragraph (d) * * * does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

This analysis does not extend, however, to allowing Lawyer A knowingly to advise Client A about how to violate or conceal any violations of I-502 or the CPPA. Similarly, this portion of the analysis does not allow Lawyer A knowingly to advise Client A about how to violate or conceal any violations of the CSA. See RPC 1.2 cmts 10 [n.8], 13 [n.9]. That is because such advice would constitute counseling and/or assisting Client A in criminal conduct. In addition, and pursuant to the duty of competent representation that Lawyer A owes to Client A under RPC 1.1, [n.10] Lawyer A must advise Client A not only about the direct or indirect risks to Client A under state law as a result of engaging in a state-regulated marijuana business but about the direct or indirect risks to Client A as a result of the CSA. [n.11]

B. Lawyer B: Advising Client B to Engage in
Business Under I-502 and the CPPA or Assisting Client B in Doing So

Unlike Lawyer A and Client A, Lawyer B proposes to advise Client B to engage in business consistently with I-502 and the CPPA notwithstanding what is assumed to be ostensibly controlling federal law to the contrary and to assist Client B in doing so. In other words, Lawyer B's conduct goes beyond the mere expression of a legal opinion as to what is or is not lawful as a matter of state law. Lawyer B's conduct thus requires us to take several further steps and to consider whether or how to apply the prohibitions contained in RPC 1.2(d), which are discussed above in Section A. In addition, and since Lawyer B's conduct in advising or assisting Client B could itself be considered to be a violation of the CSA, it is also necessary to look at RPC 8.4, which provides in pertinent part that:

It is professional misconduct for a lawyer to:

* * * *
(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

* * * *
(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which

reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or
dismissal thereof preclude the commencement of a disciplinary proceeding * * *.

* * * *
(k) violate his or her oath as an attorney [in which an attorney swears to abide by the laws of both the state and United States. APR 5(e)]

* * * *
(n) engage in conduct demonstrating unfitness to practice law;

At least for as long as the federal government continues to take the same approach to I-502 and the CPPA, Lawyer B's conduct and legal advice does not violate these rules. Although, as noted below, our opinion relies substantially upon Washington Comment [18] to RPC 1.2, which is discussed later in this section, we believe it appropriate to begin with a more general analysis of the circumstances that we believe provide the foundation for that comment.

As a general matter, and as noted in Official Comment 14 to the Preamble and Scope of the Washington Rules of Professional Conduct:

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself.

RPC 1.2(d) and 8.4(b), (i), (k), and (n) are designed to ensure that lawyers do not undermine the rule of law, whether through assisting clients in or their own acts of criminal behavior. [n.12] In this unprecedented situation, it would be the failure to allow lawyers to advise their clients rather than allowing them to do so, that would undermine the rule of law. The State of Washington has expressly approved the activities in question, and the United States Department of Justice has expressly adopted a policy that "enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity." (Cole Memorandum.) In a memorandum to United States Attorneys, the United States Deputy Attorney General has stated:

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with these laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address these priorities * * *

(Cole Memorandum.)

The State of Washington has, without question, enacted regulatory measures expressly directed at addressing just these federal concerns. Moreover, the predominant purpose of lawyer discipline is to protect the public. See, e.g., In re Disciplinary Proceeding Against Kuvara, 149 Wash.2d 237, 257, 66 P.3d 1057 (2003) (quoting In re Disciplinary Proceeding Against Noble, 100 Wash.2d 88, 95, 667 P.2d 608 (1983)). Washington voters approved I-502 and the Legislature passed and the Governor signed the CPPA. Given as well the clear and sustained

efforts being made by federal authorities to allow the implementation of these laws as long as stated federal concerns (e.g., about the risk of sales to minors or the risk of unregulated sales or other criminal conduct such as money laundering) are adequately addressed, it is plain that the Washington public does not need protection against lawyers who choose to provide legal advice and assistance to clients regarding compliance with I-502 and the CPPA, consistently with those federal concerns. [n.13] To the contrary, the Washington public needs protection to assure that the boundaries of I-502 and the CPPA are enforced, and that requires allowing lawyers to do their work. Clients who wish to comply with I-502 and the CPPA necessarily require assistance with, for example, drafting contracts, forming limited liability companies, retaining employees, and performing several other business functions that benefit from sound legal advice. RPC 1.2(d) and 8.4(b), (i), (k), and (n) exist to ensure that lawyers do not undermine the rule of law, whether through assisting clients in or their own acts of criminal behavior. [n.14]

This analysis is consistent with the logical basis for Washington Comment [18] to RPC 1.2, which was adopted by the Washington Supreme Court in November 2014, and which provides that:

Special Circumstances Presented by Washington Initiative 502 (Laws of 2013, Ch. 3):

[18] At least until there is a subsequent change of federal enforcement policy, a lawyer may counsel a client regarding the validity, scope and meaning of Washington Initiative 502 (Laws of 2013, Ch. 3) and may assist a client in conduct that the lawyer reasonably believes is permitted by this statute and the other statutes, regulations, orders and other state and local provisions implementing them.

Although this comment is limited by its terms to I-502, we conclude that the comment is, and necessarily must be, broad enough to cover legal advice and assistance with regard to the CPPA as well. Nonetheless, three caveats must be noted.

First, the “safe harbor” established by Comment 18 to RPC 1.2 will only last for as long as present federal enforcement policies last. If, for example, the federal government were to disavow its present positions and announce that it would thereafter prosecute any and all violators including but not limited to those purporting to act pursuant to I-502 or the CPPA, it could well be that any protections offered by Comment 18 would be at an end.

Second, and as we already noted with respect to Lawyer A, Lawyer B must, as a matter of the duty of competent representation under RPC 1.1, advise Client B about the full range of legal risks that can result from participation in a state law-regulated marijuana business.

Third, a lawyer has a different range of freedom of action when assisting clients with regard to I-502 or the CPPA than when assisting clients in other legally gray areas. As already noted, for example, the general state of mind requirement for a violation of RPC 1.2(d) is that the lawyer know that the conduct in question is illegal. Under Comment 18 to RPC 1.2, a lawyer who knows that the conduct in question would violate the CSA is not in violation of the RPCs if, but only if, the lawyer reasonably believes that state law authorizes the conduct on or in connection with which the lawyer is assisting the client. In other words, a lawyer who reasonably believes that state law authorizes the conduct in question is not in violation of the RPCs even if the lawyer knows that the conduct would violate the CSA.

C. Lawyer C: Engaging in Businesses Under I-502 or the CPPA

Subject to exceptions not pertinent hereto, lawyers are generally free to engage in businesses to the same

extent as other members of the public. Since Lawyer C's business under I-502 or the CPPA is separate and apart from Lawyer's practice of law, we see no reason to prohibit Lawyer C from engaging in businesses pursuant to I-502 or the CPPA to the same extent that non-lawyers may so long as Lawyer C is in compliance with the Rules of Professional Conduct. In our opinion, it would be inappropriate to interpret RPC 8.4(b)(criminal acts reflecting adversely on honesty, trustworthiness, or fitness to practice), RPC 8.4(i)(disregard for the rule of law), RPC 8.4(k)(oath of office swearing to abide by both state and federal law), or RPC 8.4(n)(conduct demonstrating unfitness to practice law) as prohibiting activities permitted by I-502 or the CPPA unless and until there is a change in federal enforcement policy that puts compliance with I-502 or the CPPA in jeopardy.

If however, if Lawyer C does plan to enter into such a business with one or more of Lawyer C's clients, Lawyer C would have to comply with RPC 1.8(a), which provides that:

A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

See, e.g., LK Operating, LLC v. Collection Grp., LLC, 181 Wash.2d 48, 331 P.3d 1147 (2014); In re Disciplinary Proceeding Against Hall, 180 Wash.2d 821, 329 P.3d 870 (2014).

For substantially the same reasons noted in Section B, it is also our opinion that a lawyer going into a business with a client that complies with I-502 and the CPPA would not, without more, constitute either a "criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects," RPC 8.4(b), or an "act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law," RPC 8.4(i). Where, as here, all involved parties are working to appropriately implement I-502 and the CPPA, this conduct does not reflect adversely on a lawyer's fitness to practice, does not involve moral turpitude and does not reflect disregard for the rule of law. It also is not a violation of the lawyer's oath of office.

D. Lawyer D: Purchasing Marijuana Under I-502 or the CPPA

Our analysis of the first three questions leads us to conclude as well that subject to the same limitations and as long as Lawyer D is able to provide competent legal advice and otherwise comply with the RPCs, Lawyer D may purchase and consume marijuana consistently with I-502 and the CPPA to the same extent that non-lawyers may generally do so.

In this context, we again see no substantial public purpose in considering conduct unrelated to the practice of law

in which members of the public are free to engage a violation of the RPCs. [n.15] At the risk of repetition, it would be inappropriate in our opinion to interpret RPC 8.4(b) (criminal acts reflecting adversely on honesty, trustworthiness, or fitness to practice), RPC 8.4(i) (disregard for the rule of law), RPC 8.4(k) (oath of office swearing to abide by both state and federal law), or RPC 8.4(n) (conduct demonstrating unfitness to practice law), as prohibiting activities permitted by I-502 or the CPPA unless and until there is a change in federal enforcement policy that puts compliance with I-502 or the CPPA in jeopardy.

E. Lawyer E: Government Lawyer Implementing I-502 and the CPPA or Purchasing Marijuana Pursuant Thereto

Without question, the implementation of I-502 and what is now the CPPA has required and will continue to require a great deal of cooperation between government lawyers and lawyers in private practice. Given our conclusion that a private practice lawyer's actions in support of a client's business or the lawyer's own business or interests under I-502 or the CPPA does not violate the RPCs as long as done consistently with this opinion and with federal guidelines, we also conclude that the parallel actions of government lawyers do not violate the RPCs. [n.16]

F. Final Observations

This opinion does not state or imply that lawyers are free in any other circumstance to disregard the law or to disregard conflicts between federal and state law. [n.17] It does, however, conclude that the extraordinary, and in our view unprecedented, combination of factors present here, including the Washington Supreme Court's express recognition of these special circumstances in Comment 18 to RPC 1.2, requires an extraordinary and unprecedented analysis under the RPCs. We also caution that Comment 18 expressly notes that if the federal government changes its position and again seeks to enforce the CSA against the kinds of activities made lawful under I-502 and the CPPA as a matter of state law, the application of the RPCs may have to be reconsidered.

Endnotes:

1. The full text of I-502 can be found online at http://lcb.wa.gov/publications/Marijuana/I-502/i502.pdf. Technically speaking, I-502 amended or added sections to Chapters 69.50 RCW, 46.61 RCW, 46.20 RCW and 46.04 RCW.

2. See, Senate Bill (SB) 5052 2015-16, Sec. 2. Legislative history available at http://app.leg.wa.gov/billinfo/summary.aspx?year=2015&bill=5052; see also Final Bill Report 2SSB 5052 (2015), available at http://lawfilesext.leg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/Senate/5052-S2%20SBR%20FBR%2015.pdf. For further information on pre-CPPA Washington law regarding medical marijuana, see Vitaliy Mkrtchyan, Initiative 692, Now and Then: The Past, Present, and Future of Medical Marijuana in Washington State, 47 Gonz. L. Rev. 839 (2012); Cannabis Action Coalition v. City of Kent, No. 90204-6 (Wash. filed May 21, 2015), 180 Wn. App. 455, 322 P.3d 1246 (2014); RCW 69.51A.030 (making health care professionals not subject to criminal or professional penalties or liabilities for advising or authorizing the medical use of cannabis); Washington State Department of Health, Medical Marijuana Authorization Guidelines (2014), available at http://www.doh.wa.gov/Portals/1/Documents/2300/2014/631053.pdf.

3. See, e.g., 21 USC §§ 841(a)(1), 844(a); Gonzales v. Raich, 545 US 1, 22, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005) (upholding, against a Commerce Clause challenge, the constitutionality of the CSA as applied to medical marijuana sales under California law); cf. Gonzales v. Oregon, 546 US 243, 266-268, 126 S. Ct. 904, 163 L. Ed. 2d 748 (2006) (CSA does not authorize the United States Attorney General to prohibit doctors from issuing assisted suicide prescriptions pursuant to the Oregon Death with Dignity Act).

4. See, e.g., Mutual Pharmaceutical Co., Inc. v. Bartlett, 570 US __ (2013), Docket No. 12-142, 133 S. Ct. 2466, 2472-73, 186 L. Ed. 2d 607 (2013).

5. See SB 5052, Sec. 2.

6. For additional Federal memoranda on this subject, see Monte Wilkinson, Director, Executive Office of U.S. Attorneys, Policy Statement Regarding Marijuana Issues in Indian Country, October 28, 2014; James M. Cole, Deputy U.S. Attorney General, Memorandum re: Guidance Regarding Marijuana Related Financial Crimes, February 14, 2014; Department of the Treasury, Financial Crimes Enforcement Network, Guidance re: BSA Expectations Regarding Marijuana-Related Businesses, February 14, 2014.

7. RPC 1.0(f) provides that:

"Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

8. RPC 1.2 cmt. 10 provides that:

When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

9. RPC 1.2 cmt. 13 provides that:

If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

10. RPC 1.1 provides that:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

11. Cf. Montana Caregivers Ass'n, LLC v. U.S., 841 F.Supp. 2d 1147, 1148 (D. Mont. 2012) (although plaintiff's conduct may have been legal under state marijuana laws, it was illegal under the federal Controlled Substances Act). Without in any way attempting a full list of the potential legal consequences of a CSA violation, we note that the consequences could include not only the risk of federal criminal prosecution but also a host of civil law questions such as the potential effect of illegality under the CSA on the enforcement of marijuana-related contracts.

12. Cf. Restatement (Third) of the Law Governing Lawyers § 23, cmt. c (2000) ("Lawyers who exercise their skill and knowledge so as to * * * obstruct the legal system subvert the justifications of their calling").

13. The Congressional decision to prohibit the Department of Justice from using any funds to prevent state law medical marijuana systems strongly suggests that, at least as to medical marijuana, Congress is of the same view.

14. If lawyers could not give legal advice to clients about how to conform their conduct to the requirements of I-502 and the CPPA as well as related federal concerns, then no one could do so. See, e.g., RCW 2.48.180 (broadly defining the unauthorized practice of law); RPC 5.5(a) ("A lawyer shall not * * * assist another" in the unauthorized practice of law).

15. If, on the other hand, Lawyer D's consumption of marijuana causes Lawyer D to engage in conduct otherwise prohibited by the RPCs, Lawyer D would be no less subject to discipline than a lawyer whose impermissible performance is caused by excessive consumption of alcohol. Cf. In re Disciplinary Proceeding Against Curran, 115 Wash.2d 747, 801 P.2d 962 (1990).

16. We assume that government attorneys will comply with any and all conflict of interest statutes or regulations that apply to investment in or ownership of businesses which are regulated by their government clients.

17. For related authorities and discussions, see Colorado Supreme Court Rule Change 2014(05) (March 24, 2014) (adopting new comment 14 to Colorado RPC 1.2); Nevada Supreme Court Order Adopting Comment [1] to Nevada RPC 1.2, May 7, 2014; Amendments to Connecticut RPC 1.2 & RPC 8.4 Comment, approved June 19, 2014; Amendments to Oregon RPC 1.2(d) [adopted 2/19/15]; State of Arizona Ethics Op. 11-01 (2011) (lawyer may counsel or assist client in legal matters permissible under medical marijuana act); Colorado Judicial Ethics Advisory Board Op. 2014-01 (judge's use of marijuana); Colorado Bar Association Formal Ethics Op. 125 (2013) (The Extent to Which Lawyers May Represent Clients Regarding Marijuana-Related Activities)[withdrawn 5/17/2014]; Colorado Bar Association Formal Opinion 124 (2012) (A Lawyer's Medical Use of Marijuana); Connecticut Bar Association Informal Opinion 2013-02 (Providing Legal Services to Clients Seeking Licenses Under The Connecticut Medical Marijuana Law); Maine Ethics Op. #199 (2010) (Advising clients concerning Maine's Medical Marijuana Act); We reach a different end result than North Dakota Ethics Opinion No. 14-02 (Aug. 12, 2014), available at http://www.sband.org/UserFiles/files/pdfs/ethics/Opinion%2014-02.pdf.

Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Committee on Professional Ethics (CPE) or its predecessor, the Rules of Professional Conduct Committee. Advisory Opinions issued by the CPE are distinguished from earlier RPC Committee opinions by a numbering format which includes the year followed by a sequential number. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The Committee's answer does not include or opine about any other applicable law other than the meaning of the Rules of Professional Conduct.