



2019 ANNUAL MEETING

Notice of Resolution

To: The Active Members of the Guam Bar Association

From: GBA Board of Governors

Date: April 23, 2019

Re: Notice of Resolution, Article II, Section 3 of the Bylaws

RELATIVE TO AMENDING THE GUAM RULES OF PROFESSIONAL CONDUCT, RULE 1.2(d) TO ADDRESS THE ETHICAL IMPLICATIONS OF ADVISING CLIENTS ON GUAM'S MARIJUANA AND CANNABIS-RELATED LAWS.

On April 15, 2019, the GBA Board of Governors appointed an Ad Hoc Committee to convene for the purpose of reporting to the GBA its recommendation for necessary amendments to the Guam Rules of Professional Responsibility following the enactment of P.L. 35-5 (2019), the *Guam Cannabis Industry Act of 2019*, and the previous enactments of medicinal cannabis on Guam.

On April 23, 2019, the GBA Ad Hoc Committee issued its report to the Board of Governors by detailing a comprehensive state bar association analysis affecting rules of professional conduct, and issuing a Resolution to be presented to the Membership at the 2019 Annual Meeting.

Pursuant to Article II, Section 3 of the Bylaws, NOTICE IS HEREBY GIVEN that the attached resolution will be presented and acted upon at the Annual Meeting scheduled for Tuesday, April 30, 2019. A copy of the Resolution and the GBA Ad Hoc Committee state bar analysis can be accessed at the following link:

<https://guambar.org/notice-of-resolution-no-2019-001-relative-to-amending-grpc-2-1d>



GUAM BAR
ASSOCIATION

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GUAM BAR ASSOCIATION
2019 ANNUAL MEETING

RESOLUTION NO. 2019-001

Introduced by:

Guam Bar Association

Ad Hoc Committee re: Cannabis Law

J.C. Arriola, Jr., Chair

M. Thompson

T. Brooks

V. Camacho

J. Camacho

RELATIVE TO AMENDING THE GUAM RULES OF PROFESSIONAL CONDUCT, RULE 1.2(d) TO ADDRESS THE ETHICAL IMPLICATIONS OF ADVISING CLIENTS ON GUAM'S MARIJUANA AND CANNABIS-RELATED LAWS.

WHEREAS, Guam Rules of Professional Conduct, Rule 1.2(d) provides:

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyers 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.

WHEREAS, Guam has enacted Public Law 32-237, the "*Joaquin KC Concepcion II Compassionate Cannabis Use Act of 2013*," which legalizes medicinal marijuana on Guam and allows the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments; and

WHEREAS, Guam has enacted Public Law 34-80, which adopted the rules and regulations for the *Joaquin KC Concepcion II Compassionate Cannabis Use Act of 2013*, and amends the Act for certain purposes; and

WHEREAS, Guam has enacted Public Law 34-165, which allows certain persons to cultivate medical cannabis at home on Guam for personal medical use; and

WHEREAS, Guam has enacted Public Law 35-5, the "*Guam Cannabis Industry Act of 2019*", which legalizes recreational use of marijuana on Guam, and regulates the use, production, sale and taxation of marijuana, declassifies marijuana as a controlled substance and re-defines references to marijuana in the Guam criminal code; and

WHEREAS, members of the Guam Bar Association and lawyers practicing on Guam have been asked by numerous Government of Guam entities and officials, private citizens, corporate clients, employers and employees, and business owners to provide counsel and advise on the effect, implementation, regulation, application and enforcement of marijuana and cannabis

laws of Guam; and

WHEREAS, Rule 1.2(d) of the Guam Rules of Professional Conduct may prevent or limit a lawyer's ability to fully and appropriately counsel and advise clients on Guam's marijuana and cannabis-related laws, as such laws conflict with or differ from federal laws which continue to criminalize marijuana and cannabis substances, by "counselling a client to engage, or assist a client, in conduct that the lawyers knows is criminal or fraudulent"; and

WHEREAS, as of April 2019, at least ten (10) States and Territories have legalized recreational marijuana, and at least thirty (30) States and Territories have legalized medical marijuana; and

WHEREAS, several States and State Bar Associations have modified their Rules of Professional Conduct to address this same issue¹, including Washington, Oregon, Arizona, Maine, Hawaii, Colorado, Minnesota, Connecticut, New York, Alaska, Arkansas, California, Florida, Illinois, Louisiana, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, Rhode Island, Vermont, and West Virginia; and

WHEREAS, due to the recent enactment of Guam marijuana and cannabis-related laws that affect the practice of law and the ability of Guam lawyers to ethically render candid and capable legal counsel and advice to clients, it is urgent and necessary that some amendment to Guam's Rules of Professional Conduct be considered by the Supreme Court of Guam;

NOW THEREFORE, IT BE RESOLVED, BY THE GENERAL MEMBERSHIP OF THE GUAM BAR ASSOCIATION AT THE 2019 GUAM BAR ASSOCIATION ANNUAL MEETING AS FOLLOWS:

That the Guam Bar Association Board of Governors, through its President, shall Petition the Supreme Court of Guam to promptly amend Guam Rules of Professional Conduct, Rule 1.2(d) as follows:

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyers 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. **A LAWYER MAY COUNSEL OR ASSIST A CLIENT REGARDING GUAM'S MARIJUANA AND CANNABIS-RELATED LAWS. IF GUAM LAW DIFFERS FROM FEDERAL LAW, THE LAWYER SHALL ALSO ADVISE THE CLIENT REGARDING FEDERAL LAW AND POLICY.**

¹ Survey of State Bar Associations Rules of Professional Conduct, April 20, 2019 attached; Some have edited their Rules, added Comments to their Rules, or issued Opinions on their Rules as it relates to marijuana laws.

BE IT FURTHER RESOLVED, that the Guam Bar Association Ethics Committee is requested to issue an Advisory Opinion as to the ability of Guam lawyers to advise on Guam marijuana and cannabis-related laws, under the current version of Rule 1.2(d).;

AND BE IT FURTHER RESOLVED, that the Guam Bar Association Board of Governors President certify, and the Secretary of the Board attest to, the adoption of this Resolution, and that copies of the same be transmitted to the Supreme Court of Guam, to the Guam Judicial Council, to the Guam Bar Association Ethics Committee, to the Governor of Guam, to the Speaker of the 35th Legislature, to the Chairperson of the 35th Guam Legislature Committee on Justice, and to all members of the Guam Bar Association.

DULY AND REGULARLY ADOPTED BY THE GUAM BAR ASSOCIATION AT ITS 2019 ANNUAL MEETING IN TUMON, GUAM, APRIL 30, 2019.

JANICE M. CAMACHO
Secretary

JACQUELINE T. TERLAJE
President

Actions Taken by State Bar Associations related to State Rules of Professional Conduct Concerning Medical and Recreational Marijuana¹

Washington:²

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

“(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by RPC 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(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.

(e) [Reserved.]

(f) A lawyer shall not purport to act as a lawyer for any person or organization if the lawyer knows or reasonably should know that the lawyer is acting without the authority of that person or organization, unless the lawyer is authorized or required to so act by law or a court order.”

Comment 18.

“Special Circumstances Presented by Washington's Marijuana Laws [18] Under Paragraph (d), a lawyer may counsel a client regarding Washington's marijuana laws and may assist a client in conduct that the lawyer reasonably believes is permitted by those laws. If Washington law conflicts with federal or tribal law, the lawyer shall also advise the client regarding the related federal or tribal law and policy.”

¹ A brief survey was conducted of the Rules of Professional Conduct in jurisdictions that have legalized the use of marijuana for medicinal purposes, or for recreational purposes, or both. The rules discussed herein were viewed on applicable State Bar/Ethics websites on or about April 20, 2019. The following states' websites either did not function correctly, or did not have the information sought reasonably accessible during the brief survey period on April 20, 2019: Delaware, Missouri, New Mexico, Ohio, Pennsylvania, Utah.

² Washington Rules of Professional Conduct available at:
https://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=RPC

Oregon:³

RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (b) and (c), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal 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.

“(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 related federal and tribal law and policy.”

³ Oregon Rules of Professional Conduct available at: <https://www.osbar.org/docs/rulesregs/orpc.pdf>

Arizona:⁴

ER 1.2. Scope of Representation and Allocation of Authority between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(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.

However, See Arizona Ethics Opinion 11-01 – Scope of Representation, issued February 2011:

“A lawyer may ethically counsel or assist a client in legal matters expressly permissible under the Arizona Medical Marijuana Act (“Act”), despite the fact that such conduct potentially may violate applicable federal law. Lawyers may do so only if: (1) at the time the advice or assistance is provided, no court decisions have held that the provisions of the Act relating to the client’s proposed course of conduct are preempted, void or otherwise invalid; (2) the lawyer reasonably concludes that the client’s activities or proposed activities comply fully with state law requirements; and (3) the lawyer advises the client regarding possible federal law implications of the proposed conduct if the lawyer is qualified to do so, or recommends that the client seek other legal counsel regarding those issues and appropriately limits the scope of the representation.”

NOTE: This opinion is limited to the specific facts discussed herein. Because the opinion is based on the Act as currently in effect, subsequent legislative or court action regarding the Act could affect the conclusions expressed herein.” (Arizona Ethics Opinion, n.d.)

⁴ Arizona Rules of Professional Conduct available at: <https://www.azbar.org/ethics/rulesofprofessionalconduct>

Maine:⁵

1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. Subject to the Rules with respect to Declining or Terminating Representation (Rule 1.16), a lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client provides informed consent after consultation. If, after consultation, the client consents, an attorney may enter a limited appearance on behalf of an otherwise unrepresented party involved in a court proceeding. A lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto that is filed with the court, may not thereafter limit representation as provided in this rule, without leave of court.

(d) A lawyer, who under the auspices of a non-profit organization or a court-annexed program provides limited representation to a client without expectation of either the lawyer or the client that the lawyer will provide continuing representation in the matter, is subject to the requirements of Rules 1.7, 1.9, 1.10 and 1.11 only if the lawyer is aware that the representation of the client involves a conflict-of-interest.

(e) 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.

However, See Maine Opinion #215 issued by the Professional Ethics Commission on March 1, 2017:

“. . . Rule 1.2 is not a bar to assisting clients to engage in conduct that the attorney reasonably believes is permitted by Maine laws regarding medical and recreational marijuana, including the statutes, regulations, Orders and other state or local provisions implementing them. The Commission cautions that, because the DOJ guidance on prosecutorial discretion is subject to change, lawyers providing advice in this field should be up to date on federal enforcement policy, as well as any modifications of federal and state law and regulations, and advise their clients of the same” (Maine Opinion #215, n.d.)

⁵ Maine Rules of Professional Conduct available at:
https://www.mebaroverseers.org/regulation/maine_conduct_rules.html

Hawaii:⁶

Rule 1.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER.

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which the objectives are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives consent after consultation.

(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, and may counsel or assist a client regarding conduct expressly permitted by Hawai'i law, provided that the lawyer counsels the client about the legal consequences, under other applicable law, of the client's proposed course of conduct.

(e) When a lawyer knows or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct. See Rule 1.4(a)(5) of these Rules.

⁶ Hawaii Rules of Professional Conduct available at:
https://www.courts.state.hi.us/docs/court_rules/rules/hrpcond.htm

Colorado:⁷

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(6), effective April 12, 2018

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. A lawyer may provide limited representation to pro se parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b).

(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.

Comment 14

[14] [4] A lawyer may counsel a client regarding the validity, scope, and meaning of Colorado constitution article XVIII, secs. 14 & 16, 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. (Colorado Const. Amend. XVIII , n.d.)

[Sec. 14 (Medical use of marijuana for persons suffering from debilitating medical conditions) and Sec. 16 (Personal use and regulation of marijuana)]

⁷ Colorado Rules of Professional Conduct available at:
https://www.cobar.org/Portals/COBAR/repository/rules_of_prof_conduct.pdf

Minnesota:⁸

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive a jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(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.

However, see Opinion No. 23 issued by Minnesota Lawyer's Professional Responsibility Board, adopted April 6, 2015.

"A lawyer may advise a client about the Minnesota Medical Marijuana Law and may represent, advise and assist clients in all activities relating to and in compliance with the Law, including the manufacture, sale, distribution and use of medical marijuana, without violating the Minnesota Rules of Professional Conduct, so long as the lawyer also advises his or her client that such activities may violate federal law, including the federal Controlled Substance Act, United States Code, title 21, section 841(a)(1)." (Minnesota Opinion, n.d.)

⁸ Minnesota Rules of Professional Conduct available at: https://www.revisor.mn.gov/court_rules/rule/prcond-toh/

Connecticut:⁹

Rule 1.2. Scope of Representation and Allocation of Authority between Client and Lawyer

(a) Subject to subsections (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify. Subject to revocation by the client and to the terms of the contract, a client's decision to settle a matter shall be implied where the lawyer is retained to represent the client by a third party obligated under the terms of a contract to provide the client with a defense and indemnity for the loss, and the third party elects to settle a matter without contribution by the client.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. Such informed consent shall not be required when a client cannot be located despite reasonable efforts where the lawyer is retained to represent a client by a third party that is obligated by contract to provide the client with a defense.

(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 (1) discuss the legal consequences of any proposed course of conduct with a client; (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law; or (3) counsel or assist a client regarding conduct expressly permitted by Connecticut law, provided that the lawyer counsels the client about the legal consequences, under other applicable law, of the client's proposed course of conduct.

However, see [Connecticut Bar Association Professional Ethics Committee Informal Opinion 2013-02](#), Approved January 16, 2013. (Connecticut Informal Opinion, n.d.)

" . . . We decline to categorize particular factual circumstances that may raise issues of culpability because the circumstances may be so various as to make the effort valueless. C.f. Maine Professional Commission Opinion 199 (2010). Nonetheless, "the Rule which governs attorney conduct does not make a distinction between crimes which are enforced and those which are not....[A]n attorney needs to perform the analysis required by the Rule and determine whether the particular legal service being requested rises to the level of assistance in violating federal law". Id. At a minimum, a lawyer advising a client on Public Act 12-55 must inform the client of the conflict between the state and federal statutes, and that the conflict exists regardless of whether federal authorities in Connecticut are or are not actively enforcing the federal statutes. It is our opinion that lawyers may advise clients of the requirements of the Connecticut Palliative Use of Marijuana Act. Lawyers may not assist clients in conduct that is in violation of federal criminal law. Lawyers should carefully assess where the line is between those functions and not cross it."

⁹ Connecticut Rules of Professional Conduct available at: <https://www.jud.ct.gov/publications/PracticeBook/PB.pdf>

New York:¹⁰

RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to the provisions herein, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed consent and where necessary notice is provided to the tribunal and/or opposing counsel.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, except that the lawyer may discuss the legal consequences of any proposed course of conduct with a client.

(e) A lawyer may exercise professional judgment to waive or fail to assert a right or position of the client, or accede to reasonable requests of opposing counsel, when doing so does not prejudice the rights of the client.

(f) A lawyer may refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal. (g) A lawyer does not violate these Rules by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, and by treating with courtesy and consideration all persons involved in the legal process.

However, see **New York State Bar Association Committee on Professional Ethics Opinion 1024**, September 29, 2014. (New York State Bar Ethics Opinion, n.d.)

"Digest: In light of current federal enforcement policy, the New York Rules permit a lawyer to assist a client in conduct designed to comply with state medical marijuana law, notwithstanding that federal narcotics law prohibits the delivery, sale, possession and use of marijuana and makes no exception for medical marijuana."

¹⁰ New York Rules of Professional Conduct available at: <https://www.nysba.org/DownloadAsset.aspx?id=50671>

Alaska:¹¹

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c), (d), and (e), a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to offer or accept a settlement. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, whether the client will testify, and whether to take an appeal.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client consents after consultation. (1) If a written fee agreement is required by Rule 1.5, the agreement shall describe the limitation on the representation. (2) The lawyer shall discuss with the client whether a written notice of representation should be provided to other interested parties. (3) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with this rule is considered to be unrepresented for purposes of Rules 4.2 and 4.3 unless the opposing lawyer knows of or has been provided with: (A) a written notice stating that the lawyer is to communicate only with the limited representation lawyer as to the subject matter of the limited representation; or (B) a written notice of the time period during which the lawyer is to communicate only with the limited representation lawyer concerning the subject matter of the limited representation.

(d) Except as provided in paragraph (f), a lawyer shall not counsel or assist a client to engage 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.

(e) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

(f) A lawyer may counsel a client regarding Alaska's marijuana laws and assist the client to engage in conduct that the lawyer reasonably believes is authorized by those laws. If Alaska law conflicts with federal law, the lawyer shall also advise the client regarding related federal law and policy.

¹¹ Alaska Rules of Professional Conduct available at: <https://public.courts.alaska.gov/web/rules/docs/prof.pdf>

Arkansas:¹²

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(1) The client's informed consent must be confirmed in writing unless:

- (A) the representation of the client consists solely of a telephone consultation;
- (B) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a program authorized by Rule 6.5 and the lawyer's representation consists solely of providing information and advice or the preparation of legal documents;
- or
- (C) the court appoints the attorney for a limited purpose that is set forth in the appointment order.

(2) If the client gives informed consent as required by this rule, there shall be a presumption that:

- (A) the representation is limited to the attorney and the services as agreed upon;
- and
- (B) the attorney does not represent the client generally or in matters other than those as agreed upon.

(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.

But see **"The Ethics of Representing Marijuana Related Businesses,"** the Arkansas Lawyer, Justice J. Brooks, I, Spring 2017 (finding that the Supreme Court of Arkansas has yet to act on a petition to add certain comments to the Arkansas Rules of Professional Conduct. (Ethics of Representing Marijuana Related Businesses, n.d.)

¹² Arkansas Rules of Professional Conduct available at: <https://www.arcourts.gov/rules-and-administrative-orders/%5Bcurrent%5D-arkansas-rules-of-professional-conduct>

California:¹³

Rule 1.2 Scope of Representation and Allocation of Authority (Rule 1.2, n.d.)

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.

Rule 1.2.1 Advising or Assisting the Violation of Law

(a) A lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyer knows* is criminal, fraudulent,* or a violation of any law, rule, or ruling of a tribunal.* (b) Notwithstanding paragraph

(a), a lawyer may: (1) discuss the legal consequences of any proposed course of conduct with a client; and (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.*

Post-Public Comment Revisions

“After consideration of comments received in response to the initial 90-day public comment period, the Commission revised the text of the rule to use the language of the Model Rule counterpart, Model Rule 1.2(d), but unlike the Model Rule the proposed rule is organized in two main paragraphs ((a) and (b)) and two subparagraphs ((b)(1) and (b)(2)). Paragraph (a) states the general prohibition against counseling a violation of law and paragraph (b) describes conduct that is permitted notwithstanding the general prohibition. The implementation of two subparagraphs in (b) is for clarity because discussion of consequences of a proposed course of conduct is distinct from counseling/assisting a client in a good faith effort to determine the scope or validity of a law. Subparagraph (b)(2) includes language from current California Rule 3-210 that refers to a rule or ruling of tribunal as “law” that can be tested as to its meaning or application.

The Commission also revised the rule comments in response to public comments. First, in Comment [2], the Commission added a reference to a lawyer's statutory duty to uphold the law (Business and Professions Code § 6068(a)). Comment [2] also includes a nonsubstantive stylistic revision made to the citation to a lawyer's duty of confidentiality. Second, a new Comment [6] was added to describe situations where conflicts of law may render it challenging for a lawyer to avoid counseling a federal law violation when the client's conduct expressly is permitted under state law. A public comment argued in favor of adding an explicit medical marijuana example in the rule but the Commission did not make that change because California laws regulating marijuana cultivation and consumption are

¹³ California Rules of Professional Conduct available at: <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>

subject to change in the near future. With these changes, the Board authorized an additional 45-day public comment period on the revised proposed rule.”

Comment 6

“[6] Paragraph (b) permits a lawyer to advise a client regarding the validity, scope, and meaning of California laws that might conflict with federal or tribal law. In the event of such a conflict, the lawyer may assist a client in drafting or administering, or interpreting or complying with, California laws, including statutes, regulations, orders, and other state or local provisions, even if the client’s actions might violate the conflicting federal or tribal law. If California law conflicts with federal or tribal law, the lawyer must inform the client about related federal or tribal law and policy and under certain circumstances may also be required to provide legal advice to the client regarding the conflict (see rules 1.1 and 1.4).”

Florida:¹⁴

RULE 4-1.2 OBJECTIVES AND SCOPE OF REPRESENTATION

(a) **Lawyer to Abide by Client's Decisions.** Subject to subdivisions (c) and (d), a lawyer must abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, must reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take action on behalf of the client that is impliedly authorized to carry out the representation. A lawyer must abide by a client's decision whether to settle a matter. In a criminal case, the lawyer must abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) **No Endorsement of Client's Views or Activities.** A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) **Limitation of Objectives and Scope of Representation.** If not prohibited by law or rule, a lawyer and client may agree to limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing. If the attorney and client agree to limit the scope of the representation, the lawyer shall advise the client regarding applicability of the rule prohibiting communication with a represented person.

(d) **Criminal or Fraudulent Conduct.** A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent. However, 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.

But see, "UP IN SMOKE OR DOWN IN FLAMES? A FLORIDA LAWYER'S LEGAL AND ETHICAL RISKS IN ADVISING A MARIJUANA INDUSTRY CLIENT" 90 Florida Bar Journal 3, 20 (March 2016). ("Up in Smoke or Down in Flames", n.d.)

"Notwithstanding The Florida Bar's policy statement [cited in article], lawyers take on tremendous risk when representing legal marijuana businesses or ancillary service providers, particularly when that representation goes beyond mere legal advice. They expose themselves to malpractice claims, criminal prosecution, loss of fees and other assets, and bar sanctions. They assume this risk in an environment in which they have limited insurance protection. Until federal law is changed, representing clients in the legal marijuana market may not be worth the risk."

¹⁴ Florida Rules of Professional Conduct available at: https://www-media.floridabar.org/uploads/2019/04/Ch-4-2019_09-MAR-RRTFB-3-29-19.pdf

Illinois:¹⁵

RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(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

- (1) discuss the legal consequences of any proposed course of conduct with a client,
- (2) and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning or application of the law, and
- (3) counsel or assist a client in conduct expressly permitted by Illinois law that may violate or conflict with federal or other law, as long as the lawyer advises the client about that federal or other law and its potential consequences.

(e) After accepting employment on behalf of a client, a lawyer shall not thereafter delegate to another lawyer not in the lawyer's firm the responsibility for performing or completing that employment, without the client's informed consent.

Comment 10

"[10] Paragraph (d)(3) was adopted to address the dilemma facing a lawyer in Illinois after the passage of the Illinois Compassionate Use of Medical Cannabis Pilot Program Act effective January 1, 2014. The Act expressly permits the cultivation, distribution, and use of marijuana for medical purposes under the conditions stated in the Act. Conduct permitted by the Act may be prohibited by the federal Controlled Substances Act, 21 U.S.C. §§801-904 and other law. The conflict between state and federal law makes it particularly important to allow a lawyer to provide legal advice and assistance to a client seeking to engage in conduct permitted by Illinois law. In providing such advice and assistance, a lawyer shall also advise the client about related federal law and policy. Paragraph (d)(3) is not restricted in its application to the marijuana law conflict. A lawyer should be especially careful about counseling or assisting a client in other contexts in conduct that may violate or conflict with federal, state, or local law."

See ISBA Professional Conduct Advisory Opinion No. 14-07 (Oct. 2014) (for discussion on lead up to changes to Illinois Rules of Professional Conduct).

¹⁵ Illinois Rules of Professional Conduct available at:
http://www.illinoiscourts.gov/supremecourt/rules/art_viii/ArtVIII_NEW.htm#1.2

Louisiana:¹⁶

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to the provisions of Rule 1.16 and to paragraphs (c) and (d) of this Rule, a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, religious, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(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.

See Letter from Office of the Disciplinary Counsel, Louisiana Attorney Disciplinary Board to W. Scott Keaty of Kantrow, Spaht, Weaver & Blitzer (May 15, 2017). ("Letter from Office of Disciplinary Counsel", n.d.)

"It is my judgment that an appropriate course for this office to take is to acknowledge that Louisiana lawyers have a right and a duty to provide legal advice to clients on how best to comply with state law on the topic of medicinal marijuana. In all instances, the lawyer has a concomitant obligation to advise the client of the facial conflict which exists between Louisiana's medicinal marijuana law and federal law on the subject. Lawyers who, in good faith, attempt to provide legitimate legal advice and counsel on how best to comply with Louisiana's medicinal marijuana laws as passed by our state legislature should be permitted to do so. Because the facts and circumstances of every case can differ, however, I do not believe that it is prudent to suggest that a violation of Rule 1.2(d) can never occur. Such a determination can only be made depending upon the unique facts presented.

It is not the function of the Office of Disciplinary Counsel to provide ethics advice or advisory opinions. However, under the circumstances presented it is my judgment that lawyers should be notified of the position I have taken in the matter."

¹⁶ Louisiana Rules of Professional Conduct available at:
<https://www.ladb.org/Material/Publication/ROPC/ROPC.pdf>

Maryland:¹⁷

RULE 19-301.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND ATTORNEY (1.2)

(a) Subject to sections (c) and (d) of this Rule, an attorney shall abide by a client's decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued. An attorney may take such action on behalf of the client as is impliedly authorized to carry out the representation. An attorney shall abide by a client's decision whether to settle a matter. In a criminal case, the attorney shall abide by the client's decision, after consultation with the attorney, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) An attorney's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) An attorney may limit the scope of the representation in accordance with applicable Maryland Rules if (1) the limitation is reasonable under the circumstances, (2) the client gives informed consent, and (3) the scope and limitations of any representation, beyond an initial consultation or brief advice provided without a fee, are clearly set forth in a writing, including any duty on the part of the attorney under Rule 1-324 to forward notices to the client.

(d) An attorney shall not counsel a client to engage, or assist a client, in conduct that the attorney knows is criminal or fraudulent, but an attorney 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.

Comment 12:

"[12] Maryland enacted a medical marijuana law in 2013. See Code, Health General Article, § 13-3301 et seq. As a matter of State law, some medical marijuana activities are permissible, and are subject to regulation. Notwithstanding Maryland law, the Federal Controlled Substances Act, 21 U.S.C. §§ 801--904, continues to criminalize the production, use, and distribution of marijuana, even in the context of medical use. As of 2014, the federal government has taken the position, however, that it generally does not wish to interfere with retail sales of medical marijuana permitted under State law. (Maryland Ethics Opinion on Marijuana Law, n.d.)

In this narrow context, an attorney may counsel a client about compliance with the State's medical marijuana law without violating Rule 19-301.2 (d) and provide legal services in connection with business activities permitted by the State statute, provided that the attorney also advises the client about the legal consequences, under other applicable law, of the client's proposed course of conduct."

See Maryland State Bar Association Committee on Ethics, Ethics Docket No. 2016-10:

¹⁷ Maryland Rules of Professional Conduct available at: [https://govt.westlaw.com/mdc/Browse/Home/Maryland/MarylandCodeCourtRules?guid=N29F342503A3311E69636A2C4C528971C&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Browse/Home/Maryland/MarylandCodeCourtRules?guid=N29F342503A3311E69636A2C4C528971C&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

“Maryland attorneys are not prohibited under the Maryland Rules of Professional Conduct from advising clients as to medical marijuana business related activities in Maryland, or providing legal services such as contracting or negotiating to advance such projects; and Maryland attorneys are not prohibited by the Rules of Professional Conduct from owning a business interest in such a venture. However, the Committee emphasizes that this opinion is subject to several limitations, which are included at the conclusion of this opinion.”

Massachusetts:¹⁸

Rule 1.2: Scope of Representation and allocation of authority between Client and Lawyer:

(a) A lawyer shall seek the lawful objectives of his or her client through reasonably available means permitted by law and these Rules. A lawyer does not violate this Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his or her client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(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.

See Massachusetts Board of Bar Overseers and Office of the Bar Counsel Policy on Legal Advice on Marijuana (March 29, 2017). (Massachusetts Board and Office Counsel Policy, n.d.)

"The Massachusetts Board of Bar Overseers and Office of the Bar Counsel will not prosecute a member of the Massachusetts bar solely for advising a client regarding the validity, scope, and meaning of Massachusetts statutes and laws regarding medical or other legal forms of marijuana or for assisting a client in conduct that the lawyer reasonably believes is permitted by Massachusetts statutes, regulations, orders, and other state or local provisions implementing them, as long as the lawyer also advises the client regarding related federal law and policy."

¹⁸ Massachusetts Rules of Professional Conduct available at: <https://www.mass.gov/supreme-judicial-court-rules/supreme-judicial-court-rule-307-rules-of-professional-conduct>

Nevada:¹⁹

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decision concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(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.

COMMENT

"[1] A lawyer may counsel a client regarding the validity, scope, and meaning of Nevada Constitution Article 4, Section 38 [Use of Plant of Genus Cannabis for Medical Purposes], and NRS Chapter 453A[Medical Use of Marijuana], and may assist a client in conduct that the lawyer reasonably believes is permitted by these constitutional provisions and statutes, including 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."

¹⁹ Nevada Rules of Professional Conduct available at: <https://www.leg.state.nv.us/courtrules/rpc.html>

New Hampshire:²⁰

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c), (d), and (e), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. In providing limited representation, the lawyer's responsibilities to the client, the court and third parties remain as defined by these Rules as viewed in the context of the limited scope of the representation itself; and court rules when applicable.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, except as stated in paragraph (e), 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.

(e) A lawyer may counsel or assist a client regarding conduct expressly permitted by state or local law that conflicts with federal law, provided that the lawyer counsels the client about the potential legal consequence of the client's proposed course of conduct under applicable federal law.

(f) It is not inconsistent with the lawyer's duty to seek the lawful objectives of a client through reasonably available means, for the lawyer to accede to reasonable requests of opposing counsel that do not prejudice the rights of the client, avoid the use of offensive or dilatory tactics, or treat opposing counsel or an opposing party with civility.

(g) In addition to requirements set forth in Rule 1.2(c),

(1) a lawyer may provide limited representation to a client who is or may become involved in a proceeding before a tribunal (hereafter referred to as litigation), provided that the limitations are fully disclosed and explained, and the client gives informed consent to the limited representation. The form set forth in section (g) of this Rule has been created to facilitate disclosure and explanation of the limited nature of representation in litigation. Although not prohibited, the provision of limited representation to a client who is involved in litigation and who is entitled as a matter of law to the appointment of counsel is discouraged.

(2) a lawyer who has not entered an applicable limited appearance, and who provides assistance in drafting pleadings, shall advise the client to comply with any rules of the tribunal regarding participation of the lawyer in support of a pro se litigant.

(h) Sample form.

²⁰ New Hampshire Rules of Professional Conduct available at:
https://www.courts.state.nh.us/rules/pcon/pcon-1_2.htm

Comment:

“4. A new section (e) is added to allow a lawyer to counsel or assist a client regarding conduct expressly permitted by state law that conflicts with federal law. The new section is consistent with similar amendments or revisions to Rule 1.2 in other states that have legalized therapeutic cannabis or the recreational use of marijuana. States that have adopted a regulatory approach to marijuana’s public health and commercial applications nonetheless contravene the Controlled Substances Act and other federal law. Under the former version of Rule 1.2, a lawyer counseling a client to engage, or assist a client, in conduct that the lawyer knows violates federal law was in violation of section (d). The new section allows the lawyer to counsel or assist a client engaging in the conduct without violating the New Hampshire Rules of Professional Conduct, despite the conflict with federal law, provided that the lawyer also counsels the client about the potential legal consequences under applicable federal law.”

New Jersey:²¹

RPC 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) A lawyer shall abide by a client's decisions concerning the scope and objectives of representation, subject to paragraphs (c) and (d), and as required by RPC 1.4 shall consult with the client about the means to pursue them. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall consult with the client and, following consultation, shall abide by the client's decision on the plea to be entered, jury trial, and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent, or in the preparation of a written instrument containing terms the lawyer knows are expressly prohibited by law, but a lawyer may counsel or assist a client in a good faith effort to determine the validity, scope, meaning or application of the law.

A lawyer may counsel a client regarding New Jersey's medical marijuana laws and assist the client to engage in conduct that the lawyer reasonably believes is authorized by those laws. The lawyer shall also advise the client regarding related federal law and policy.

²¹ New Jersey Rules of Professional Conduct available at:
<https://www.njcourts.gov/attorneys/assets/rules/rpc.pdf>

Rhode Island.²²

Rule 1.2. Scope of representation and allocation of authority between client and lawyer.

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) 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.

(d) Limited Scope Representation. A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. The client must provide knowing and informed consent as part of the written limited scope representation engagement or retainer agreement. Upon entering into a written limited scope representation engagement or retainer agreement, an attorney/client relationship arises between the client and lawyer.

See Rhode Island Supreme Court Ethics Advisory Panel Opinion 2017-01 (Feb. 13, 2017) (Rhode Island Supreme Court Ethics Panel Opinion, n.d.)

“. . . attorneys may ethically advise clients about Rhode Island’s medical marijuana law, and may ethically represent, advise, and assist clients in all activities relating to and in compliance with the law, provided that the lawyers also advise clients regarding federal law, including the federal Controlled Substances Act.”

²² Rhode Island Rules of Professional Conduct available at:
<https://www.courts.ri.gov/PublicResources/disciplinaryboard/PDF/Article5.pdf>

Vermont:²³

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer.

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(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.

Comment 14

"With respect to paragraph (d), a lawyer may counsel a client regarding the validity, scope and meaning of Title 18, chapters 84, 84A, and 86 of the Vermont Statutes Annotated, and may assist a client in conduct that the lawyer reasonably believes is permitted by these statutes and the rules, regulations, orders, and other state and local provisions implementing the statutes. In these circumstances, the lawyer shall also advise the client regarding the potential consequences of the client's conduct under related federal law and policy." (Order Promulgating Addition to Comment 14 to Rule 1.2, n.d.)

²³ Vermont Rules of Professional Conduct available at:
<https://www.vermontjudiciary.org/sites/default/files/documents/VermontRulesofProfessionalConduct.pdf>

West Virginia:²⁴

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(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.

(e) A lawyer may counsel a client regarding West Virginia law and assist the client to engage in conduct that the lawyer reasonably believes is authorized by those laws. If West Virginia law conflicts with federal law, the lawyer shall also advise the client regarding related federal law and its potential consequences.

²⁴ West Virginia Rules of Professional Conduct available at: <http://www.courtswv.gov/legal-community/court-rules/professional-conduct/rule1.html#rule1.2>