

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8005

OFFICE OF
APPELLATE COURTS

DEC 31 2014

FILED

**ORDER SCHEDULING PUBLIC HEARING
ON PROPOSED AMENDMENTS TO THE
MINNESOTA RULES OF PROFESSIONAL CONDUCT**

Thompson Hall Santi Cerny & Dooley has filed a petition proposing amendments to the Minnesota Rules of Professional Conduct to permit attorneys to represent the marijuana business enterprises authorized by Minnesota law. By order filed September 19, 2014, the court opened a public comment period, and has considered the written comments received during that period. The court will consider the petition, the proposed amendments, and the comments after holding a public hearing. The petition and the proposed amendments to the Rules of Professional Conduct are attached to this order.

IT IS HEREBY ORDERED THAT:

1. A hearing will be held before this court to consider the proposed amendments to the Minnesota Rules of Professional Conduct identified in the petition. The hearing will take place in Courtroom 300, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota, on Wednesday, January 28, 2015, at 10:00 a.m.

3. Any person or organization desiring to make an oral presentation at the hearing in support of or in opposition to the proposed amendments to the Minnesota Rules of Professional Conduct shall file one copy of a written request to so appear, along with

one copy of the material to be presented, with AnnMarie O'Neill, Clerk of Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155. The request to appear and written materials shall be filed with the Clerk of Appellate Courts so as to be received no later than January 16, 2015.

Dated: December 31, 2014

BY THE COURT:

A handwritten signature in black ink, appearing to read "G. Barry Anderson", is written over a horizontal line.

G. Barry Anderson
Associate Justice

JUL 29 2014 *JA*

FILED

FILE NO. ADM10-8005

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