

**ETHICS OPINION NO. 265  
OF THE MISSISSIPPI BAR  
RENDERED JUNE 9, 2022**

**CAVEAT: This Opinion is limited strictly to the facts as presented for analysis under Mississippi’s Rules of Professional Conduct. The facts and questions outlined below and the opinion rendered is limited to ethical issues only.**

The Ethics Committee of the Mississippi Bar has been asked to respond to the following question and hypothetical:

May a Mississippi lawyer consistent with Mississippi Rule of Professional Conduct 1.2(d) ethically provide legal services assisting a client to comply with the Mississippi Medical Cannabis Act (Senate Bill 2095)?

**Applicable Rules**

The following Rules of Professional Conduct are applicable to this opinion. The relevant portions of those Rules provide:

**Rule 1.2 Scope of Representation**

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that a lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

**Rule 1.4 Communication**

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

**Analysis**

Mississippi recently enacted the Mississippi Medical Cannabis Act (Senate Bill 2095) signed by the Governor on February 2, 2022. The law allows the establishment of businesses and facilities for the cultivation, transportation and sale of medical cannabis through a licensing and regulatory program administered by the Mississippi Department of Health.

The legal services requested will include the full range of activities and conduct contemplated by the Mississippi Medical Cannabis Act, including organizing business entities, arranging financing, negotiating contracts, appearing before regulatory boards,

facilitating the acquisition of real estate, equipment and facilities, among other activities – all as contemplated by, and in compliance with, the Mississippi Medical Cannabis Act.

National press and independent research indicates Mississippi has now become the 37<sup>th</sup> state to legalize cannabis to some extent. Certain federal laws exist criminalizing growing and selling cannabis. See Controlled Substances Act, 21 U.S.C. §§801-971 (“CSA”). Further, every year since 2014, Congress has also enacted the Rohrabacher Amendment (Consolidated Appropriations Act, 2019, Pub. L. No. 11607 §537, 133 Stat. 13, 138 (2019)) which congressional act “places practical limits on federal prosecutors ability to enforce the CSA with respect to certain conduct involving medical marijuana.” *United States v. Bilodeau*, 24 F.4th 705, 709 (1st Cir. 2022). The Rohrabacher Amendment states:

None of the funds made available under this Act to the Department of Justice may be used, with respect to [Mississippi and other states], to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana. *Id.* at 709.

The scope of the Mississippi Rules of Professional Conduct is set forth therein:

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. ...

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The Rules presuppose a larger context shaping the lawyer’s role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. ...

The Mississippi Medical Cannabis Act Section 5(5) recognizes the tension between state and federal law in this highly unusual if not unique situation, setting forth the public policy of Mississippi: “It is the public policy of the State of Mississippi that no contract entered into by a cardholder, a medical cannabis establishment, or a medical cannabis establishment agent, or by a person who allows property to be used for activities that are authorized under this chapter, shall be unenforceable on the basis that activities related to cannabis are prohibited by federal law.” This tension is further evidenced by two recent U.S. Courts of Appeal decisions which found that under the Rohrabacher Amendment: “[T]he DOJ may not spend funds to bring prosecutions if

doing so prevents a state from giving practical effect to its medical marijuana laws.” *United States v. Bilodeau*, 24 F.4th 705, 713 (1st Cir. 2022); *United States v. McIntosh*, 833 F.3d 1163,1176-77 (9th Cir. 2016).

Keeping in mind the stated public policy of Mississippi, the Committee recognizes the need for clients to have the assistance of Mississippi lawyers to assure compliance with complex state regulatory requirements in the medical cannabis industry. The state’s medical cannabis program will function more expeditiously and with closer adherence to state law if Mississippi lawyers can assist clients in complying with state law.

### **Conclusion**

The Committee is of the opinion that pursuant to Mississippi Rules of Professional Conduct 1.2(d) and 1.4 a Mississippi attorney may ethically provide legal services, representing, counseling and assisting a client in activities relating to, and in compliance with, the Mississippi Medical Cannabis Act, provided that the lawyer also advises the client, of relevant federal law, including but not limited to the federal Controlled Substances Act.

The Committee expresses no opinion on the criminality of any act or conduct and does not address any questions of law.