

KOMO News

Should Washington lawyers be allowed to smoke pot?

By GENE JOHNSON Associated Press | Published: Nov 5, 2013 at 6:04 PM PST (2013-11-6T2:04:58Z) | Last Updated: Nov 6, 2013 at 10:17 AM PST (2013-11-6T18:17:32Z)



FILE -- This photo taken Feb. 13, 2013 shows different strains of marijuana displayed during the grand opening of the Seattle location of the Northwest Cannabis Market, for sales of medical marijuana products. (AP Photo/Elaine Thompson)

SEATTLE (AP) - Seattle attorney Kurt Boehl is happy to think he's contributing to the success of Washington's grand experiment in regulating marijuana by advising his clients on how to navigate the industry's legal complexities.

But there's a slight worry his efforts could earn him an ethics complaint. After all, marijuana is illegal under federal law, and lawyers aren't supposed to help their clients break the law.

Washington's Supreme Court could put his mind at ease. The justices on Wednesday are taking up an emergency proposal to change the state's ethics rules for lawyers to make clear that attorneys complying with state law won't get in trouble for giving pot-related legal advice - or for smoking up themselves, as long as they're not high at work.

The Supreme Court in Colorado, the other state to legalize marijuana for recreational use, has been presented with a similar proposal.

"I really like the concept," Boehl said. "There are attorneys out there that are scared to advise clients because it's against federal law. As long as we advise our clients about the federal law,

we have a duty to help them comply with state law."

Washington and Colorado legalized the recreational use of marijuana by adults over 21 last year and authorized its sale at state-licensed stores. Washington will begin accepting applications this month from people seeking state licenses to grow, process or to sell pot - a process that creates a thicket of potential legal issues, such as contracts with landlords authorizing the production of marijuana on their property.

Washington's proposed ethics rule was drafted by the King County Bar Association, which covers Seattle. The state bar declined to endorse it, but the Supreme Court's rules committee recommended adopting it, and the full court is considering the rule during its regular meeting Wednesday.

"Without new rules of professional conduct, the Washington legal community would be telling its citizens that they may need to navigate this regime without the assistance of attorneys," King County bar President Anne M. Daley wrote to the court. "The voters of Washington did not endorse this approach."

Lawyers in many states have for years advised clients about the legal pitfalls that abound in the medical marijuana realm. It doesn't appear that lawyers in Washington or Colorado have ever been sanctioned strictly for giving such counsel, though some have run into trouble for getting too involved in their clients' questionable activities.

The punishments for violating professional conduct rules can include suspensions from practicing law or disbarment.

The legal communities in some states have wrestled with similar questions in recent years. In Maine, lawyers have been cautioned that they risk committing ethical violations if their advice to medical marijuana entities crosses the line by assisting them in violations of federal law. In Connecticut, the bar association's ethics committee issued a similar warning.

But Arizona's bar association held that barring such help to clients would deprive them of the assistance they need to follow that state's medical marijuana law. And in Colorado, the Supreme Court's Office of Attorney Regulation Counsel advised that lawyers who complied with the medical marijuana law in personally using cannabis would not run afoul of ethics rules.

Douglas Ende, the chief disciplinary counsel of the Washington State Bar Association, urged the state Supreme Court to allow more time to consider the rule and noted that lawyers in Washington take oaths to abide by state and federal law.

Ende suggested the rule wasn't immediately necessary because the U.S. Justice Department has

made clear that it will allow the states to move forward with their regulatory schemes and because lawyers complying with state law are at little to no risk of being prosecuted for an ethical violation.

The King County Bar Association says it has learned of ethical complaints against at least two lawyers for advising clients or using marijuana themselves since Washington's recreational pot law passed. Though Ende's office hasn't pursued the cases, "the effect on an attorney's personal life and professional reputation from being accused of misconduct can be substantial, disruptive and expensive," Daly wrote.