



## Eureka! California lawyers can advise cannabis clients without breaching ethical duties

By Alison Torbitt and Hillary Baca

California lawyers received important guidance last week that they can advise clients in the legal cannabis industry—which is estimated to reach \$30 billion in sales and employ almost half a million full-time workers by 2023 in the United States<sup>1</sup>—without breaching their ethical duties. This quickly growing industry has a significant need for legal services as cannabis businesses attempt to comply with California law. However, despite California legalizing the medicinal and recreational use of marijuana, it remains a federal crime to possess, use, sell, or distribute it. This conflict between state and federal law has historically been a problem for lawyers and their prospective cannabis clients. While cannabis clients seek advice on compliance with state laws and regulations, lawyers must comply with the ethical rules, which prohibit advising or assisting clients in conduct that is criminal. Fortunately for California lawyers and cannabis businesses, the State Bar’s Standing Committee on Professional Responsibility and Conduct (the Committee) issued an [opinion](#) clarifying that California lawyers can advise cannabis clients despite marijuana being illegal under federal law.

In a 15-page advisory (not binding) opinion, the Committee assuaged many lawyers’ fears by stating that under the Rules of Professional Conduct, they may ethically advise clients in matters related to compliance with California’s cannabis laws. The Committee explicitly stated that lawyers may assist cannabis clients in conduct permitted by those laws, despite the fact that the client’s conduct may be a crime under federal law. California lawyers also can advise on other state laws as reasonably required to make the cannabis business functional and profitable, including seeking regulatory approvals or negotiating leases.

While this opinion is welcome news for California lawyers and cannabis businesses, it does not provide lawyers the freedom to help clients hide their activities from federal enforcement agencies. The Committee cautions lawyers that they may not provide advice or assist in conduct that enables cannabis clients to evade detection or prosecution under California or federal law. This would, for example, include holding client funds in excess of any amount required to pay legal fees as a rainy day fund against the possibility that federal authorities might seize the client’s assets. Depending on a cannabis client’s intent, prohibited conduct may also include assisting a client in establishing

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<sup>1</sup> See our blog post, [“Ethical issues for attorneys providing services to the cannabis industry.”](#)

offshore bank accounts into which the proceeds of the business may be placed. California lawyers must also inform cannabis clients of the conflict between state and federal law, including the potential for criminal liability and the penalties that could be associated with a violation of federal law.

The opinion also clarifies under their ethical duties that California lawyers from across many practices may help cannabis businesses ensure they are complying with the myriad laws that apply to running their business in the Golden State. These include guidance on incorporating an entity to operate their business, following tax rules and regulations, purchasing or renting real estate; seeking land use, environmental, and operational permits; securing water rights, complying with the state's strict employment laws, preparing contracts for services, and complying with food and beverage safety standards, to name just a few. While advising cannabis clients is not entirely risk-free for lawyers, who could still face potential (albeit unlikely) federal prosecution, it should provide greater comfort to many California practitioners, including the authors of this article, operating to advise cannabis businesses.

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