



SUPREME COURT OF GUAM

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HON. KATHERINE A. MARAMAN
CHIEF JUSTICE

HANNAH G. ARROYO
CLERK OF COURT

October 4, 2019

To: All Guam Bar Association Members

Re: Notice and Opportunity to Comment on Proposed Amendment to Rule 1.2(d) of the Guam Rules of Professional Conduct

Dear GBA Members:

The Supreme Court of Guam is considering adopting amendments to Rule 1.2(d) of the Guam Rules of Professional Conduct to address the ethical implication of advising clients on Guam's marijuana and cannabis-related laws. The Guam Bar Association, through its Resolution No. 2019-001 (attached), has submitted the proposed amendments that the court is now considering.

Written comments on the proposed amendments will be accepted through **Monday, November 4, 2019**, and may be sent by email to Hannah G. Arroyo, Clerk of Court for the Supreme Court of Guam, at hgutierrezarroyo@guamsupremecourt.com, or to the following address:

Hannah G. Arroyo, Clerk of Court
Supreme Court of Guam
Suite 300, Guam Judicial Center
120 West O'Brien Drive
Hagåtña, Guam 96910

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:

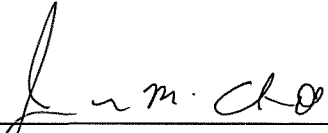
A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyers knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the 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