

## PROPOSED AMENDMENT TO RULE 8.4(B) OF THE MICHIGAN RULES OF PROFESSIONAL CONDUCT

### Issue

Should the State Bar of Michigan adopt resolutions calling for an amendment to the Michigan Rules of Professional Conduct (MRPC) and related Comments to make clear that a lawyer or prospective lawyer's use of marijuana in accordance with applicable State law shall not constitute professional misconduct?

RESOLVED, that the State Bar of Michigan supports amendment of the Comments to Rule 8.4(b) of the Michigan Rules of Professional Conduct (MRPC) to make clear that a lawyer or prospective lawyer's use of marijuana in accordance with state law shall not, in and of itself, be considered professional misconduct.

FURTHER RESOLVED, that the State Bar of Michigan proposes the amendment of the Comment to MRPC 8.4 by adding additional language to the Comment as follows:

**A lawyer or prospective lawyer who uses marijuana in accordance with the requirements of Michigan law, even if that conduct might violate federal law, shall not by such use, in and of itself, be engaged in professional misconduct. Nothing in this comment shall allow or excuse a lawyer's use of marijuana in any way that may compromise the lawyer's professional skill or judgment.**

### Synopsis

The proposed resolution supports a Comment to MRPC 8.4 will make clear that a lawyer's use of marijuana, if in compliance with applicable state law, is not the sort of violation of criminal law (if a violation) that has any specific connection to his or her fitness to practice law, and is not, in and of itself, professional misconduct.

### Background

In 2008, Michigan voters approved the Michigan Medical Marihuana Act (MMMA)<sup>1</sup>. That law was premised on findings which included that “[m]odern medical research . . . has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions.” MCL 333.26422(a). While patients, caregivers, and physicians who comply with MMMA requirements are protected from state criminal prosecution for production, possession, or delivery of marijuana, the Federal Controlled Substances Act (CSA) and related federal statutes continue to outlaw almost all use and possession of marijuana. Federal law provides that it is illegal to possess, manufacture, distribute, or dispense marijuana, or conspire to do so.

Lawyers are potentially subject to the types of debilitating medical conditions noted in the MMMA, and are not precluded from activity authorized by that law. However, MRPC 8.4(b) states that it is

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<sup>1</sup> The title of the act spells marihuana with an H: for purposes of clarity, this rule using the more common spelling with a J.

professional misconduct for a lawyer to engage in conduct that is a violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer. The Comments to this section make clear that while some ". . . kinds of illegal conduct reflect adversely on fitness to practice law . . . [other] kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving 'moral turpitude.'" Any Michigan citizen's use of marijuana under the MMMA is a violation of the federal criminal law. But in Michigan the people have adopted the MMMA to authorize and approve of the medical use of marijuana as an activity appropriate to treat certain medical conditions and not constituting criminal activity. Under a fair reading of this law and its purposes (see MCL 333.26422), the authorized use of medical marijuana under the MMMA cannot be seen as involving moral turpitude.

The proposed amendment to the Comment to the Rule makes clear that if a lawyer (or a prospective lawyer) uses marijuana in accordance with applicable Michigan law, such use is not, in and of itself, misconduct under MRPC 8.4(b).

### Opposition

None known.

### Prior Action by Representative Assembly

None known.

### Fiscal and Staffing Impact on State Bar of Michigan

None known.

## STATE BAR OF MICHIGAN POSITION

By vote of the Representative Assembly on September 22, 2016

Should the Representative Assembly adopt the above resolution:

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(a) Yes  
or

(b) No