

August 11, 2014

Clerk of the Supreme Court
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Please add the attached comment to the public comments section for Proposed
RPC 1.2, published for comment in June 2014.

Michael Kaiser

Received
Washington State Supreme Court

AUG 13 2014

Ronald R. Carpenter
Clerk

With regard to Rachel Felbeck's comments on Proposed RPC 1.2:

1) Ms. Felbeck states, "I recommend deleting the first part of the first sentence 'At least until there is a change in federal enforcement policy' as that leaves uncertainty for the attorney providing advice on this statute based on the whims and possible changes in federal law, which likely will not affect the law here in Washington unless and until it is specifically held unconstitutional by the US Supreme Court." The "whims" of federal law? Apparently the "whims" she is referring to is controlling legal authority in this matter? As for needing the United States Supreme Court to affirm that Washington's law is not legal, all it would take is a lower state court, let alone a federal district court, to bring this matter to an end. As for the Supreme Court, perhaps Ms. Felbeck should take another look at Gonzalez v. Raich.

2) Ms. Felbeck states, "Many states, counties and cities in our country have decriminalized the penalties for possession of marijuana in conflict with federal law mandatory sentencing guidelines." Her comparison is irrelevant. A federal prosecution is a separate matter from a state prosecution and so federal penalties, as they compare to state penalties for anything, are apples and oranges. Furthermore, as an aside, there is a huge difference between decriminalization on a state level--as it relates to prosecution--and sanctioning attorneys to help pot dealers open up shop in violation of federal law, with the federal law, again, rendering meaningless, in a legal sense, as it relates to controlling authority, any state law purporting to "legalize" pot.

3) Ms. Felbeck states, "Many states will have, or will likely have, initiatives in the next several years to legalize recreational marijuana in conflict with current federal law." Not only is this irrelevant, but Ms. Felbeck presents absolutely no evidence to support her assertion that "'many' states will have, or will likely have, initiatives in the next several years to legalize recreational marijuana in conflict with current federal law." In fact, Ms. Felbeck can not even predict whether federal authorities may decriminalize pot themselves, rendering the rest of her argument meaningless. Furthermore, on the other side of the coin, "many" states may look at Washington and decide that they want nothing to do with "legal" pot. Ms. Felbeck has no idea which way this will go, and neither do I.

4) Ms. Felbeck states, "It is both reasonable and appropriate for residents and business owners in Washington to consult with attorneys concerning state laws and attorneys should be free to do so without concern that they will be sanctioned by our Bar Association or by the State Supreme Court for doing so." The statement is somewhat disingenuous. No one is going to be sanctioned for being approached by someone for legal advice. The issue is that if the "attorney" has taken an oath to uphold the law, and also took Constitutional Law in law school, there is only one piece of advice they can give: "Pot is illegal, and, legally, it means absolutely nothing that Washington voters were somehow allowed to pass a law purporting to 'legalize' pot." The matter should never have been allowed to get that far, but there clearly was an absolute lack of leadership from local legal authorities including the Attorney General--who at least has had the integrity to stand up and state that the law is non-binding--as well as the Secretary of State's Office.

5) Ms. Felbeck states, "Many states- over 23 at this point, have enacted medical marijuana statutes in violation of federal law." Exactly. They are in violation of federal law, and thus in violation of the law--period, although I recognize that, remarkably, within just roughly the past five years pot has been found by some to be a medical treatment for almost every medical condition ever known to man.

Michael Kaiser