



ETHICS ADVISORY OPINION

19-03

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

South Carolina Rules of Professional Conduct: 8.4

Factual Background: South Carolina lawyers A and B want to purchase an interest in a corporation engaged in cannabis-related undertakings—including infrastructure, construction, cultivation, production management, and distribution. This is an existing, publicly traded corporation that provides similar services to other cultivation and production operators in states where the cannabis industry is authorized under state law.

Lawyers A and B acknowledge the contemplated ownership interest is in a company whose conduct is illegal under federal law and may result in criminal liability under the Controlled Substances Act (18 U.S.C. §2) or money laundering (18 U.S.C. §§1956, 1957).

Question: Does a South Carolina lawyer's ownership interest in a cannabis-related business amount to criminal conduct that "reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer" or otherwise constitute "a criminal act involving moral turpitude"?

Summary: While we do not express opinions on questions of law, the Committee cautions South Carolina licensed attorneys from participating in activities that are illegal under state or federal law, as criminal activity may constitute a violation of Rule 8.4, RPC, Rule 407, SCACR.

Discussion: The Committee does not express opinions on questions of law, such as whether the ownership interest Lawyers A and B are seeking in the cannabis-related corporation constitutes a violation of federal or state criminal statutes or subjects them to criminal liability as officers, directors, agents, or shareholders for crimes committed by a corporation. *See State v. Hill*, 286 S.C. 283, 333 S.E.2d 789 (Ct. App. 1985) (officers and directors of corporations can be held personally liable for their individual criminal activity committed on behalf of the entity). Any South Carolina licensed attorney seeking an ownership interest or involvement in a corporation engaged in cannabis-related activity should carefully review all applicable state and federal law to determine the legality of the activity and whether ownership of a company engaged in that activity constitutes a violation of Rule 8.4, RPC, Rule 407, SCACR ("Rule 8.4").

Rule 8.4 provides, in relevant part:

It is professional misconduct for a lawyer to:

...

- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) commit a criminal act involving moral turpitude[.]

Comment

...

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. The South Carolina version of this Rule also specifically includes criminal acts involving moral turpitude as professional misconduct. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

Although previously concluding that possession of marijuana is not a crime of moral turpitude, the Supreme Court has found marijuana possession by a member of the Bar reflects adversely on the public's view of the legal profession, shows an unfitness to practice law, and has a tendency to bring the legal profession into disrepute. *Matter of Anonymous Member of South Carolina Bar*, 293 S.C. 329, 330, 360 S.E.2d 322, 323 (1987). The Court found the possession of marijuana by the lawyer in *Anonymous* violated DR 1-102(A)(6) (conduct that adversely reflects on a lawyer's fitness to practice law) and section 5D of the Rule on Disciplinary Procedure. *Id.*

In subsequent cases, the Court has found the possession and cultivation of marijuana to violate Rule 8.4. In *In re Newton*, 361 S.C. 404, 605 S.E.2d 538 (2004), the Court found that Newton's cultivation of marijuana plants and possession of marijuana violated Rule 8.4(b) and warranted suspension. In *Matter of Neal*, 418 S.C. 373, 793 S.E.2d 301 (2016), Neal pled guilty to disorderly conduct and furnishing alcohol to a person under twenty-one and pled "no-contest" to possession of marijuana. In his disciplinary proceedings, his conduct was determined to have violated Rule 8.4 by bringing the legal profession into disrepute.

In other cases, the Court has found importing or distributing marijuana and possessing marijuana with intent to distribute in violation of federal law to be among convictions that violate Rule 8.4 and its predecessor, DR 1-102. *In re Farlow*, 380 S.C. 35, 37, 668 S.E.2d 790, 791 (2008) (Farlow pled guilty to accommodation distribution of marijuana without remuneration and possession of ecstasy); *Matter of Tedder*, 296 S.C. 500, 374 S.E.2d 294 (1988) (Tedder pled guilty to conspiracy

to import marijuana, conspiracy to possess marijuana with intent to distribute; conspiracy to defraud the Department of the Treasury, and four counts of perjury).

Any South Carolina licensed attorney seeking an ownership interest or involvement in a corporation engaged in cannabis-related activity should carefully review all applicable state and federal law to determine the legality of the activity in which the corporation will engage and, if the corporation will engage in conduct criminal under either state or federal law, whether such criminal conduct constitutes a violation of Rule 8.4 and whether the particular form of ownership interest is itself a crime.