

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition to Amend Rule 1.2(d),
Minnesota Rules of Professional Conduct

**PETITION OF THOMPSON HALL
SANTI CERNY & DOOLEY TO
AMEND THE RULES OF
PROFESSIONAL CONDUCT**

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE
STATE OF MINNESOTA

Petitioner Thompson Hall Santi Cerny & Dooley (“Thompson Hall”) respectfully petitions this Court to amend the Minnesota Rules of Professional Conduct (“MRPC”) as set forth below.

In support of this Petition, Thompson Hall would show the following:

1. This Court has exclusive and inherent power and duty to administer justice and adopt rules of practice and procedure before the courts of this state and to establish standards for regulating the legal profession. This power has been expressly recognized by the Legislature. *See* MINN. STAT. § 480.05 (2012).

2. This Court has adopted the MRPC by way of establishing standards of practice for lawyers licensed in the State of Minnesota to practice law. These standards have been amended from time-to-time.

MRPC Prohibits Representation of Marijuana Enterprises

3. Rule 1.2(d) of the MRPC provides that “[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal”

4. The manufacturing and sale of marijuana is criminal under federal law. *See, e.g.*, 28 U.S.C § 841; 21 U.S.C. §§ 802, 812.

5. The Minnesota Legislature authorized the manufacturing and sale of marijuana, under certain conditions, and directed the state Commissioner of health to regulate these activities. *See* 2014 Minn. Laws, ch. 311.

MRPC Should Permit Representation of Certain Marijuana Enterprises

6. The Minnesota Legislature expressed its intent that attorneys be authorized to represent these businesses:

An attorney may not be subject to disciplinary action by the Minnesota Supreme Court or professional responsibility board for providing legal assistance to prospective or registered manufacturers or others related to activity that is no longer subject to criminal penalties under state law pursuant to sections 152.22 to 152.37.

Id. sec. 12, subdiv. 2(i).

7. There is a public interest in this new industry being counseled and assisted by attorneys, including representation in business formation, contract drafting, regulatory compliance, corporate counsel, and other matters.

8. Other states legalizing marijuana adopted similar amendments: on March 24, 2014, the Colorado Supreme Court amended the Colorado Rules of Professional Conduct by adding Comment 14 to Rule 1.2; on May 7, 2014, the Nevada Supreme Court amended the Nevada Rules of Professional Conduct by adding Comment 1 to Rule 1.2.

9. Entrepreneurs have contacted Thompson Hall, seeking representation in a medical marijuana business authorized under state law; this would include having a lawyer “counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal” under federal law.

Proposed Amendment to MRPC

10. Thompson Hall hereby petitions This Court to amend the MRPC to permit attorneys to represent the marijuana business enterprises authorized by state law.

11. By way of example, Thompson Hall proposes appending a comment to Rule 1.2 of the MRPC:

Comment D. A lawyer may counsel and assist a client in conduct the lawyer reasonably believes is permitted by [2014 Minn. Laws, ch. 311] and state and local law implementing these provisions. In these circumstances, the lawyer shall also advise the client regarding related federal law and policy.

Dated: July 29, 2014

Respectfully submitted,



Aaron D. Hall (No. 0387727)
Maureen A. Carlson (No. 0388979)
Steven P. Katkov (No. 0202769)
Thompson Hall Santi Cerny & Dooley
901 Marquette Avenue
AT&T Tower Suite 1675
Minneapolis, Minnesota 55402
Telephone: (612) 466-0010
Facsimile: (612) 437-4500