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IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AN  
AMMENDMENT TO RULE OF  
PROFESSIONAL CONDUCT  
8.4(b) REGARDING MEDICAL  
MARIJUANA.

ADKT 0495

**FILED**

SEP 20 2016

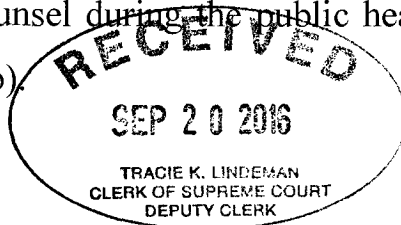
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
CHIEF DEPUTY CLERK

**PUBLIC COMMENT IN OPPOSITION TO AMMENDMENT OF RULE OF  
PROFESSIONAL CONDUCT 8.4(b) REGARDING  
MEDICAL MARIJUANA.**

NATURE OF PROCEEDING: The Court held a Public Hearing on the Petition to amend rule 8.4(b) on September 9, 2016 and requested comment from the bar and public regarding the proposed amendment ("Order"). In response to the Order, Joey Gilbert Law filed its public comment in opposition to the Board of Governors of the State Bar of Nevada ("Board of Governors") petition to amend Nevada's Rule of Professional Conduct 8.4(b) ("RPC 8.4(b)"). The Court has extended opportunity to submit supplemental public comment after the hearing. Joey Gilbert Law, through its attorneys Dominic P. Gentile of Gentile Cristalli Miller Armeni Savarese LLC, and John L. Arrascada of Arrascada and Aramini, Ltd., hereby files its supplemental comment correcting and clarifying statements made on the record during the hearing on the petition to amend RPC 8.4(b).

**SUPPLEMENT TO PUBLIC COMMMENT**

Recognizing the importance of this issue to the public and members of the State Bar of Nevada and that our duty of candor to the court pursuant to NRPC 3.3 applies even when the error is unintentional, we respectfully submit this supplement correcting and clarifying comments made on the record by below signed counsel during the public hearing on the proposed amendment to Nevada RPC 8.4(b).



1 During the presentation by Mr. Gentile, immediately after Justice Cherry  
2 questioned him about a bright line rule creating a safe harbor for lawyers who have  
3 a business interest in medical marijuana facilities, the following colloquy occurred  
4 between Justice Parraguirre (JRDP) and Mr. Gentile (DPG):

5 JRDP: Are there any other jurisdictions that have done that?

6 DPG: "Yes, Colorado and Washington".

7 JRDP: "Does Colorado allow lawyers to have interests in dispensaries? "

8 DPG: "Yes".

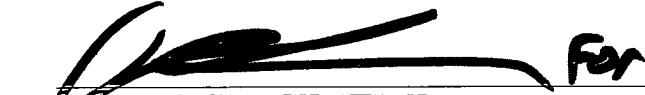
9 Mr. Gentile's response was incorrect, albeit unintentionally so. No  
10 "jurisdiction" which has ultimate disciplinary authority over the lawyers in any  
11 state – such as this Court does in Nevada - has directly addressed the problem with  
12 a bright line safe harbor rule as to ownership interests by lawyers. The Kings  
13 County Bar Association – which as Justice Gibbons noted is in the State of  
14 Washington and not Colorado as Mr. Gentile misstated - rendered an advisory  
15 opinion that set up such a protection. So did the Washington State Bar Association  
16 in 2015 through Advisory Opinion 201501. The Washington Supreme Court,  
17 however, has neither approved nor rejected the proposed safe harbor as of yet.  
18 Until it has done so the "jurisdiction" of the State of Washington has not adopted  
19 the rule.


20 Neither has the Colorado Supreme Court formally adopted such a rule.  
21 Colorado does provide safe harbor for attorney's use, possession and cultivation of  
22 marijuana in Colorado State Bar formal opinion 124 and amendment 64,  
23 respectively, and formal opinion 125. As is true in Nevada, Colorado also  
24 provides a safe harbor for attorneys representing clients in the marijuana industry  
25 pursuant to comment 14 of Colorado RPC 1.2. However, no safe harbor provision  
26 for an attorney's ownership interests in a marijuana business has been established  
27 as yet. The Colorado committee on ethics has proposed RPC 8.6, which would  
28 provide a safe harbor for attorney ownership interests in a marijuana business.

1 In sum, the comments made on record by Mr. Gentile in response to Justice  
2 Parraguirre's questions do not precisely reflect the existing rules of professional  
3 conduct in Colorado and Washington. Like Nevada, proposed changes to the Rules  
4 of Professional Conduct must be submitted by their respective State Bar  
5 Associations and approved by their respective Supreme Courts. To date, neither  
6 the Colorado nor the Washington Supreme Courts have approved or rejected the  
7 safe harbor rule proposed by their respective Bar Associations. However, both  
8 Colorado and Washington have recognized a clear absence of a nexus between an  
9 attorney assisting the creation and operation - within the parameters of state law -  
10 of a commercial marijuana businesses and an adverse reflection upon that  
11 attorneys' honesty, trustworthiness or fitness to practice law for the purposes of  
12 state bar disciplinary action.

13 Dated this 30 day of September, 2016.

14 GENTILE CRISTALLI  
15 MILLER ARMENI SAVARESE

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