

April 2022

Paradigm

President's Podium:

A new look

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for refugees**

**Growth industry
for cannabis lawyers**

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The World's Finest Law Firms

A close-up photograph of vibrant green cannabis leaves with serrated edges, filling the background of the page. The leaves are in sharp focus, showing their intricate vein structure.

Growth industry

**Attorneys help
cannabis clients
steer way through
legal maze**

By Tom Kirvan

O

ne outgrowth of the burgeoning marijuana industry is the increasing

number of lawyers and law firms nationwide that have embraced the concept of a legitimate cannabis practice.

In one sense, it's all about "weed control" for the state and local agencies that regulate the legalized sale and recreational use of marijuana, which has spread across 18 states since Colorado and Washington blazed the green trail a decade ago.

And those oftentimes hazy cannabis laws have proved to be both a boon and bane to attorneys advising "touch-the-leaf" businesses on how best to navigate the occasionally choppy waters of regulatory compliance.

Just ask Michelle Mabugat, a corporate and transactional attorney for Greenberg Glusker, a single-office law firm in the Century City district of Los Angeles.

A 2011 graduate of the University of Southern California Gould School of Law,

Mabugat quickly became one of L.A.'s "go-to" lawyers in the field of cannabis law, so much so that she was one of the co-authors in 2017 of a book titled, "Legal Weed: A Comprehensive Guide to California Cannabis Law & Regulation."

At the time it was published, the book was viewed as a trusted guide on how those in the cannabis business could stay on the right side of the law.

Until it wasn't.

"It took about three months before the book was outdated," Mabugat lamented. "That's how fast the cannabis landscape was changing – and continues to change as the fragmented laws and regulations for cannabis change on a yearly, monthly, weekly, and sometimes daily basis.

Someone recently compared my legal experience in this industry to an 'athlete training at altitude,' and I couldn't agree more. You have to be able to turn on a dime and think more creatively than your average lawyer."

Particularly in the nation's most populous state of California, which Mabugat said "might as well be divided into two states" when it comes to marijuana production.

"In northern California, most of the cultivation is done outdoors or in greenhouses," she explained. "In southern

California, virtually all of the growing is done in giant warehouses, where everything is in a controlled environment not subject to the whims of the elements. Those growing in the northern part have seasonal harvests, while growers in southern California can harvest their crops every 6 to 8 weeks. It's a big difference in yearly output."

In 1996, California became the first state in the country to legalize the use of medical marijuana, according to Mabugat, who received her bachelor's degree from U.C.L.A, the cross-town rival of her legal alma mater U.S.C. In late 2016, California voters approved a ballot initiative that legalized recreational use of weed by adults.

"California has been at the forefront of the cannabis industry for years and other states have kept watch over our successes and failures in regulating the business," said Mabugat, noting that there are more licensed cannabis businesses in the state than there are McDonald's and Starbucks outlets combined.

The state's greatest challenge in regulating the marijuana industry, which reportedly has generated upward of \$2.8 billion in tax revenue since 2018, is dealing with an entrenched black market

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Michelle Mabugat, Alexandra Becker, Carrie Ward, and Eric Sleeper (left to right) are four members of the recently formed Cannabis Practice Group that is part of the Primerus alliance. The group hosted a webinar on February 22, discussing a host of issues for those interested in the ever-evolving field of cannabis law, both domestically and internationally.

or “legacy” market that sidesteps the tax-man and makes it difficult for licensed operators to compete, Mabus indicated.

“The state has tried to step up law enforcement actions, but dealing with those in the legacy market is like playing a game of whack-a-mole, where they shut down an illicit operator and another pops up somewhere else,” said Mabus, who noted that illicit market prices can be half as expensive as from regulated sources.

Mabus is one of two attorneys at Primerus member Greenburg Glusker who primarily concentrate their practice on cannabis and hemp-related matters.

“It was a thousand percent by chance that I got into this field, but I must admit that it has been a fascinating experience to be one of the first legal pioneers involved in such an evolving part of the law,” she said. “I derive a great deal of satisfaction from puzzling together creative business solutions for my clients and defending them when faced with regulatory enforcement actions.”

Alexandra Becker – a partner with the Nolan Heller Kauffman law firm in Albany, New York – also is part of the recently formed Cannabis Practice Group in Primerus. Her interest in cannabis law has been sparked over the past year by the State of New York’s decision last fall

to legalize marijuana for recreational use after years of failed attempts.

“Relatively speaking, New York is a late entrant to the legalization movement,” said Becker, whose law practice has been dominated in recent years by liquor licensing matters. “Obviously, states like California and Colorado have been at the forefront of the movement and have a huge head start on states that have recently adopted legalization legislation.”

With a population of approximately 20 million people, New York is the fourth most populous state in the nation, making it an especially attractive and potentially lucrative market for marijuana growers and sellers, according to Becker.

“Currently, a lot of that potential tax revenue is going to neighboring states such as Massachusetts,” Becker explained. “While the recreational use of marijuana in New York became legal last fall, selling cannabis is not legal until all the regulations are in place, which might not be until this summer or fall. There is a sense of urgency to get all the regulations in place so as not to miss out on any more tax revenue, which is projected to be in the neighborhood of \$1.2 billion over the next six years according to budget estimates.”

The state dipped its proverbial toe in the cannabis water in 2014 when it adopted the Compassionate Care Act, which legalized the sale and use of marijuana for medical purposes, according to Becker.

“Traditionally, legalizing medical marijuana has been the first step for most states,” said Becker, who earned her bachelor’s degree from Johns Hopkins University in Baltimore and her juris doctor from Villanova University School of Law in 2014. “The step to legalizing it for recreational use has been a tougher sell politically in some states, although more and more are adopting it principally because of the potential tax revenue.”

Currently, Becker is the lone attorney at Nolan Heller Kauffman who is dealing with cannabis legal matters, although that could change as the industry begins to take hold in the next few years, she said.

“In some respects, I expect that many of the issues I deal with in liquor licensing will be similar to what will be presented in the cannabis area,” she said. “Of course, one of the major differences is that marijuana is still classified as an illegal drug on the federal level and that has impacted the banking industry’s involvement.”

Attorney Carrie Ward, a partner with the Primerus firm of Earp Cohn, P.C. of Cherry Hill, New Jersey, has watched with special interest over the past two years as her native state inches closer to granting licenses for cannabis businesses catering to recreational users of pot.

“State voters gave the green light to recreational use back in the fall of 2020 and the legislature set licensing plans in motion on February 22, 2021 with the first licenses to be issued beginning a year later on February 22, 2022,” Ward indicated.

But that timeline was not met as state officials wrestled with a host of nettlesome issues, principally centered on how best “to level the playing field” for cannabis suppliers, according to Ward, who earned her juris doctor from Rutgers Law School.

“The medical use of marijuana has been in place for around a decade in New Jersey, although initially only a limited number of licenses were granted,”



explained Ward, who has a business law practice with a particular focus on the entertainment, communications, and media areas. “Several years ago, the number of licenses was expanded and collectively all those suppliers are poised to enter the recreational market as soon as they get the go-ahead from the state. In effect, they would have a huge head-start on those looking to get into the recreational side of the industry, which is why the licensing process is taking longer than expected.”

The “big players” in the cannabis business, said Ward, are “chomping at the bit” to start selling to recreational users in New Jersey.

“They already have the growing and distribution infrastructure in place, so those major suppliers would have the potential to create a monopoly, squeezing out the smaller companies who want to get into the market,” Ward indicated. “State officials are trying to figure out a way to ensure that there are opportunities for whatever size company you have.”

Each delay compounds the frustration not only for potential suppliers, but also for state treasury officials who project that marijuana sales will generate upwards of \$300 million annually in tax revenue.

“And, of course, that’s money that can be spent for the schools, the roads, and various other important needs the state wants to address,” said Ward, who expects that “more and more” of her practice will be devoted to cannabis law in the years ahead.

“The laws are all over the place and nothing is black and white in the cannabis business,” said Ward. “And that doesn’t begin to take into account the inherent tension between federal and state laws regarding marijuana use. It’s just one of the many reasons it will be especially important to have legal help in that type of business, where there are so many

uncertainties and compliance issues to be sorted out.”

Eric Sleeper, a longtime partner with Barton LLP in New York, has spent much of his career on creditor-debtor rights, restructurings, cybersecurity, corporate bankruptcy, and commercial litigation matters, but in recent years has kept a close watch on legal issues impacting the cannabis industry.

“Barton LLP is very entrepreneurial focused in our legal practice and in advising our clients in getting, and maintaining, a firm toehold in industries like cannabis,” said Sleeper of the law firm that also has an office in Nashville. “The cannabis industry, in turn, is highly entrepreneurial. The growth of the industry has been just short of phenomenal over a period of less than two decades. Medical marijuana did not start to become legalized in the U.S. until the late-1990s beginning with the state of California. It was only roughly a decade later, in or about 2012, that legalization followed in the U.S. for the recreational, adult-use market through the states of Colorado and Washington. Since then, legalization has skyrocketed throughout this country. Now, a majority of states have legalized medical cannabis and more than a third have done so also for recreational use.

“Simultaneously, following Canada’s cannabis legalization other countries are beginning to move towards legalization in one shape or another,” indicated Sleeper, an honors graduate of Emory University School of Law in Atlanta. “The Netherlands, Luxembourg, and Malta, in particular, are already well down that path. But other large countries are in kind giving serious consideration towards legalization, including Germany, Italy, Mexico, South Africa, etc. It is an exciting time to be a part of this, a very open and make-law field from a legal practice standpoint, and one requiring knowledgeable legal advice for a whole series of legal considerations

to have a successful business, directly or ancillary, to the cannabis industry. After almost four decades of practicing primarily in the corporate restructuring field, I am thrilled to have expanded my practice to advising clients in this high growth industry.”

Sleeper said that “worldwide sales of legalized marijuana topped \$21 billion in 2020 and projections show market growth rising above \$100 billion by 2028,” a meteoric rise that has huge tax implications for governmental entities around the globe.

And yet, cannabis use is still illegal under federal law in the U.S. and it remains unclear if that will change anytime soon, said Sleeper, an alum of Rutgers University, where he was inducted into the prestigious Phi Beta Kappa Society.

“I have no crystal ball when it comes to federal decriminalization and/or legalization towards marijuana,” he said. “Fortunately, pursuant to the Hemp Farming Act of 2018, the federal government removed hemp as a Schedule 1 controlled substance and opened a wide-ranging market for the cultivation, production and sale of industrialized hemp and hemp-related products.

“At the same time, there remains a significant portion of Congress (as well as the U.S. public) that supports decriminalization and legalization of recreational, adult-use marijuana,” Sleeper noted. “Given the obvious failures of the War on Drugs, the billions of taxpayer funds that have been lost ‘fighting’ that War, and the obvious social inequities resulting from the criminalization of marijuana, I would like to believe that decriminalization has a stronger chance of becoming a reality sooner at the federal level in advance of legalization. Obviously, as with the states and certain countries, decriminalization tends to then open the door wider towards overall legalization.” 