



Los Angeles County Bar Association

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Via Email and U.S. Mail

Mr. Adrian Snead
Holland & Knight
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Mr. Steven A. Cash
Day Pitney LLP
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Dear Messrs. Snead and Cash:

I write on behalf of the Los Angeles County Bar Association's (LACBA) Cannabis Section in support of American Bar Association Resolutions 103B and 103D.

LACBA was founded in 1878 and is one of the largest voluntary metropolitan bar associations in the country, with more than 20,000 members. LACBA serves attorneys, judges, and other legal professionals through 27 sections, committees, networking events, live and on-demand CLE programs, and pro bono opportunities, as well as public service and informational resources.

The recently formed Cannabis Section is one of the newest among LACBA's many sections. LACBA formed its Cannabis Section out of an interest among its members and the foresight of its leadership. By way of background, California was the first state to legalize medical cannabis in 1996 and recently adopted a comprehensive and complex regulatory scheme covering the cultivation, manufacture, testing, transportation, distribution, marketing, and sale of cannabis for both medicinal and adult recreational use. In addition, communities throughout California independently regulate commercial cannabis according to their own priorities. At the same time, possession and commercial production, distribution, and sale of cannabis remain unlawful under federal law.

LACBA's Cannabis Section provides top-tier continuing legal education concerning the legal cannabis industry and its many complex issues, including: state and local regulatory compliance, corporate and tax structuring, banking, real estate, labor and employment, intellectual property, insurance, litigation, distribution, marketing, and ethics. The Cannabis Section serves as a source of expertise for other attorneys, government bodies, and the news media on issues

regarding cannabis laws, regulations and developments, and serves as a forum for the consideration of public policies dealing with or regarding cannabis generally. For example, on February 11, 2020, LACBA's Cannabis Section hosted an educational program that featured the primary author of the City of Los Angeles's regulations, the Executive Director who runs the City's Department of Cannabis Regulation and the attorney who is the president of the City's Cannabis Commission.

There is so much interest in understanding the complexities in this new state-legal cannabis economy and in providing top-tier client services, that attorneys are joining LACBA for the sole purpose of participating in the Cannabis Section.

The existence of LACBA's dedicated Cannabis Section is consistent with the ethical rules that govern California attorneys. Specifically, in November 2018, the California Supreme Court approved an update to the Rules of Professional Conduct that provides comfort to California attorneys with clients in the state-legal cannabis industry. Specifically, Rule 1.2.1 provides:

**Rule 1.2.1 Advising or Assisting the Violation of Law
(Rule Approved by the Supreme Court, Effective November 1, 2018)**

- (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.*

Comment [6] to Rule 1.2.1 provides that an attorney may advise a client engaged in the commercial cannabis industry and remain within the ethical bounds of California law despite the existence of a conflict with federal law:

[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).

The attorneys who are members of the Cannabis Section represent clients in all aspects of the cannabis industry, including investment funds, cultivators, processors, dispensaries, distributors, and suppliers of ancillary products and services. Our clients seek legal solutions to the full range of rulemaking, regulatory, transactional, legislative, and litigation challenges they confront and our members seek to provide clear advice about the varying contours and conflicts within the law that must be navigated and respected.

In January 2020, Loyola of Los Angeles Law School began offering a class to its students entitled Cannabis Business Law. The UCLA Law School offers a class entitled Cannabis Law and Regulation. Santa Clara University School of Law provides a course entitled Cannabis Law and Policy.

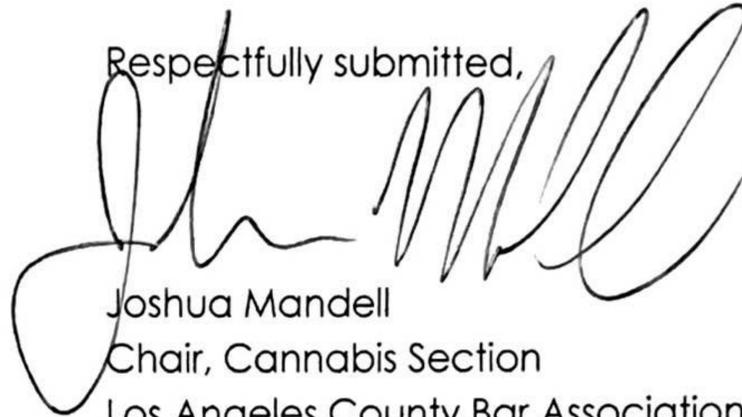
Finally, according to the 2018 DEA report entitled National Drug Threat Assessment, the DEA acknowledged that “[d]omestic use of marijuana will remain high and is likely to increase. . . . Fragmented and developing medical and personal use law among states will continue to create uncertainty and increasingly complex issues for the public, law enforcement, banking systems, and medical professionals. Marijuana will remain a part of domestic and international discussions for the near future.” In other words, complex and thorny issues involving cannabis regulation, use, law enforcement, and banking are here to stay.

LACBA's Cannabis Section supports ABA Resolution 103B because it seeks to remove the unnecessary confusion that attorneys may be prosecuted for violating or conspiring to violate any federal act merely by providing advice and legal services to a client relating to state-legal cannabis activity or business. As the number of states that legalize commercial cannabis increases each election cycle, it is important that those state-legal businesses have access to legal counsel who can explain and provide advice regarding the complex legal issues those businesses face. Attorneys should not fear prosecution merely by advising clients how to comply with or understand the nuances of an increasingly complex area of law. This is all the more sensible as states like California clarify that attorneys can provide this advice within the ethical bounds of the state law and accredited law schools offer courses regarding the same. Clarifying that attorneys will not face prosecution for conducting themselves in accordance with state laws is an appropriate response to the conflict that exists with federal law.

Similarly, LACBA's Cannabis Section supports ABA Resolution 103D, which seeks to protect the bank accounts of attorneys and others who provide services to state-legal cannabis businesses. Resolution 103D will help eliminate the situation where attorneys either decline to provide appropriate legal services to a state-legal cannabis business for fear of having their own bank accounts closed or intentionally withhold or omit the true facts that some attorneys' fees are derived from representing clients engaged in state-legal cannabis businesses.

State-legal cannabis businesses need good legal counsel. The attorneys who can provide that advice should not be stuck in the middle of a conflict that exists between state law and federal law but should instead be allowed to provide legal counsel without fear of prosecution or the closing of bank accounts simply because they provide legal services to state-legal cannabis businesses.

Respectfully submitted,



Joshua Mandell
Chair, Cannabis Section
Los Angeles County Bar Association

cc: Ronald F. Brot, President
Stanley Bissey, Executive Director