



## **REPRESENTING LEGALIZED MARIJUANA INTERESTS – AN ETHICAL TRAP?**



**GUAM RULES OF PROFESSIONAL RESPONSIBILITY**

*Presented by Attorney Jacqueline Taitano Terlaje*

# Are you this Lawyer ???

- ADMINISTRATIVE LAWS ATTORNEY?
- CORPORATE ATTORNEY?
- BUSINESS LAW ATTORNEY?
- FINANCIAL INSTITUTION'S ATTORNEY?
- REAL ESTATE ATTORNEY?
- TAX ATTORNEY?
- LABOR ATTORNEY?
- CRIMINAL DEFENSE ATTORNEY?
- FAMILY LAW ATTORNEY?
- ATTORNEY WHO QUALIFIES AS A PATIENT?

**Don't be a DOPE! Pay Attention!**

# FEDERAL LAW CONFLICT

Federal law criminalizes the cultivation, sale, distribution, and use of marijuana for virtually any purpose. See Controlled Substances Act, 21 U.S.C. §§ 801 - 904 (CSA). The CSA categorizes marijuana as a Schedule I controlled substance and prohibits its cultivation, sale, distribution, and use based on Congress's conclusion that marijuana has no accepted utility. 21 U.S.C. § 812(b)(1), (c).

## GUAM LAW DECRIMINALIZATION OF MARIJUANA FOR MEDICAL USE

Joaquin Concepcion II Compassionate  
Cannabis Use Act of 2013  
10 GCA § 124404 and 124405

Guam law under a structure of regulation and licensure has exempted from criminal prosecution and civil penalties the possession, use, cultivation manufacturing, distribution and sell of cannabis

# GUAM RULES OF PROFESSIONAL CONDUCT

(Adopted from the 2002 ABA Model Rules of Professional Conduct)  
(Adopted September 29, 2003 pursuant to Promulgation Order No. 04-002.)

## RULE 1.2(d)

A lawyer SHALL NOT  
COUNSEL A CLIENT TO  
ENGAGE, OR ASSIST A  
CLIENT, IN CONDUCT THAT  
THE LAWYER KNOWS IS  
CRIMINAL OR FRAUDULENT

## RULE 8.4 (b)

It is professional misconduct  
for a lawyer to COMMIT A  
CRIMINAL ACT THAT  
REFLECTS ADVERSELY ON  
THE LAWYER'S HONESTY,  
TRUSTWORTHINESS OR  
FITNESS AS A LAWYER IN  
OTHER RESPECTS

# GUAM RULES OF PROFESSIONAL CONDUCT

(Adopted from the 2002 ABA Model Rules of Professional Conduct)  
(Adopted September 29, 2003 pursuant to Promulgation Order No. 04-002.)

## RULE 1.2(d)

A lawyer SHALL NOT COUNSEL A CLIENT TO ENGAGE, OR ASSIST A CLIENT, IN CONDUCT THAT THE 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.

# VIOLATION OF ETHICAL RULES

## HAWAII

A lawyer may counsel a client with regard to requirements of Marijuana law, but is prohibited from assisting a client to commit a crime.

MAINE (2010) COLORADO (2013) CONNECTICUT (2013)

A lawyer may give advise on state law, but may not help clients break the law

## STATE REVIEW ON MODIFICATIONS OR STATUTORY EXEMPTION

### MINNESOTA

Minnesota Statutes §152.32, Subd 2.

An attorney may not be subject to disciplinary action by the Minnesota Supreme Court or professional responsibility board for providing legal assistance to prospective or registered manufacturers or others related to activity that is no longer subject to criminal penalties under state law

### CONNECTICUT

Modification to Rule 1.2

A lawyer may “counsel or assist . . . Regarding conduct expressly permitted by Connecticut law” but requires counseling with regard to other laws.

### COLORADO

Supreme Court adoption of Comment to Rule 1.2:

A lawyer may counsel a client the validity, scope, and meaning of Colorado constitution article XVIII, secs. 14 & 16 [related to medical marijuana], and may assist a client in conduct that the lawyer reasonably believes is permitted by these constitutional provisions and the statutes, regulations, orders, and other state or local provisions implementing them. In these circumstances, the lawyer shall also advise the client regarding related federal law and policy.

# STATE REVIEW ON MODIFICATIONS OR STATUTORY EXEMPTION

## WASHINGTON

### Comment to Rule 1.2

At least until there is a change in federal enforcement policy, a lawyer may counsel a client regarding the validity, scope and meaning of Washington Initiative 502 (Laws of 2013, ch. 3) and may assist a client in conduct that the lawyer reasonable believes is permitted by this statute and other statutes, regulations order, and other state and local provisions implementing them.

## OREGON

### Modification to Rule 1.2(d)

Notwithstanding paragraph (c), a lawyer may counsel and assist a client regarding Oregon's marijuana-related laws. In the event Oregon law conflicts with federal or tribal law, the lawyer shall also advise the client regarding the related federal and tribal law and policy.

## ARIZONA

Declined to interpret Rule 1.2(d) in a manner that would prevent a lawyer who concludes that the client's proposed conduct is in "clear and unambiguous compliance" with state law from assisting client the client in connection with activities expressly authorized under state law; however, lawyer required to advise client on potential for federal law implication and consequences.

## STATE REVIEW NO ETHICAL RULE VIOLATION

### ARIZONA

Declined to interpret Rule 1.2(d) in a manner that would prevent a lawyer who concludes that the client's proposed conduct is in "clear and unambiguous compliance" with state law from assisting the client in connection with activities expressly authorized under state law; however, lawyer required to advise client on potential for federal law implication and consequences.

### SAN FRANCISCO BAR ASSOCIATION

(Ethics Op. 2015-1)

Declined to discipline lawyers whose clients seek advice on how to comply with state or local laws; provided that client conduct is limited to those permitted under state law, and lawyer counsels client regarding federal law.

# GUAM RULES OF PROFESSIONAL CONDUCT

(Adopted from the 2002 ABA Model Rules of Professional Conduct)  
(Adopted September 29, 2003 pursuant to Promulgation Order No. 04-002.)

## **RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice . . .

## STATE REVIEW

### NO ETHICAL RULE VIOLATION FOR PERSONAL USE

#### COLORADO

Ethics Opinion that there is no ethical violation for personal use, but the Colorado Supreme Court when modifying Rule 1.2(d) did not address the implications of Rule 8.4 for personal use.

#### WASHINGTON

Lawyers may use so long as they stay within state law and federal policy of prosecutorial discretion does not change

# WHY ADVOCATE?

2015 WL 7574128

**PEOPLE** v. David J. **FURTADO** No. 15PDJ056

Office of Presiding Disciplinary Judge of the Supreme Court of Colorado Nov. 2, 2015

**Furtado** served as general counsel for two medical marijuana dispensaries. In 2013, **Furtado** agreed to assist in tracking and accounting the dispensaries' funds earmarked for taxes and bills. **Furtado** arranged to open two new COLTAF accounts with Wells Fargo bank under his own name. Wells Fargo did not allow entities that indicated they were marijuana-related businesses to open accounts. Respondent was aware of Wells Fargo's policy but failed to inform the bank that the COLTAF accounts were opened in order to pay the bills for two medical marijuana dispensaries. In so doing, **Furtado** violated [Colo. RPC 8.4\(c\)](#) (a lawyer commits professional misconduct by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).