

## Tracy, Mary

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Monday, June 30, 2014 8:04 AM  
**To:** Tracy, Mary  
**Subject:** FW: Comment on proposed comment to RPC 1.2

**From:** Seth Fine [mailto:dpafine@yahoo.com]  
**Sent:** Saturday, June 28, 2014 8:57 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Subject:** Comment on proposed comment to RPC 1.2

The proposed new comment to RPC 1.2 raises important questions concerning federal supremacy and separation of powers. Despite the importance of these questions, they are not difficult. Manufacture and delivery of marijuana are federal crimes. A lawyer cannot properly aid in their commission.

The following statements seem undisputable:

1. It is unethical for lawyers to use their professional skills to aid commission of a crime. Like everyone else, lawyers are subject to the law. Aiding a crime is itself a crime. "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal." 18 U.S.C. sec. 2(a).
2. Manufacture or delivery of marijuana is a crime under federal law.
3. No state can nullify or repeal a federal law.
4. Federal executive authorities likewise cannot nullify or repeal a law. The power to repeal a valid federal law belongs solely to Congress.

From these statements, some conclusions inevitably follow. Since the manufacture or delivery of marijuana is a federal crime, no lawyer can properly aid that activity. Neither Initiative 502 nor any other state law can change this. Nor can the law be changed by any action or inaction of the President or Attorney General.

The proposed comment asserts the contrary. It purports to allow lawyers to assist clients in conduct that is permitted by Initiative 502, "at least until there is a change in federal enforcement policy." This combines two disturbing implications. It implies that Initiative 502 nullified federal drug laws – thereby asserting the supremacy of Washington law over federal law. It also implies that "federal enforcement policy" nullified federal laws – thereby asserting the supremacy of the executive branch over Congress. The court should not endorse either of these propositions.

With regard to this issue, the wisdom of federal drugs laws makes no difference. Those laws express a constitutionally-valid policy. Initiative 502 expresses an equally valid but conflicting policy. The choice between those policies must be made by Congress. Until Congress amends the law, Washington lawyers are bound by their oath to abide by the laws of the United States. See APR 5(d) (oath taken by Washington lawyers).

Ultimately, this proposal presents one fundamental question: Can a Washington lawyer assist a client in committing a felony? The answer should be a resounding "NO!"

Seth Fine  
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