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9 (STATE BAR NUMBER 011474)

8 ARIZONA SUPREME COURT

10 IN RE: PETITION TO AMEND
11 ETHICAL RULE 1.2, RULE 42,
12 ARIZONA RULES OF THE
13 SUPREME COURT

R-18-0009

MARICOPA COUNTY ATTORNEY'S
RESPONSE TO PETITION TO AMEND
ETHICAL RULE 1.2, RULE 42, ARIZONA
RULES OF THE SUPREME COURT

15 The Maricopa County Attorney's Office hereby responds to the renewed
16 Petition to Amend ER 1.2(d) and again asks this Court to deny the petition as the
17 proposed amendment remains inconsistent with the duty of lawyers to uphold the law
18 and is unnecessary.

20 The Petition's focus is one specific area of conflict - the Arizona Medical
21 Marijuana Act and the federal Controlled Substances Act. To resolve the direct
22 conflict between these two laws - the state law that permits the possession, use,
23 cultivation, and distribution of marijuana in some circumstances and the federal law
24 that clearly prohibits it - the Petition seeks to create an exception to this longstanding
25 ethical principle of the legal profession: lawyers cannot help clients commit crimes.
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1 Effectively the rule would be re-written to say, "A lawyer may not help clients
2 commit crimes unless they are helping them do something state law permits, and the
3 lawyer advises the client that their course of action is in clear violation of federal
4 criminal law." Thus, the Petition would modify the ethical rules to permit lawyers to
5 advise their clients to commit federal crimes as long as the State of Arizona does not
6 happen to agree with the particular federal law in question if the lawyer tells the
7 client that they are, in fact, advising them on how to violate the law. Such a rule is a
8 very odd view of our federal system of government and directly contradicts one of the
9 stated duties and obligations of every lawyer in this state: "To support the constitution
10 and the *laws of the United States* and the State of Arizona." ARIZ. SUP. CT. R. 41(b)
11 (emphasis added). Permitting lawyers to help clients commit acts that are expressly
12 prohibited by the laws of the United States makes a mockery of this clearly stated
13 obligation.
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19 As currently written, ER 1.2(d) provides sufficient guidance for lawyers. The
20 rule allows a lawyer to discuss and advise a client on the potential legal consequences
21 of any particular action - including opening a marijuana dispensary or possessing
22 marijuana. The rule also allows a lawyer to explain the "scope, meaning or
23 application" of the law. Armed with that advice, clients are then free to make their
24 own decisions on how they wish to proceed, but the lawyer cannot ignore his or her
25 obligations to the legal system by helping them violate the law. Creating a rule to the
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1 contrary does nothing but erode the rule of law that all lawyers take an oath to
2 uphold. What could be more antithetical to lawyer *ethics* than adopting a rule that
3 specifically permits lawyers to be willing participants in criminal conduct?
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5 The clearest demonstration that ER 1.2(d) is sufficient as currently drafted is the
6 fact that Petitioner cites no specific examples of a lawyer being subjected to
7 discipline in Arizona or any other state for violating this rule in the context of
8 legalized marijuana. Certainly the medical marijuana business does not appear to be
9 suffering with the current ER 1.2(d) in place. Physicians are advertising their
10 willingness to provide marijuana certifications, marijuana cards are being issued, and
11 dispensaries are being licensed and operated around the state. While the business of
12 medical marijuana is progressing with the current ER 1.2(d), apparently no lawyer in
13 this or any other state has faced ethical sanctions for working with clients who are
14 violating federal law. While some other states may have made modification to their
15 rules, Arizona's previous refusal to do so has proven to be the more prudent course.
16 Arizona's experience shows there is no reason to modify our ethical rules to permit
17 lawyers to counsel or assist a client to commit acts that are violations of federal law.
18 ER 1.2 as currently drafted adequately handles the situation by permitting a lawyer to
19 counsel a client on the scope and meaning of state law without assisting them to
20 violate federal law. Certainly nothing has happened in the years since this Court
21 previously rejected this Petition to show that ER 1.2 needs any modification.
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1 For these reasons, the Maricopa County Attorney's Office asks this Court to
2 deny the Petition and to decline to either modify the rule or add comments to the rule.
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4 The ethical rules should promote the rule of law and this Petition undermines this
5 core value with no demonstrable benefit.
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7 Respectfully submitted this 20 day of May, 2018.

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10 By 
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