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# Representing Clients in the Marijuana Industry: Navigating State and Federal Rules

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**This article discusses the practical consequences of the District of Colorado's partial rejection of Colo. RPC 1.2, Comment 14.**

On November 6, 2012, Colorado voters added Amendment 64 to Colorado's constitution.<sup>1</sup> Amendment 64 legalizes many aspects of, and requires regulation for, the personal use (for adults 21 and over), commercial cultivation, manufacture, and sale of marijuana. Following an implementation period, the first recreational stores officially opened on January 1, 2014, and the industry has been growing since then. This occurred against the conspicuous backdrop of federal law, specifically the Controlled

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Substances Act, 21 USC §§ 801 *et seq.* (CSA), which makes illegal all of the above-described personal and commercial conduct relating to marijuana.

Rather than invoke the Supremacy Clause and assert that the CSA preempts conflicting state law, the U.S. Department of Justice (DOJ) has attempted to provide guidance in a series of memoranda. While affirming the DOJ's authority to enforce the CSA, the memoranda suggest that direct enforcement is not a high priority for the federal government in states that have legalized or decriminalized marijuana and have their own effective regulatory systems.<sup>2</sup> Nevertheless, the tenor of these oft-quoted documents is advisory and interpretive, underscoring the ephemeral nature of any wisdom divined from them. The reaction of the federal executive branch thus is impermanent and uncertain on several levels.

Before recent amendments, Colorado lawyers wishing to represent clients in the growing marijuana industry faced a serious impediment arising from the conflict between the CSA and Amendment 64. Colorado Rule of Professional Conduct (Colo. RPC or Rule) 1.2(d) states:

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.<sup>3</sup>

Because the CSA criminalizes conduct permitted under Amendment 64, a straightforward reading of Colo. RPC 1.2(d) suggested that a lawyer counseling or assisting a client with respect to conduct consistent with Amendment 64 was in violation of the Rule.<sup>4</sup> On the other hand, reading Colo. RPC 1.2(d) to deny clients the assistance of lawyers in navigating a complex and evolving area of law seemed unreasonable to some.<sup>5</sup>

On March 24, 2014, the Colorado Supreme Court undertook an effort to reduce uncertainty for Colorado attorneys wishing to represent clients in connection with Amendment 64 by adding Comment 14 to Colo. RPC 1.2(d). Comment 14 created an exception to Rule 1.2(d). It states in relevant part that a lawyer may

assist a client in conduct that the lawyer reasonably believes is permitted by these constitutional provisions [Amendment 64, §§ 14 & 16] and the statutes, regulations, orders, and other state or local provisions implementing them. In these circumstances, the lawyer shall also advise the client regarding related federal law and policy.<sup>6</sup>

Comment 14 thus removed some uncertainty by clarifying that Colorado attorneys (at least under Colorado law) are permitted to “assist” clients with conduct related to Amendment 64. The Court, however, did not define “assist” and left the contours of acceptable representation consistent with Colo. RPC 1.2(d) and Comment 14 to the common law and/or future regulation.

On November 17, 2014, the U.S. District Court for the District of Colorado (USDC) announced that it had “reviewed and approved revisions to its Local Rules which bec[a]me effective December 1, 2014.” While the USDC has adopted most of the Colo. RPC as its rules,<sup>7</sup> it added a new exception to Local Attorney Rule 2(b), stating:

**Exceptions.** The following provisions of the Colorado Rules of Professional Conduct (Colo. RPC) are excluded from the standards of professional responsibility for the United States District Court and the United States Bankruptcy Court for the District of Colorado:

Colo. RPC 1.2(d), Comment [14] (counseling and assisting client regarding Colorado Constitution art. XVIII, §§ 14 and 16 and related statutes, regulations, or orders, and other state or local provisions

implementing them), except that a lawyer may advise a client regarding the validity, scope, and meaning of Colorado Constitution art. XVIII, §§ 14 and 16 and the statutes, regulations, orders, and other state or local provisions implementing them, and, in these circumstances, the lawyer shall also advise the client regarding related federal law and policy.<sup>8</sup>

Importantly, with respect to the application of the Local Attorney Rules, Rule 1(c) provides:

Scope. These rules shall apply to all attorneys who are admitted to the bar of this court, or who purport to appear in the United States District Court or the United States Bankruptcy Court for the District of Colorado.<sup>9</sup>

The Colorado Supreme Court's adoption of Comment 14 and the USDC's subsequent rejection of Comment 14 have created an uncertain playing field for Colorado lawyers admitted to practice in the USDC who wish to represent clients in Amendment 64 matters. Specifically, these lawyers face two challenges. First, which jurisdiction's rules of professional conduct apply to their representation of clients in the marijuana industry—the Colo. RPC, which permit assisting such clients, or the USDC Local Attorney Rules, which prohibit assistance? Second, if the USDC Local Attorney Rules apply, what is the scope of permitted advice regarding related federal law and policy as opposed to (the at least negatively implied) prohibited assistance? Both of these thorny issues are explored below.

### **Reconciling Colo. RPC 8.5, USDC Local Attorney Rule 8.5, and the USDC's Inherent Power**

Consider the following examples: Suppose Colorado is sued in USDC by sheriffs from Colorado and neighboring states arguing that Amendment 64 puts an undue economic burden on other states.<sup>10</sup> Attorney A is admitted in the USDC and enters an appearance on behalf of Colorado in the matter. Has

Attorney A violated the USDC Local Attorney Rules by representing Colorado?

Attorney B represents Client X, a marijuana dispensary owner, negotiating a commercial real estate lease. Attorney B is admitted in the USDC and represents Client Y in an unrelated litigation matter pending before the USDC. Has Attorney B violated the USDC Local Attorney Rules by representing Client X?

Having not opted out of Colo. RPC 8.5, the USDC is bound by its provisions.<sup>11</sup> Colo. RPC 8.5(a) deals with disciplinary authority and states in relevant part:

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. . . . A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.<sup>12</sup>

The rule provides that an attorney's conduct is subject to discipline in "this jurisdiction" regardless of where the conduct occurs. The plain language of the rule establishes that because Attorneys A and B are admitted to practice before the USDC, they are both subject to the disciplinary authority of the court. The pertinent question becomes: Which rules of professional conduct would the USDC apply if it were to discipline Attorneys A and B? Is it the Colo. RPC, which permit, per Comment 14, attorneys' assistance to Amendment 64 clients, or its Local Attorney Rules, which reject Comment 14 and therefore prohibit it? Clearly, only one set of rules of professional conduct may apply to any particular attorney conduct.<sup>13</sup>

Colo. RPC 8.5(b), adopted by the USDC, provides choice of law provisions that instruct the court as to what law to apply. Rule 8.5(b)(1) states:

[F]or conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits [apply], unless the rules of the tribunal provide otherwise.<sup>14</sup>

Rule 8.5(b)(2) adds:

[F]or any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.<sup>15</sup>

Because Attorney A is representing Colorado in a matter pending before the USDC, Rule 8.5(b)(1) means that the USDC would apply its Local Attorney Rule 2(b) to determine whether Attorney A committed misconduct. Attorney B's representation, however, presents a more complicated choice of law question because the representation of Client X is not before the USDC.

On the one hand, a plain reading of Colo. RPC 8.5 suggests that where the representation of clients in the marijuana industry is not "in connection with a matter pending before" the USDC, the USDC must apply, per Rule 8.5(b)(2), "the rules of the jurisdiction in which the lawyer's conduct occurred," namely the Colo. RPC. Here, because Attorney B's conduct—the representation of Client X—is not pending before the USDC, the Colo. RPC that permit the representation would apply. Colo. RPC 8.5(b)(2) does not allow a court to discipline an attorney if the attorney's conduct conforms to the rules of the jurisdiction in which the attorney reasonably believed the predominant effect of the conduct would occur, therefore the USDC would apply the Colo. RPC. (and Attorney B would not face discipline.)<sup>16</sup>

Indeed, federal district courts are courts of limited jurisdiction. These courts have jurisdiction over cases between residents of different states and that exceed \$75,000, cases that concern a federal question, and bankruptcy cases for which the federal courts have exclusive jurisdiction.<sup>17</sup> It is thus axiomatic that the USDC does not have jurisdiction over all claims arising in the State of Colorado. In light of this limited jurisdiction, Attorney B might reasonably conclude that her representation of Client X would not have a nexus to any matter pending before the USDC and, further, that the USDC must apply Colo. RPC 8.5(b)(2) and decline to assert jurisdiction over her conduct.

On the other hand, the USDC might decide to exercise its inherent power to apply its Local Attorney Rules, Colo. RPC 8.5 notwithstanding, finding that any other construction would deny its ability to discipline lawyers admitted to its bar and force it to apply Colo. RPC 1.2 Comment 14, which it explicitly rejected. The USDC has the power to discipline or disbar attorneys admitted to practice before it.<sup>18</sup> Nothing in the Local Rules negates or diminishes the USDC's inherent power to discipline attorneys who are members of its bar.<sup>19</sup> This disciplinary and contempt power is "far-reaching and potentially drastic."<sup>20</sup> Thus, while contemplating what rules the USDC will apply, it is incumbent on attorneys practicing before it to recognize that the court may invoke its inherent power to apply its Local Rule 2(b), ostensibly even to attorney conduct in matters not pending before it.<sup>21</sup> Here, if the USDC were to invoke its inherent power to disregard its own Rule 8.5(b)(2), Attorney B's representation of Client X would be subject to Local Rule 2(b) although the representation of Client X was not before the tribunal and was unrelated to its representation of Client Y before the court.

In sum, Colorado lawyers admitted to practice before the USDC assume a nontrivial risk by representing Amendment 64 clients. In matters pending

before the USDC, the court will apply its Local Rules 8.5(b)(1) and 2(b) to reject Comment 14. In matters not pending before it the USDC is likely to interpret its Rule 8.5(b)(2) and apply the Colo. RPC in full, including Comment 14. However, it may invoke its inherent power to apply its own Local Rule 2(b) to such representations. We turn next to explore the application of Local Rule 2(b) to the representation of Amendment 64 clients.

### **Semantics or Substance? Discuss v. Assist/Counsel v. Advise**

Colorado lawyers who fear discipline by the USDC must confront a second quandary: What is the scope of permitted advising under the Local Attorney Rules as opposed to prohibited assisting? In attempting to navigate the issues described above, attorneys may refrain from assisting clients regarding Amendment 64 and only advise them, in accordance with Local Attorney Rule 2(b)(2). The USDC rejected Comment 14 to the extent that it permitted an attorney to assist a client regarding Amendment 64, but accepted that an attorney could advise his or her client regarding Amendment 64 and related federal law and policy.<sup>22</sup> Further, the USDC has adopted Colo. RPC 1.2(d), which states that while a “lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal,” 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.<sup>23</sup>

This requires an analysis of the difference between three categories of attorney conduct: (1) discuss, (2) counsel and assist, and (3) advise.

### ***Discussing***

Colo. RPC 1.2(d), adopted by the USDC, states in relevant part that a lawyer “may discuss the legal consequences of any proposed course of conduct with a client.”<sup>24</sup> Thus, a lawyer may discuss and explain to a client the legal consequences of any conduct given Amendment 64, the CSA, and related bodies of law. Comment 9 clarifies that, in discussing the law with a client, a lawyer is not precluded “from giving an honest opinion about the actual consequences that appear likely to result from a client’s conduct.”<sup>25</sup> It adds that “[t]here is a critical distinction between presenting an analysis of legal aspects of questionable conduct,”<sup>26</sup> which is permitted under the Rule, “and recommending the means by which a crime or fraud might be committed with impunity,”<sup>27</sup> which is prohibited.

### ***Assisting and Counseling***

While a Colorado lawyer is thus always permitted to discuss the consequences of a proposed Amendment 64 conduct with a client under the Local Attorney Rules, an attorney must not assist or counsel a client to engage in violating the CSA given the USDC’s rejection of Comment 14. What attorney conduct amounts to prohibited assisting and counseling? Comment 10 to Colo. RPC 1.2 offers guidance in drawing the line, noting that

[t]he 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.<sup>28</sup>

By analogy, a lawyer prohibited from assisting Amendment 64 client conduct under Local Rule 2(b)(2) would be prohibited from drafting or delivering documents that the lawyer knows will be used to violate the CSA, such as

drafting a lease or an employment agreement on behalf of a marijuana dispensary owner.

CBA Formal Ethics Opinion 125 delineated the line between prohibited assistance and permitted Amendment 64 representations. The Opinion was rendered moot by Comment 14 and was therefore withdrawn. But because the USDC's rejection of Comment 14 once again makes it important to distinguish between prohibited assistance and permitted representation, we believe it provides good guidance and lends ample support for the above interpretation.<sup>29</sup> The Opinion stated in relevant part:

Circumstances in which the question [distinguishing permissible attorney conduct and prohibited conduct] arises are too various to permit a single, bright-line answer. It must suffice to describe a spectrum of conduct starting with conduct which the Committee believes is unquestionably permissible, ending with conduct which the Committee believes is undoubtedly unethical, and circling back to the range of conduct in between as to which reasonable minds may differ.

It is, for example, unquestionably permissible for lawyers to represent clients regarding the consequences of their past conduct. Just as a lawyer may ethically defend a client accused of committing a crime, so too may a lawyer ethically represent a client accused of violating Colorado's rules and regulations regarding marijuana, in any area in which that conduct may become an issue—including family law, employment law, workers' compensation law, and criminal law.

Opinion 125's analysis does not quite resolve our first example. The Opinion states that a lawyer can always represent a client accused of a crime, but it bases its conclusion on the fact that the client's conduct in question is past conduct. Attorney A, in contrast, has been retained by Colorado to represent it regarding ongoing conduct. We believe, however, that Attorney

A has likely not violated the USDC's Local Rules for two related reasons. First, the court's Local Rules allow a lawyer to "counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law."<sup>30</sup> Because in our example the sheriffs are challenging the validity and application of Amendment 64, it seems likely that that court will not find Attorney A's representation of Colorado to violate its Local Rules.

Support for this analysis is found in the recent case of *In re Arenas*, dismissing a debtor's Chapter 7 bankruptcy and denying his motion to convert to a Chapter 13 on the basis that the debtor's compliance with Amendment 64 of Colorado in running his marijuana business constituted violations of the CSA, and permitting a bankruptcy would require the bankruptcy trustee to distribute assets that were the result of illegal conduct.<sup>31</sup> Importantly, while the court denied the debtor's motion for relief, it did not refer debtor's counsel for discipline, presumably because the lawyer in question was assisting the client "to make a good faith effort to determine the validity, scope, meaning or application of the law."

Second, disciplining Attorney A for agreeing to represent Colorado in our example defies common sense because such discipline would deprive Colorado of representation in the case. But what about Colorado lawyers who generally agree to represent Amendment 64 clients before the USDC in matters involving ongoing—as opposed to past—client conduct? While such lawyers might argue that the representations constitute "a good faith effort to determine the validity, scope, meaning or application of the law," and might construe *In re Arenas* to suggest that the USDC would not refer them to discipline, such lawyers do risk a determination that their representations constitute prohibited assistance under the court's Local Rules.

Next, what about lawyers who represent Amendment 64 clients in matters not before the court, like Attorney B? Withdrawn Opinion 125 is once again helpful in construing Local Rule 2(b):

By contrast, the Committee concludes that the plain language of Colo. RPC 1.2(d) prohibits lawyers from assisting clients in structuring or implementing transactions which by themselves violate federal law. A lawyer cannot comply with Colo. RPC 1.2(d) and, for example, draft or negotiate (1) contracts to facilitate the purchase and sale of marijuana or (2) leases for properties or facilities, or contracts for resources or supplies, that clients intend to use to cultivate, manufacture, distribute, or sell marijuana, even though such transactions comply with Colorado law, and even though the law or the transaction may be so complex that a lawyer's assistance would be useful, because the lawyer would be assisting the client in conduct that the lawyer knows is criminal under federal law. Similarly, a lawyer cannot under Colo. RPC 1.2(d) represent the lessor or supplier in such a transaction if the lawyer knows the client's intended use of the property, facilities, or supplies, as such actions are likely to constitute aiding and abetting the violation of or conspiracy to violate federal law.<sup>32</sup>

Accordingly, because negotiating a commercial real estate lease for Client X constitutes prohibited assistance under USDC's Local Rule 2(b), if the court were to invoke its inherent power and attempt to discipline Attorney B for conduct not pending before it, Attorney B might be found to have violated Rule 2(b). Notably, however, the *Restatement (Third) of the Law Governing Lawyers* § 94 defines "assistance" differently than withdrawn Opinion 125. Assisting a client under the *Restatement* means to, with the intent of facilitating or encouraging the client's action, as opposed to mere knowledge, provide professional services such as "preparing documents,

drafting correspondence, negotiating with a non-client, or contacting a governmental agency.”<sup>33</sup> That is, drafting and preparing documents on behalf of a client only amounts to assisting if a lawyer acts with intent to help the client, as opposed to mere knowledge of the client’s criminal conduct.<sup>34</sup> Contrary to Colo. RPC 1.2 Comment 10 and withdrawn Ethics Opinion 125, a Colorado lawyer facing USDC discipline for drafting documents for an Amendment 64 client may argue that her conduct does not constitute prohibited assistance because she lacked the intent to help the client.

Here, Attorney B may argue that even if the USDC invokes its inherent power and attempts to impose discipline for conduct not before it, Attorney B has not violated Local Rule 2(b) unless it can be established that Attorney B had the intent to help Client Y. In any event, recall that as explained above, when the representation of Amendment 64 clients is not before it, the USDC might interpret its choice of law Rule 8.5(b)(2) to require it to apply the Colo. RPC, including Comment 14, in which case it will likely find no misconduct on Attorney B’s part.

### ***Advising***

Local Attorney Rule 2(b)(2) appears to introduce a new hybrid category—advise. Recall that the Local Rule states in relevant part that a lawyer “may advise a client” regarding the validity, scope, and meaning of Amendment 64 and its implementing laws, and must “advise the client regarding related federal law and policy.” Thus, arguably, a Colorado lawyer may do more than merely discuss the legal consequences with an Amendment 64 client, but less than assist or counsel that client.

Once again the Colo. RPC Comment and withdrawn Ethics Opinion 125 provide guidance in delineating the meaning of this new category of conduct. Comment [9] notes in relevant part that

[t]here 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.” (Emphasis added.)<sup>35</sup>

“Recommending the means” is prohibited by Comment 9 because it, unlike Local Rule 2(b)(2), had only two categories of attorney conduct to construe—discussing and assisting—and recommending appeared to go above and beyond discussing. The USDC, however, may conclude that recommending is an example of permitted advising because while more than discussing, it is sufficiently less than assisting.

Opinion 125 provided two additional examples of advising. First, it explained:

The CSA provides that “no civil or criminal liability shall be imposed by virtue of this subchapter upon . . . any duly authorized officer of any State . . . who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.” 21 U.S.C. § 885(d). Some courts have interpreted this section to provide civil and criminal immunity for state law enforcement officers enforcing valid state marijuana laws.<sup>36</sup>

Importantly, added the Opinion,

state officials carrying out their responsibilities under Colorado’s marijuana laws are not engaging in criminal activity. Relying on these cases, the Committee believes that government lawyers *advising* these officials do not violate Colo. RPC 1.2(d) when they work to help their clients enforce, interpret, or apply marijuana laws. (Emphasis added.)<sup>37</sup>

Second, Opinion 125 noted that

in the family law context, a lawyer may *advise* a client about the consequences of using marijuana before, during, or after exercising parental rights or parenting time without violating the Rules.<sup>38</sup>

Thus, it appears that permissible advising under Local Attorney Rule 2(b)(2) creates a third hybrid category of attorney conduct, in addition to discussing and assisting, pursuant to which a Colorado lawyer may do more than discuss the consequences of a proposed course of conduct with an Amendment 64 client without reaching the prohibited assisting, for example, by recommending a course of conduct based on the permitted discussion.

## Conclusion

The USDC’s rejection of Comment 14 introduces uncertainty into the practice of law for Colorado lawyers admitted to practice before the USDC. Specifically, while we believe that the court’s choice of law rule requires it to apply the Colorado Rules to attorney conduct not pending before it, lawyers admitted to practice before the USDC face the possibility that the court may exercise jurisdiction to discipline them for representing Amendment 64 clients in matters pending before it and even regarding representations not before it. In doing so, it might apply its Local Attorney Rules, which reject Comment 14. Moreover, Colorado lawyers also face uncertainty as to the scope of permitted advising under the Local Attorney Rules, as well as the scope of prohibited assisting.

## Notes

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1. In this article, “Amendment 64” refers to the constitutional amendment, inclusive of the statutory and regulatory schemes

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promulgated under the amendment. Amendment 64 followed the legalization of medical marijuana in Colorado in 2000.

2. Ogden, Deputy Attorney General, Memorandum for Selected United States Attorneys, Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana (Oct. 19, 2009); Cole, Deputy Attorney General, Memorandum for United States Attorneys, Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use (June 29, 2011); Cole, Deputy Attorney General, Memorandum for United States Attorneys, Guidance Regarding Marijuana Enforcement (Aug. 29, 2013).

3. Colo. RPC 1.2(d) (emphasis added).

4. CBA Formal Ethics Committee Opinion 125: The Extent to Which Lawyers May Represent Clients Regarding Marijuana-Related Activities (adopted Oct. 21, 2013, withdrawn May 17, 2014), [www.cobar.org/tcl/tcl\\_articles.cfm?articleid=8370](http://www.cobar.org/tcl/tcl_articles.cfm?articleid=8370); Maine Professional Ethics Commission Opinion 199 (2010); Connecticut Bar Association Professional Ethics Committee Informal Opinion. 2013-02 (2013).

5. Arizona's Ethics Committee refused to "apply ER 1.2(d) in a manner that would prevent a lawyer who concludes that the client's proposed conduct is in 'clear and unambiguous compliance' with state law from assisting the client in connection with activities expressly authorized under state law, thereby depriving clients of the very legal advice and assistance that is needed to engage in the conduct that the state law expressly permits." State Bar of Arizona Ethics Opinion 11-01 (2011); New York State Bar Association Committee on Professional Ethics Opinion 1024 (Sept. 29, 2014).

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6. Colo. RPC 1.2, cmt. [14].

7. D.C.Colo.LAttyR 2(a) and (b).

8. D.C.Colo.LAttyR 2(b)(2).

9. *See id.* at 1(c).

10. *See, e.g.*, Hughes, “Sheriffs sue Colorado over legal marijuana,” *USA Today* (March 5, 2015), [www.usatoday.com/story/news/2015/03/05/sheriffs-from-three-states-sue-colorado-over-marijuana/24385401](http://www.usatoday.com/story/news/2015/03/05/sheriffs-from-three-states-sue-colorado-over-marijuana/24385401).

11. *See also Rivera v. Periodicos Todo Bayamon*, 1997 U.S. Dist. LEXIS 877 at \*6 (D.P.R. 1997) (commenting that Rule 8.5 does not bind a court that has not adopted it).

12. Colo. RPC 8.5(a).

13. Colo. RPC 8.5(b)(2), cmt. [3]. *See also Rivera*, 1997 U.S. Dist. LEXIS 877 (commenting that Model Rule of Professional Conduct 8.5(b) (which is identical to Colo. RPC 8.5 except for the words after (b) “Choice of Law.”) clearly provided that a court was prohibited from applying more than one set of rules of professional conduct to any particular conduct).

14. Colo. RPC 8.5(b)(1).

15. Colo. RPC 8.5(b)(2).

16. Colo. RPC 8.5(b)(2), cmt. [3] (the purpose of Colo. RPC 8.5 is to protect attorneys who act reasonably in the face of uncertainty).

17. *See* 28 USC §§ 1331, 1332, and 1334.

18. The U.S. Supreme Court has also recognized the inherent power of the federal district courts to disbar or discipline attorneys before them. *In re Snyder*, 472 U.S. 634, 642-45 (1985) (providing that the federal court has inherent authority to suspend or disbar an attorney).

19. D.C.Colo.LAttyR 1(d).

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20. See *Braley v. Campbell*, 832 F.2d 1504, 1510 n.5 (10th Cir. 1987) (noting the power of the federal court to discipline attorneys). See also *Snyder*, 472 U.S. at 642-45 (providing that the court has inherent authority to suspend or disbar an attorney); *Burkett v. Chandler*, 505 F.2d 217(10th Cir. 1974) (recognizing that the court has the authority to disbar or hold an attorney in contempt).

21. Richardson, “Demystifying the Federal Law of Attorney Ethics,” 29 *U. Georgia L.Rev.* 137, 149-50, n.45 (Fall 1994) (citing *In re Sanchez-Ferrer*, 620 F.Supp. 951 (D.P.R. 1983) (disbarring lawyer from bar of federal court for conduct committed in state court)).

22. See D.C.Colo.LAttyR 2(b)(2).

23. Colo. RPC 1.2(d).

24. *Id.*

25. Colo. RPC 1.2, cmt. [9].

26. *Id.*

27. *Id.*

28. Colo. RPC 1.2, cmt. [10].

29. Opinion 125, *supra* note 4.

30. Colo. RPC 1.2(d).

31. *In re Arenas*, 514 B.R. 887, 895 (Bankr.D.Colo. 2014).

32. Opinion 125, *supra* note 4.

33. *Restatement (Third) of Law Governing Lawyers* § 94, cmt. A (2000).

34. See also Kamin and Wald, “Marijuana Lawyers: Outlaws or Crusaders?” 91 *U. Oregon L.Rev.* 869 (2013) (arguing that lawyers “assist” and “counsel” clients who engage in *malum prohibitum* conduct only when acting with intent as opposed to mere knowledge).

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35. Colo. RPC 1.2 cmt. [9].

36. Opinion 125, *supra* note 4.

37. *Id.* See also, Sam Kamin & Eli Wald, *Public Lawyers and Marijuana Regulation*, 23(1) THE PUBLIC LAWYER 14 (2015).

38. *Id.* (emphasis added).