
COMMENT

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Clearing the Smoke: The Ethics of Multistate Legal Practice
for Recreational Marijuana Dispensaries

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I. INTRODUCTION

Uncertainty abounds in the United States on the legality of marijuana. While the drug remains a prohibited substance under federal law,¹ there is a growing movement to legalize marijuana throughout the country.² With the legalization movement gaining victories in Colorado³ and Washington,⁴ and more states considering following their lead,⁵ marijuana law is presently in a state of flux. This causes some amount of uncertainty for many as to the actual legality of the drug in the United States, not the least for the legal community.⁶ The actions taken by these two states

1. 21 U.S.C. § 812(c)(c)(10) (2012).

2. See Art Swift, *For First Time, Americans Favor Legalizing Marijuana: Support Surged 10 Percentage Points in Past Year, to 58%*, GALLUP (Oct. 22, 2013), <http://www.gallup.com/poll/165539/first-time-americans-favor-legalizing-marijuana.aspx> (acknowledging for the first time majority public opinion in the United States favors decriminalizing marijuana); see also German Lopez, *How Marijuana Legalization Became a Majority Movement*, VOX, <http://www.vox.com/2014/10/1/6858173/marijuana-legalization-majority-movement> (last updated Oct. 1, 2014, 10:00 AM) (noticing the rapid growth of the marijuana legalization movement in the United States).

3. See COLO. CONST. art. XVIII, § 16, cl. 3 (permitting the possession of one ounce or less and the cultivation of up to six plants of marijuana).

4. See WASH. REV. CODE ANN. § 69.50.4013(3) (West 2014) (condoning the use of small amounts of marijuana by those over the age of twenty-one).

5. See Rick Lyman, *Pivotal Point Is Seen as More States Consider Legalizing Marijuana*, N.Y. TIMES (Feb. 26, 2014), http://www.nytimes.com/2014/02/27/us/momentum-is-seen-as-more-states-consider-legalizing-marijuana.html?_r=0 (recognizing many states across the country are considering decriminalizing marijuana or permitting its use for medical purposes).

6. See Donald Scarinci, *Gonzales v. Raich, The Supreme Court's Stance on Legalizing Marijuana*, CONST. L. REP. (Nov. 15, 2012), <http://scarinciattorney.com/the-supreme-courts-stance-on-legalizing-marijuana-gonzales-v-raich> (indicating the United States is unlikely to legalize marijuana due to a ruling made by the Supreme Court in *Gonzales v. Raich*).

provoked questions for the legal community as to whether lawyers can practice at all for the recently legalized businesses and what services lawyers can provide for them.⁷ The rules of professional responsibility do not look favorably upon attorneys assisting their clients with illegal activity.⁸ Some states have issued their own interpretation as to what services the legal community is allowed to provide;⁹ however, most states have failed to address the issue.

The legal community has grown increasingly national, and even global, in its practice.¹⁰ Today it is not enough for a lawyer to only learn the rules of his own state, but he must be attentive to the laws of other states as well.¹¹ With many firms practicing in multiple states, a lawyer could represent a marijuana dispensary in a legalized state while practicing in a state, like Texas, which continues to criminalize the drug. This raises a question of whether Texas attorneys who make the bold attempt to assist a company that sells marijuana violate the rules of professional responsibility.¹²

In Section II, this Comment examines the background of the criminalization of marijuana and looks into the movement to liberalize the laws surrounding it. This section also acknowledges the growth of the multistate legal practice and explores what effects this situation could have on attorneys and firms who practice in multiple jurisdictions. Section III analyzes the rules of professional conduct in Texas and in Colorado to determine what a lawyer in each jurisdiction may and may not do. Finally, Sections IV and V scrutinize various propositions that have been made

7. See Sam Kamin & Eli Wald, *Marijuana Lawyers: Outlaws or Crusaders?*, 91 OR. L. REV. 869, 871 (2013) (advancing the risks attorneys will face by representing marijuana practitioners); see also A. Claire Frezza, Note, *Counseling Clients on Medical Marijuana: Ethics Caught in Smoke*, 25 GEO. J. LEGAL ETHICS 537, 538 (2012) (questioning the propriety of assisting marijuana businesses in states that have legalized medical marijuana).

8. See MODEL RULES OF PROF'L CONDUCT r. 1.2(d) (AM. BAR ASS'N 2013) (declaring attorneys who facilitate a client's illegal activities commit a violation of the rules of professional responsibility).

9. See, e.g., COLO. RULES OF PROF'L CONDUCT r. 1.2(d) cmt. 14 (West 2014) (sanctioning lawyers to counsel and assist marijuana dispensaries).

10. Ted Schneyer, *Professional Discipline for Law Firms?*, 77 CORNELL L. REV. 1, 4 (1991); see also Jeffrey L. Rensberger, *Jurisdiction, Choice of Law, and the Multistate Attorney*, 36 S. TEX. L. REV. 799, 801 (1995) (noting even lawyers who choose to practice in only one state are "likely today to have out-of-state clients, disputes, or transactions due to the pervasive presence of interstate commerce").

11. See Rensberger, *supra* note 10, at 801 (indicating choice of law problems make it difficult for the multistate attorney to know what law applies in a given situation).

12. Cf. Melody Finnemore, *Preparing for Pot: Washington, Colorado Advise Oregon's Legal Community to Take Proactive Stance*, OR. ST. B. BULL., June 2014, at 19, 20 (noting legalization of marijuana for recreational purposes created questions about ethical issues related to legal practice for the marijuana industry).

regarding legal practice on behalf of marijuana dispensaries and make a recommendation to Texas attorneys and law firms who consider practicing for marijuana producers and distributors in Colorado.

Ultimately, this Comment concludes Texas lawyers should not fear ethical violations by engaging marijuana companies as clients. With the general lack of concern about initiating action against lawyers in other states and with the federal government seeming to allow the experiment to continue, lawyers should be free to represent these companies, which have a color of legitimacy, without facing disciplinary action.¹³ This Comment proposes the Texas State Bar should not initiate action against an attorney who represents a company that is legal in another state. Just as the rules of professional responsibility require states to reciprocate and find attorneys in violation of the rules of ethics for violations occurring in another state, they should also find lawyers do not violate the rules in one state for actions that do not breach ethical duties in another.¹⁴

II. BACKGROUND

A. *Criminalizing Marijuana*

The twentieth century saw two major efforts at prohibition of chemical substances in an attempt to prevent substance abuse.¹⁵ The first attempt, prohibition of alcohol, lasted only thirteen years before being repealed by the Twenty-First Amendment in 1933.¹⁶ History regards this “noble experiment” as an utter failure.¹⁷ In the 1970s, as an attempt to address substance abuse by the counter-culture,¹⁸ Congress again took up the

13. See Halimah Abdullah, *Up in Smoke: The Obama Administration's Pot Politics Problem*, CNN, <http://www.cnn.com/2014/02/04/politics/pot-politics/index.html> (last updated Feb. 5, 2014, 9:00 AM) (reporting the Obama administration's lenient policy towards legalized marijuana permits states to experiment with their approach to the drug).

14. See TEX. RULES PROF'L CONDUCT r. 8.05(a), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A, art. 10, § 9 (West 2005) (establishing the doctrine of reciprocity, which states attorneys are subject to disciplinary action in Texas for ethics violations committed in other states).

15. See U.S. CONST. amend. XVIII, § 1 (banning the sale of all alcoholic beverages throughout the United States beginning in 1920), *repealed by* U.S. CONST. amend. XXI § 1; Controlled Substances Act, 21 U.S.C. §§ 801–889 (2012) (proscribing the use of psychoactive drugs in the United States).

16. U.S. CONST. amend. XXI; Mark Thornton, *Alcohol Prohibition Was a Failure*, CATO INST. (July 17, 1991), <http://www.cato.org/publications/policy-analysis/alcohol-prohibition-was-failure>.

17. Thornton, *supra* note 16; see also Michael Lerner, *Unintended Consequences*, PBS, <http://www.pbs.org/kenburns/prohibition/unintended-consequences> (last visited May 12, 2016) (examining many of the unintended consequences felt by the country as a result of prohibition).

18. See David T. Courtwright, *The Controlled Substances Act: How a "Big Tent" Reform Became a Punitive Drug Law*, 76 DRUG & ALCOHOL DEPENDENCE 9, 11 (2004) (chronicling how the Nixon administration pushed reform of national drug laws to the top of the presidential agenda because of

cause of prohibition by enacting the Controlled Substances Act.¹⁹ Like the prior prohibition, the Act prohibits the use, transportation, and sale of certain mind-altering substances.²⁰ The Controlled Substances Act categorizes drugs into five “schedules” based on their relative level of harmfulness and medicinal uses.²¹ Schedule One drugs are defined as those with a high probability of leading to abuse, with no accepted medicinal or safe use.²² Marijuana was placed in Schedule One but not without controversy.²³ At the time the Act was passed, a minority of doctors believed marijuana did, in fact, have a medicinal use.²⁴ Due to this decision by Congress, however, marijuana became illegal for all purposes, medicinal or otherwise, throughout the country.²⁵

the heightened drug use among the youth of the time).

19. See 21 U.S.C. §§ 801–889 (outlawing the use of drugs in an attempt to counter the increased drug use of the period).

20. Compare *id.* § 841(a)(1) (prohibiting the creation, distribution, or possession of a controlled substance), with U.S. CONST. amend. XVIII, § 1 (proscribing the production, marketing, and shipping of alcohol throughout the United States), repealed by U.S. CONST. amend. XXI, § 1. Psychoactive drugs considered of little or no medical use were strictly prohibited. 21 U.S.C. § 812(c)(b)–(c). Unlike the prior attempt to restrict Americans’ use of intoxicating substances, Congress decided to create exceptions to the general rule of exclusion. *Id.* § 812(c)(a)–(c); see, e.g., Native American Church, 21 C.F.R. § 1307.31 (2015) (highlighting an example of an exemption from Schedule One status for members of the Native American Church who use peyote in their religious ceremonies).

21. See 21 U.S.C. § 812(b) (defining the characteristics of the drugs in various schedules). When making its determination of which schedule a particular drug should be placed, Congress considered the following factors: its potential for abuse, its medicinal uses, the state of scientific knowledge on the effects of the drug, the history of abuse on this drug, and risks it poses to public health. *Id.* § 811(c).

22. *Id.* § 812(b)(1). Each subsequent schedule is marked by decreased potential for abuse or chemical dependency. See *id.* § 812(b)(2)–(5) (denoting Schedule Two through Schedule Five drugs as those that all have a current medical use, but each have a decreasing potential for abuse and lower chances of leading to chemical dependency).

23. *Id.* § 812(c)(c)(10). Placement in Schedule One indicates a lack of any medicinal use, a high potential for abuse, and an ability to be safely used. *Id.* § 812(b)(1). However, not all medical experts at the time agreed with this categorization and felt marijuana deserved to be placed in a different schedule. All for Cannabis Therapeutics v. DEA, 930 F.2d 936, 938 (D.C. Cir. 1991). Some have also theorized marijuana received harsher treatment under the Controlled Substances Act due to its association with minorities, who often were characterized by higher incidents of crime and viewed as violent. See Gregg A. Bilz, *The Medical Use of Marijuana: The Politics of Medicine*, 13 HAMLIN J. PUB. L. & POL’Y 117, 119 (1992) (indicating marijuana received harsher treatment because of its common use among the jazz subculture and minorities of lower socioeconomic status that were viewed as violent); see also Kamin & Wald, *supra* note 7, at 872 (intimating marijuana’s Schedule One placement developed due to underlying racism).

24. All for Cannabis Therapeutics, 930 F.2d at 938.

25. Possession of marijuana in any quantity is punishable by upwards of a year in prison and a \$1,000 minimum fine. 21 U.S.C. § 844(a); see *id.* § 841(b)(E)(iii)(4) (stating possession of small amounts of cannabis is punishable under the standard laid out in Section 844(a) of the Controlled Substances Act). Possession of larger quantities, at least fifty kilograms, is punishable by \$250,000

Each state also has its own regulatory scheme in regards to possession of marijuana.²⁶ Texas codified its attempt to regulate the use of drugs in its own Controlled Substances Act.²⁷ This Act also categorizes drugs according to schedules; however, it permits a commissioner to establish and maintain the schedules under the Act.²⁸ Texas currently lists marijuana as a Schedule One drug, similar to its treatment under the federal statute.²⁹ Some consider Texas to be among the least friendly states towards marijuana possession.³⁰

for an individual and \$1,000,000 for a group, and five years in prison. *Id.* § 841(b)(D). Doctors may not write prescriptions for marijuana regardless of whether in their medical opinion it could be beneficial to their patient or not. *See id.* § 844(a) (prohibiting the possession of a controlled substance unless validly prescribed by a physician). Physicians are permitted to prescribe drugs of every schedule other than Schedule One under certain circumstances. *Id.* § 829. Marijuana can be used only by practitioners if they study it as a part of a pre-approved FDA study. *Gonzales v. Raich*, 545 U.S. 1, 14 (2005).

26. *See Drug Laws & Drug Crimes: From Drug Possession to Drug Trafficking, a Look at Laws Regulating Controlled Substances*, NOLO, <http://www.nolo.com/legal-encyclopedia/drug-laws-drug-crimes-32252.html> (last visited May 12, 2016) (recognizing every state has its own laws regulating drugs in addition to the federal scheme).

27. *See generally* TEX. HEALTH & SAFETY CODE ANN. §§ 481.001–481.314 (West 2013) (representing Texas’s attempt to control the use and abuse of drugs through its own Controlled Substances Act).

28. *See id.* § 481.032 (indicating drugs shall be placed in five different schedules, in accordance with the Texas Controlled Substances Act, by the commissioner of public health); *see also id.* § 481.036 (specifying the process by which the commissioner will adopt or modify the categorization of drugs in Texas).

29. *See* 39 Tex. Reg. 4031 (2014) (pronouncing the current “Texas Schedules of Controlled Substances,” which take effect twenty-one days after appearing in the Texas Register). The Texas Health & Safety Code provides, in relevant part, for the following charges when in possession of marijuana:

- (1) a Class B misdemeanor if the amount of marihuana possessed is two ounces or less;
- (2) a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces;
- (3) a state jail felony if the amount of marihuana possessed is five pounds or less but more than four ounces;
- (4) a felony of the third degree if the amount of marihuana possessed is [fifty] pounds or less but more than [five] pounds;
- (5) a felony of the second degree if the amount of marihuana possessed is 2,000 pounds or less but more than [fifty] pounds.

TEX. HEALTH & SAFETY § 481.121. Possession of two ounces of marijuana is punishable by up to 180 days incarceration and a maximum fine of two thousand dollars. TEX. PENAL CODE ANN. § 12.22 (West 2013).

30. *See* Paul Armentano, *The Five Worst States to Get Busted with Pot*, ALTERNET (May 16, 2011), http://www.alternet.org/story/150935/the_5_worst_states_to_get_busted_with_pot (reporting Texas pursues more arrests for possession of marijuana than every other state).

B. *Medical Marijuana—The Gateway Statute*

Despite the history of criminalizing marijuana use and possession in the United States, a growing number of states are liberalizing their laws to permit medicinal use of the drug.³¹ To date, twenty-one states and the District of Columbia have legalized marijuana for medical uses.³² These statutes generally permit physicians to prescribe marijuana to patients who suffer from a range of diseases.³³ These varied approaches all represent the initial steps in the open legalization of marijuana movement.³⁴

In June 2015, Texas Governor Greg Abbot signed into law the Texas

31. See *Medical Marijuana Laws by State*, FINDLAW, <http://healthcare.findlaw.com/patient-rights/medical-marijuana-laws-by-state.html> (last visited May 12, 2016) (indicating the states that permit marijuana to be prescribed by physicians for various conditions).

32. This list includes: California, Colorado, New Mexico, and Washington. See *id.* (detailing the provisions in the various medical marijuana statutes throughout the United States); see also *State Medical Marijuana Laws*, NAT'L CONF. ST. LEGISLATURES (Oct. 20, 2014), <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (providing a brief history and description of the various medical marijuana statutes passed by state legislatures since 1996). In the 2014 midterm elections, Florida voters narrowly rejected a ballot measure that would have added their name to this list. Daniel Wood, *Legalized Marijuana Spreads to Two More States and D.C. Next up, California*, CHRISTIAN SCI. MONITOR (Nov. 5, 2014), <http://www.csmonitor.com/USA/Elections/2014/1105/Legalized-marijuana-spreads-to-two-more-states-and-D.C.-Next-up-California.-video>. The proposed measure actually received majority support; however, it required a super-majority of voters to approve it. *Id.*

33. See COLO. CONST. art. XVIII, § 14 (permitting patients to use marijuana at the recommendation of their doctor for diseases involving pain, nausea, or seizures); CAL. HEALTH & SAFETY CODE ANN. § 11362.7(h) (Deering 2010) (listing the conditions for which a patient may be prescribed marijuana under California law, such as AIDS, cancer, seizures, and arthritis); see also *Medical Marijuana Laws by State*, *supra* note 31 (providing an overview of the ailments one must suffer from to be permitted to use marijuana in those states that allow the medicinal use of the drug). These state statutes allow the patient to possess anywhere from one ounce to twenty-four ounces depending on the jurisdiction. See, e.g., CAL. HEALTH & SAFETY § 11362.77 (permitting patients to possess up to eight ounces of marijuana). Some states took a different approach in determining the amount of marijuana a patient may be allowed, including Connecticut and Massachusetts, which allow for an indeterminate supply for a specified time period. See CONN. GEN. STAT. ANN. § 21a-408(a)(1)–(2) (West Supp. 2013) (permitting a physician to issue a prescription “for the palliative use of marijuana . . . not exceed[ing] an amount . . . reasonably necessary to ensure uninterrupted availability for a period of one month”); MASS. GEN. LAWS ANN. ch. 94C App., § 1–4 (West 2012) (protecting patients from criminal liability if they “[p]ossess[] no more marijuana than . . . necessary for the patient’s personal, medical use, not exceeding the amount necessary for a sixty-day supply”). Maryland simply created an affirmative defense against possession. See MD. CODE ANN., CRIM. LAW § 5-601(c)(3)(iii)(1)(A)–(C) (LexisNexis 2012) (creating an affirmative defense to the prosecution of possession of marijuana if “the defendant used or possessed marijuana because: the defendant has a debilitating medical condition” and the “marijuana is likely to provide the defendant with therapeutic or palliative relief”).

34. See *State Medical Marijuana Laws*, *supra* note 32 (noting the differing approaches to medical marijuana taken by various legislatures throughout the United States).

Compassionate Use Act.³⁵ While this Act is similar to a medical marijuana statute, it contains a number of limitations in its applicability.³⁶ The law permits specific Texas physicians to prescribe a low-grade form of marijuana to specific patients.³⁷ Only patients found to have “intractable epilepsy” may take advantage of this law.³⁸ Likewise, only physicians who are certified in treating epilepsy, neurology, or neurophysiology and treat a substantial number of patients with this level of epilepsy may issue a prescription for this drug.³⁹ While this Act certainly liberalizes Texas’s stance towards the drug, it hardly changes the legal status of marijuana for the majority of persons residing in the state.⁴⁰

Medical marijuana statutes have not been without their challenges. California, the first state to allow for the medical use of marijuana,⁴¹ faced a couple legal hurdles to its regime. The first challenge came when the

35. Heather Fazio, *An Overview of Texas’ Low-THC Medical Cannabis Program*, TEXANS FOR RESP. MARIJUANA POL’Y (June 1, 2015), http://texasmarijuanapolicy.org/2015/06/01texas_compassionate_use_act_2015.

36. See Charles Kuffner, *The Texas Compassionate Use Act*, OFF THE KUFF (Feb. 24, 2015), <http://offthekuff.com/wp/?p=65402> (noting the limited nature of the Compassionate Use Act).

37. TEX. OCC. CODE ANN. § 169.003 (West 2015). The form of marijuana that doctors may prescribe is one characterized by low levels of 0.5% tetrahydrocannabinols (THC) and higher levels of cannabidiol. *Id.* § 169.001(3).

38. *Id.* § 169.003(3)(A). Intractable epilepsy is defined by the Act as “a seizure disorder in which the patient’s seizures have been treated by two or more appropriately chosen and maximally titrated antiepileptic drugs that have failed to control the seizures.” *Id.* § 169.001(2).

39. *Id.* § 169.002(b)(2)–(3). The Act requires doctors to be licensed and join a registry to be allowed to prescribe this limited form of the drug. *Id.* §§ 169.002(b)(1), 169.004; see TEX. HEALTH & SAFETY CODE ANN. § 487.054(a)(1) (West 2015) (providing for the creation of a patient–physician registry to keep track of information of who proscribed marijuana and to whom).

40. See *Texas Governor Legalizes MMJ Program that No One Can Use*, CANNABISNOW (June 5, 2015), <http://cannabisnowmagazine.com/cannabis/medical/texas-governor-legalizes-mmj-program-that-no-one-can-use> (noting the Compassionate Use Act only applies to a limited number of patients who may not be aided much by it and opining, due to the way the law was written, few doctors will be willing to write a prescription for their patients). Governor Abbot opposes further legislation and prefers Texas “not open the door for conventional marijuana to be used for medical or medicinal purposes.” *Id.*

41. *State Medical Marijuana Laws*, *supra* note 32; see also *Gonzales v. Raich*, 545 U.S. 1, 5 (2005) (noting California was the first state to experiment with the legalization of medical marijuana when it passed its Compassionate Use Act). The Compassionate Use Act allows patients to possess marijuana “for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.” CAL. HEALTH & SAFETY CODE ANN. § 11362.5(d) (Deering 2012) (ensuring patients that are seriously ill have access to marijuana if their physician deems it appropriate). This Act contained no limitation on the quantity of marijuana a patient could possess, except it had to be used for medical purposes. *Id.*; see also *People v. Phomphakdy*, 81 Cal. Rptr. 3d 443, 450 (Ct. App. 2008) (recognizing no explicit limitation on the quantity of marijuana a patient is permitted to possess under the Compassionate Use Act). This has been interpreted to mean the Act at best “impose[s] only a reasonableness requirement.” *Phomphakdy*, 81 Cal. Rptr. 3d at 450.

California legislature attempted to limit the Compassionate Use Act as it had been enacted by the voting public.⁴² However, this attempt was overturned by the California Supreme Court because the method employed by the legislature violated the California Constitution.⁴³ The California medical marijuana statutes faced a more rigorous constitutional challenge from the U.S. Supreme Court in *Gonzales v. Raich*.⁴⁴ The Supreme Court held the Controlled Substances Act was valid under the Commerce Clause, even if it regulated possession of the drug without intent to sell.⁴⁵ While the Court did not explicitly hold the Compassionate Use Act unconstitutional, it did hold any law that is contrary to validly enacted federal laws must give way to the federal law.⁴⁶ This case left all the medical marijuana statutes throughout the United States in a very tenuous legal position.⁴⁷ Some, however, argue the ruling in *Raich* did not change much for states with medicinal marijuana laws because federal officials have been unconcerned with punishing those who possess

42. See CAL. HEALTH & SAFETY § 11362.77 (limiting the amount of marijuana a patient is permitted to possess to eight ounces).

43. *People v. Kelly*, 222 P.3d 186, 196 (Cal. 2010); see CAL. CONST. art. II, § 10(c) (“The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.”). The Act was only held unconstitutional in so far as it placed a limit on a defense created in the Compassionate Use Act. *Kelly*, 222 P.3d at 196. The court held “it would be inappropriate to sever [the section limiting the quantity of marijuana a patient is entitled to possess] from the [Medical Marijuana Program] and hence void that provision in its entirety”; therefore, only the quantitative limitations were struck down. *Id.* at 214.

44. *Gonzales v. Raich*, 545 U.S. 1 (2005). The plaintiffs in the case were prevented by federal agents from benefiting from the Compassionate Use Act’s provisions. *Id.* at 6–7. Raich, one of the plaintiffs, suffered from a debilitating disease that her doctor felt, without marijuana, could “cause [her] excruciating pain and could very well prove fatal.” *Id.* at 7. Raich and Monson challenged the validity of the Controlled Substance Act under the Commerce Clause of the Constitution. *Id.* at 8.

45. See *id.* at 15–17 (affirming previous case law that permits Congress to regulate local, non-commerce activities if such activities yield a substantial effect on interstate commerce (citing *Wickard v. Filburn*, 317 U.S. 111, 125 (1942))).

46. See *id.* at 29 (“The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail.”); see also U.S. CONST. art. I, § 8, cl. 3 (naming one of the powers of Congress as “regulat[ing] commerce with foreign nations, and among the several States, and with the Indian Tribes”); *id.* art. VI (declaring the “Constitution, and the Laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land”).

47. See Scarinci, *supra* note 6 (emphasizing the unlikelihood the United States government will permit the legalization of marijuana in the near future). But see Mark Sherman, *Prosecutions Unlikely of Medical Pot Users*, CANNABIS NEWS (June 5, 2005, 7:31 AM), <http://cannabisnews.com/news/20/thread20793.shtml> (“The ruling does not strike down California’s law, or similar ones in Alaska, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont[,] and Washington state. However, it may hurt efforts to pass laws in other states because the federal government’s prosecution authority trumps states’ wishes.”).

marijuana due to illness.⁴⁸

C. *Legalization Movement—A Growing Movement*

In recent years, the movement to legalize marijuana has shifted from the medical field to the recreational arena.⁴⁹ In 2012, Colorado voters approved an amendment to their state constitution, which permits the possession of marijuana for recreational use, making Colorado the first state to legalize a quantity of marijuana for a purpose other than medicine.⁵⁰ In the same election cycle, voters in Washington also adopted a recreational marijuana statute.⁵¹ Many states are considering whether to follow Colorado and Washington's lead in light of the perceived success of their programs.⁵² However, as of this Comment's publication, Colorado, Washington, Oregon, Alaska, and the District of Columbia remain the

48. See Sherman, *supra* note 47 (quoting a Drug Enforcement Administration official who said the federal government "never targeted the sick and dying, but rather criminals engaged in drug trafficking?").

49. See Eliza Gray, *New Laws Chart Course for Marijuana Legalization*, TIME (Oct. 19, 2013), <http://nation.time.com/2013/10/19/new-laws-chart-course-for-marijuana-legalization> (informing readers about the legalized recreational marijuana programs in the first two states to adopt such laws, Colorado and Washington); Lopez, *supra* note 2 (recognizing the rapid growth of those who support the legalization of marijuana).

50. See COLO. CONST. art. XVIII, § 16, cl. 3 (permitting people over twenty-one to possess and cultivate marijuana in small quantities for recreational purposes); see also *US Breakthrough for Recreational Marijuana Legalization*, LEGALIZATIONOFMARIJUANA.COM, <http://legalizationofmarijuana.com/us-breakthrough-for-recreational-marijuana-legalization> (last visited May 12, 2016) (notifying readers that Amendment 64, which legalized marijuana for recreational use, passed with 55% of the vote).

51. See WASH. REV. CODE ANN. § 69.50.4013 (West 2014) (legalizing the possession of small quantities for marijuana for those over twenty-one without needing to qualify for the medical marijuana program); see also *US Breakthrough for Recreational Marijuana Legalization*, *supra* note 50 (recognizing Initiative 502 passed with a similar margin of victory to Colorado's constitutional amendment).

52. See Wood, *supra* note 32 (informing readers that voters in Alaska, Oregon, and the District of Columbia approved legislation legalizing marijuana for recreational purposes in the November 2014 midterm elections); see also Dennis Lynch, *Why Some Southern States May Be Closer To Legalizing Medical Marijuana than You Think*, INT'L BUS. TIMES (Feb. 9, 2014, 3:33 PM), <http://www.ibtimes.com/why-some-southern-states-may-be-closer-legalizing-medical-marijuana-you-think-1554252> (indicating even some traditionally conservative states, like Alabama, Georgia, Louisiana, and Mississippi, are considering legalizing medical marijuana); Nick Wing, *These States Are Most Likely To Legalize Pot Next*, HUFFINGTON POST (Aug. 30, 2013 9:47 AM), http://www.huffingtonpost.com/2013/08/30/marijuana-legalization-states_n_3838866.html (opining Arizona, California, Nevada, Maine, Massachusetts, Montana, Rhode Island, and Vermont will be among the next states to legalize marijuana). *But see* Lisa Rough, *Which States Are Most Likely to Legalize Cannabis in 2016?*, LEAFLY (Dec. 22, 2015), <https://www.leafly.com/news/headlines/what-states-are-most-likely-to-legalize-in-2016> (suggesting Delaware, Maryland, Massachusetts, New York, and Missouri are unlikely to legalize marijuana in the near future).

only jurisdictions with recreational marijuana laws in force.⁵³

1. Colorado & Washington—The First Attempts to Legalize Marijuana

Colorado voters enshrined the legalization of recreational marijuana in their constitution⁵⁴ with approximately 55% in favor of legalization.⁵⁵ The Colorado constitutional amendment allows adults over the age of twenty-one to lawfully possess minimal amounts of marijuana for any purpose.⁵⁶ While Colorado was the first state to take steps to legalize marijuana, voting to legalize the drug the same night, Washington's recreational marijuana law was the first to take effect.⁵⁷ Similar to Colorado, the Washington recreational marijuana statute permits adults over the age of twenty-one to possess small amounts of marijuana for any purpose.⁵⁸ However, the Washington statute allows for marijuana users to possess different quantities depending on the form it takes.⁵⁹ Unlike

53. See Liz Rowley, *Where Is Marijuana Legal in the United States? List of Recreational and Medicinal States*, NEWS MIC (Oct. 5, 2015), <http://mic.com/articles/126303/where-is-marijuana-legal-in-the-united-states-list-of-recreational-and-medicinal-states#.d8B7NeOkT> (identifying Washington D.C. and three states, Alaska, Colorado, and Oregon, as fully legalizing recreational marijuana use); see also Wing, *supra* note 52 (noting so far only Colorado and Washington have implemented a recreational marijuana law and indicating more states may follow due to Attorney General Eric Holder choosing not to step up enforcement in those states).

54. COLO. CONST. art. XVIII, § 16, cl. 3; see also Matt Ferner, *Marijuana for Recreational Use Now Legal in Colorado: Hickenlooper Signs Amendment 64 into State Constitution*, HUFFINGTON POST (Dec. 10, 2012, 2:24 PM), http://www.huffingtonpost.com/2012/12/10/hickenlooper-signs-amendm_n_2272168.html (noting Colorado's constitutional amendment legalizing the recreational finally became law on December 10, 2012, when Colorado Governor John Hickenlooper signed an executive order formalizing into law the results of the midterm referendum).

55. *US Breakthrough for Recreational Marijuana Legalization*, *supra* note 50.

56. COLO. CONST. art. XVIII, § 16, cl. 3.

57. See Ferner, *supra* note 54 (informing readers that Washington's ballot initiative on recreational marijuana became law on December 6, 2012, whereas Colorado's constitutional amendment was not approved by the governor until four days later); see also Gene Johnson, *Legalizing Marijuana: Washington Law Goes into Effect, Allowing Recreational Use of Drug*, HUFFINGTON POST (Dec. 6, 2012, 3:18 AM), http://www.huffingtonpost.com/2012/12/06/legalizing-marijuana-washington-state_n_2249238.html (noting Washington's ballot initiative legalizing marijuana took effect a month after it was passed; whereas, the Colorado constitutional amendment was slated to take effect on January 5, 2013).

58. WASH. REV. CODE ANN. § 69.50.4013 (West 2014); see also Johnson, *supra* note 57 (stating the initial statute merely decriminalized those over twenty-one from having an ounce of marijuana on their person and noting the state required further implementation to permit the sale of the drug on the open market).

59. See WASH. REV. CODE § 69.50.360(3) (permitting the possession of "[o]ne ounce of useable marijuana[,] [s]ixteen ounces of marijuana-infused product in solid form[,] or [s]eventy-two ounces of marijuana-infused product in liquid form?"). But see *id.* § 69.50.445 (prohibiting the public opening of containers of marijuana and public consumption of marijuana, which are punishable by a civil fine);

Colorado, Washington does not allow individuals to grow their own marijuana plants at home; all marijuana must be purchased from lawful dispensaries, which mandates the creation of an industry to meet this demand.⁶⁰

Colorado and Washington both required their legislatures to take further steps to regulate the production, sale, and distribution of marijuana.⁶¹ Both states require extensive licensing to sell marijuana and restrict the locations where it can be sold.⁶² Colorado provided flexibility to localities that desired to opt out of the legalized marijuana program, creating diversity in the approach to recreational marijuana throughout the state.⁶³ Both states intend to use their retail system for dispensing marijuana to generate revenue for various in-state projects.⁶⁴ These regulatory requirements and the benefits the states intend to reap from this industry have given these states something of a vested interest in the continued viability of the recreational marijuana industry.

While Washington and Colorado were the first states to legalize marijuana, more states have followed⁶⁵ and more are considering taking the same approach.⁶⁶ Washington and Colorado have become the model

Johnson, *supra* note 57 (noting, under the ballot initiative passed by voters in the fall of 2012, the public consumption of marijuana remains a punishable offense).

60. See WASH. REV. CODE § 69.50.360(3) (excluding plants from the forms of marijuana one can lawfully possess in Washington); see also Phillip A. Wallach & John Hudak, *Legal Marijuana: Comparing Washington and Colorado*, BROOKINGS (July 8, 2014, 9:51 AM), <http://www.brookings.edu/blogs/fixgov/posts/2014/07/08-washington-colorado-legal-marijuana-comparison-wallach-hudak> (advising readers, under Colorado law, one may lawfully possess six plants, three of which are flowering at any time; whereas, in Washington, home growing of marijuana is prohibited).

61. See Johnson, *supra* note 57 (noting both state measures call for establishing state licensing schemes for marijuana harvesters, processors, and retail stores).

62. See COLO. REV. STAT. ANN. § 12-43.4-201 to 12-43.4-405 (West 2014) (placing limitations on retailers who sell marijuana); WASH. REV. CODE § 69.50.325 (requiring a license to produce, process, or sell marijuana in Washington); see also Wallach & Hudak, *supra* note 60 (providing details of the regulatory schemes created by Colorado and Washington for the implementation of their recreational marijuana statutes).

63. COLO. CONST. art. XVIII, § 16, cl. 5(f).

64. See Wallach & Hudak, *supra* note 60 (explaining the tax structure in both states on the production, distribution, and sale of marijuana and noting the various projects the revenue will be used to fund, from school construction and law enforcement in Colorado to substance abuse programs in Washington); see also Johnson, *supra* note 57 (stating analysts optimistically estimate the new recreational marijuana regime will generate millions of dollars in tax revenue for Washington's public services).

65. See Wood, *supra* note 32 (recognizing, in the 2014 midterm elections, Alaska, Oregon, and the District of Columbia decriminalized marijuana).

66. See Rough, *supra* note 52 (predicting Maine, Arizona, Connecticut, Michigan, Ohio, Rhode Island, and Vermont will likely legalize marijuana in the near future); Wing, *supra* note 80 (informing readers California, Nevada, and Massachusetts are also considering whether to legalize marijuana).

from which other states will develop their approach to recreational marijuana.⁶⁷ The issues surrounding the legalization of marijuana are likely to grow in the near future.⁶⁸

In the wake of state efforts to legalize marijuana, the legality of marijuana still remains in question.⁶⁹ Possession of marijuana, for any purpose, remains a federal crime.⁷⁰ Federal officials initially indicated an intention to continue to prosecute marijuana possession in the states where it has been decriminalized;⁷¹ however, the Obama administration has permitted the experiment to continue in states with liberalized marijuana laws.⁷²

2. More States Legalize Recreational Marijuana in the 2014 Elections

For many years, other states have also considered legalizing marijuana for recreational use.⁷³ In the 2014 elections, Alaska, Oregon, and the

67. See Shelby Sebens, *Voters Give Nod to Legal Marijuana in Oregon, Alaska, and Washington, D.C.*, REUTERS (Nov. 5, 2014, 5:21 AM), <http://www.reuters.com/article/2014/11/05/us-usa-elections-marijuana-idUSKBN0IO13620141105> (informing readers the Alaska and Oregon recreational marijuana programs will be similar to those implemented in Colorado and Washington).

68. See Swift, *supra* note 2 (noting the recent increase in support for the legalization of marijuana nationwide and indicating the movement is growing rather than subsiding).

69. See Sabrina Siddiqui, *White House: Obama Still Opposed To Marijuana Legalization*, HUFFINGTON POST, http://www.huffingtonpost.com/2014/01/22/obama-marijuana-legalization_n_4647523.html (last updated Jan. 23, 2014, 11:59 AM) (finding the Obama administration still opposes the legalization of medical and recreational marijuana and informing readers that although the administration stated it would permit the experiment to continue in legalized states, it has stepped up prosecution of marijuana possession even in medical marijuana states). *But see* Abdullah, *supra* note 13 (informing readers the Obama administration's stated policy towards the legalization effort in individual states is to let the experiment continue); Wing, *supra* note 52 (noting the reluctance of Attorney General Eric Holder to step in to obstruct the legalized marijuana systems in decriminalized states).

70. 21 U.S.C. § 812(c)(10) (2012); *see also* Johnson, *supra* note 57 (educating readers, regardless of the legality of marijuana under the state regulatory schemes, the drug remains a prohibited substance under federal law, which could potentially lead to criminal liability for those who use it in legalized states).

71. See Charlie Savage, *Administration Weighs Legal Action Against States that Legalized Marijuana Use*, N.Y. TIMES (Dec. 6, 2012), http://www.nytimes.com/2012/12/07/us/marijuana-initiatives-in-2-states-set-federal-officials-scrambling.html?_r=2& (reporting, in the wake of the first two ballot measures legalizing marijuana, the Justice Department considered legal action to halt the decriminalization efforts).

72. See Abdullah, *supra* note 13 (stating, despite initial reluctance to permit experimentation in the states with legalized recreational marijuana, the federal government is abstaining from enforcing the Controlled Substances Act in states that elect to allow such use of the drug).

73. See Wing, *supra* note 52 (listing nine states that were considering decriminalizing marijuana at the time of the article); *see also* Gray, *supra* note 49 (recognizing California is preparing to attempt to legalize marijuana in the 2016 election, following a failed attempt in 2010).

District of Columbia joined, after much campaigning,⁷⁴ Colorado and Washington in decriminalizing possession of marijuana for any purpose.⁷⁵ These initiatives require additional steps to be taken before permitting the lawful sale and possession of marijuana.⁷⁶ Oregon became the third state to approve the legal possession and sale of marijuana when its voters endorsed Measure 91.⁷⁷ The Oregon measure, like Colorado, provides for the lawful possession of an ounce of useable marijuana in public.⁷⁸ On the same night,⁷⁹ Alaska voters approved Ballot Measure No. 2,⁸⁰

74. See Wing, *supra* note 52 (acknowledging proponents of marijuana legalization stepped up their efforts leading up to the 2014 midterm elections); see also Sebens, *supra* note 67 (remarking, in the wake of legalization of marijuana in three new jurisdictions in the midterm elections, opponents are still campaigning to tighten the restrictions on the drug as much as possible).

75. See Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act § 79(6) (2014) (codified as OR. REV. STAT. ANN. § 475.864(6) (West 2015)) (allowing Oregon voters the opportunity to permit the legal possession of up to eight ounces of useable marijuana and regulation of its production and sale); *Ballot Initiative*, DC CANNABIS CAMPAIGN, <http://dcmj.org/ballot-initiative> (last visited May 12, 2016) (showing readers the full text of ballot Initiative Measure Seventy-One, which is a referendum that allows voters to permit the possession of small quantities of marijuana for personal use); Jacob Sullum, *When Will Legal Pot Be Available in Alaska, Oregon, and D.C.?*, REASON (Nov 7, 2014, 3:46 PM), <http://reason.com/blog/2014/11/07/when-will-legal-pot-be-available-in-alas> (identifying the three new states in which voters opted to legalize possession of marijuana); see also Ballot Measure No. 2-13PSUM: An Act to Tax and Regulate the Production, Sale, and Use of Marijuana, <http://www.elections.alaska.gov/doc/bml/BM2-13PSUM-ballot-language.pdf> [hereinafter Ballot Measure No. 2] (providing Alaska voters the option to permit the legal possession of marijuana and the regulation of its sale).

76. See Sullum, *supra* note 75 (notifying readers, as of Election Night, all three of the recent ballot initiatives to legalize marijuana required some further step to take effect: Alaskans must wait ninety days after the election results are certified, Oregon must develop further regulations by January 2016, and Washington D.C. requires congressional assent before the legislation takes full effect).

77. *Voters Legalize Recreational Pot in Oregon*, KGW (Nov. 6, 2014, 6:47 AM), <http://www.kgw.com/story/news/politics/2014/11/04/measure-91-legalize-marijuana-oregon/18481827>.

78. COLO. CONST. art. XVIII, § 16, cl. 3; OR. REV. STAT. ANN. § 475.864(6) (West 2015). The Oregon provision is far more generous than Colorado's, and though similar to Washington's, it permits the possession of eight ounces of marijuana, sixteen ounces of solid marijuana product, and seventy-two ounces of liquid marijuana product. Compare OR. REV. STAT. § 475.864(6) (permitting the possession of eight to seventy-two ounces of marijuana depending on the form of the drug), and WASH. REV. CODE ANN. § 69.50.360(3) (West Supp. 2014) (providing for the lawful possession of "[o]ne ounce of useable marijuana; [s]ixteen ounces of marijuana-infused product in solid form; or . . . [s]eventy-two ounces of marijuana-infused product in liquid form"), with COLO. CONST. art. XVIII, § 16, cl. 3 (sanctioning the transfer of up to one ounce of marijuana to a person over the age of twenty-one). Measure 91 also permits the possession of up to four plants for personal use in the home. OR. REV. STAT. § 475.856. Oregon residents will, however, be forbidden to consume marijuana in public under this regime. See Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act, § 54(1) (2014) (to be codified) (prohibiting the public consumption of marijuana in Oregon).

79. See Matt Ferner, *Alaska Becomes the Fourth State to Legalize Recreational Marijuana*,

permitting the recreational use of marijuana, shortly after Oregon by a close margin.⁸¹ The Alaska ballot initiative generally follows the legalization approach taken in Colorado.⁸² These two states generally follow the paradigm set by the Colorado and Washington regimes, which is likely to continue as more states consider following their lead.⁸³

The nation's capital also voted to legalize recreational marijuana in 2014.⁸⁴ While Initiative 71 permits adults over twenty-one to possess small amounts of marijuana at any given time, the provision was unique among the statutes because it does not provide for the sale of marijuana.⁸⁵ Unlike many of the others, this initiative allows only for the free transfer of marijuana but not the sale of the drug.⁸⁶ Due to this aspect, the D.C. provision will be unlikely to implicate the ethical issues the other statutes affect as there will be no cannabusinesses to serve. These statutes, however, indicate the movement to legalize marijuana is growing and likely

HUFFINGTON POST, http://www.huffingtonpost.com/2014/11/05/alaska-marijuana-legalization_n_5947516.html (last updated Nov. 5, 2014, 8:59 AM) (noting Alaska became the fourth state to legalize recreational marijuana on the same night as voters approved such use in Oregon and the District of Columbia).

80. Ballot Measure No. 2, *supra* note 75.

81. The Alaskan measure passed with 52% voting in favor of the initiative. Ferner, *supra* note 79; Sebens, *supra* note 67.

82. Compare COLO. CONST. art. XVIII, § 16, cl. 3 (permitting adults twenty-one and older in Colorado to possess up to an ounce of marijuana and six plants for recreational purposes), with ALASKA STAT. ANN. § 17.38.020(1)–(2) (Lexis Supp. 2015) (declaring Alaska residents are permitted to possess lawfully an ounce of cannabis and six plants for their own use).

83. See Gray, *supra* note 49 (opining Colorado and Washington are “test cases” for future implementation of legalized recreational marijuana systems). Compare COLO. CONST. art. XVIII, § 16, cl. 3 (licensing the use of an ounce of and the cultivation of up to six plants of marijuana), and WASH. REV. CODE § 69.50.360(3) (allowing adults in Washington to possess up to an ounce of usable marijuana, sixteen ounces of solid, and seventy-two ounce of liquid, marijuana-infused product), with OR. REV. STAT. § 475.864(6) (condoning the possession of eight ounces of marijuana and sixteen ounces of solid, and seventy-two ounces of liquid, marijuana product), and Ferner, *supra* note 79 (recognizing, similar to the Colorado constitutional provision, adults in Alaska are permitted to possess up to an ounce of marijuana and six plants at any time).

84. *Ballot Initiative*, *supra* note 75; see Sullum, *supra* note 75 (noting, in addition to Oregon and Alaska, the District of Columbia also approved the recreational possession of marijuana in the 2014 midterm elections). The provision passed by a substantial margin; nearly 65% of voters favored the ballot initiative and nearly 28% opposed it. See *General Election: Certified Results*, DISTRICT COLUM. BOARD ELECTIONS, https://www.dcboee.org/election_info/election_results/2014/November-4-General-Election (last updated Dec. 3, 2014) (identifying the percentage of the vote Initiative 71, which provided for the legalization of marijuana, received in the 2014 midterm election).

85. See D.C. CODE ANN. § 48-904.01(a)(1)(A) (West Supp. 2015) (permitting possession of two ounces of marijuana at any given time). The initiative also allows citizens of the District of Columbia to cultivate up to six plants, only three of which can be mature on any occasion. *Id.* § 48-904.01(a)(1)(C).

86. See *id.* § 48-904.01(a)(1)(B), (D) (permitting the transfer of the drug but prohibiting the “lawful . . . s[ale], offer for sale, or mak[ing] available for sale any marijuana or cannabis plants”).

to move to other states in the future.⁸⁷

D. *Growth of Interstate Law Firms and Multistate Practice of Law*

The practice of law was traditionally confined within a single jurisdiction.⁸⁸ Lawyers only needed to know the law in their state because they generally only served clients in their jurisdiction.⁸⁹ Lawyers have traditionally been expected to attend a state accredited law school and then pass the bar exam in each state they intend to practice.⁹⁰ An exception exists in some jurisdictions for attorneys who have practiced lawfully for a period of time in their own jurisdiction.⁹¹ This system was initially intended to protect clients by raising the standards by which attorneys could be admitted to the bar in a particular state.⁹² However, even when it was the norm for attorneys to confine their practice to a single jurisdiction, it was possible for attorneys to represent clients in another state on a case-by-case basis.⁹³

When this system was established, most attorneys practiced law as solo practitioners or in small firms.⁹⁴ Engaging primarily local clients did not require law firms to be very large or complex.⁹⁵ Since then, businesses

87. See Wood, *supra* note 32 (opining the legalization of marijuana in Alaska and Oregon will strengthen the movement to legalize marijuana around the United States, with California likely being the next state to take the same approach).

88. See Bruce A. Green, *Assisting Clients with Multi-state and Interstate Legal Problems: The Need to Bring the Professional Regulation of Lawyers into the 21st Century*, ABA CTR. PROF. RESP. (June 2000), http://www.americanbar.org/groups/professional_responsibility/committees_commissions/commission_on_multijurisdictional_practice/mjp_bruce_green_report.html (intimating lawyers traditionally were only licensed to practice in one state in an attempt to promote professionalism).

89. See *id.* (noting for most of the history of unauthorized practice of law provisions, there was not much of a concern about interstate practice because most lawyers represented local clients on local issues).

90. See *id.* (describing the specifics of the current system by which attorneys become licensed to practice law in a particular jurisdiction); see also *Admission to Practice: Bar Admissions an Overview*, LEGAL INFO. INST.: CORNELL UNIV. L. SCH., http://www.law.cornell.edu/wex/Admission_to_Practice (last visited May 12, 2016) (detailing how lawyers typically become admitted to the bar in a state).

91. See Green, *supra* note 88 (noting some attorneys are permitted to practice law in more than one state without the requirement of taking an examination in that state); see also *Admission to Practice: Bar Admissions an Overview*, *supra* note 90 (indicating an attorney may in some instances practice law in a state where he has not taken the bar examination if the attorney is already a member of another state's bar).

92. See *id.* (explaining the system for admitting lawyers to practice in states was intended to protect clients by ensuring that attorneys who practiced in a state were competent in the law of that jurisdiction).

93. MODEL RULES OF PROF'L CONDUCT r. 5.5(c) (AM. BAR ASS'N 2013).

94. See Schneyer, *supra* note 10, at 4 (stating, in the first half of the twentieth century, as high as 60% of lawyers throughout the United States practiced alone).

95. See *id.* (indicating law firms were often smaller and more simply structured in the past); see

and other areas requiring legal services have become increasingly national and even global in scale.⁹⁶ Small firms and lawyers practicing on their own are not a very expedient model for handling increasingly complex, multijurisdictional issues.⁹⁷

Due to the increasingly intricate issues law firms face, firms have increasingly become larger in size and more complex in structure.⁹⁸ Many law firms currently have offices in more than one state.⁹⁹ This increases the chance lawyers could represent clients whose issues span more than one state.¹⁰⁰ These considerations give rise to a host of issues.¹⁰¹ Lawyers today must be aware of much more than the law of a single jurisdiction;¹⁰² they are required to know and consider the laws of multiple states, possibly even nations as they serve their clients.¹⁰³ This also gives rise to ethical dilemmas.¹⁰⁴ What happens if an attorney

also Green, *supra* note 88 (noting that confining lawyers to single jurisdictions and, therefore, smaller firm was largely due to the local nature of most legal issues).

96. *See* Green, *supra* note 88 (informing readers the issues facing lawyers today have become increasingly more intricate, requiring knowledge of federal law and the laws of other states and nations).

97. *See id.* (questioning the efficacy of the traditional methods of legal practice in light of the ever increasing complexity of modern legal practice); *see also* Schneyer, *supra* note 10, at 4 (remarking, due to changes in legal practice in modern years, most lawyers no longer practice on their own or in small firms).

98. *See* Schneyer, *supra* note 10, at 4 (highlighting the trend of law firms growing in size and using increasingly complex structures). Today, many law firms around the country have fifty or more lawyers in them, which was a rarity in the early part of the twentieth century. *See id.* (noting in 1984, there were over five hundred law firms throughout the country with more than one hundred lawyers as opposed to only thirty-eight thirty years earlier).

99. *See generally id.* at 46 (“A number of questions remain concerning the implementation of a system of law firm discipline . . . [such as] who should have jurisdiction over a firm with branches in several sates.”).

100. *See* Rensberger, *supra* note 10, at 801 (remarking the rise in transactions that occur in more than one state and “[t]he rise of law firms with offices in several different states means that more attorneys are engaging in multistate practice”); *see also* Green, *supra* note 88 (indicating the transactions lawyers assist clients with today often span state and national lines due to improvements in communication and transportation, requiring lawyers to be familiar with a larger body of law).

101. *See id.* (noting the current unauthorized practice of law provisions make it increasingly difficult for attorneys to assist clients with multistate issues).

102. *See* Green, *supra* note 88 (explaining, unlike in the past where issues were largely local in scope, today legal issues often span more than one jurisdiction, requiring lawyers to familiarize themselves with the law of more than one jurisdiction).

103. *See* Rensberger, *supra* note 10, at 801 (informing readers many lawyers are likely to have clients with out of state issues, requiring them to be aware of issues spanning multiple jurisdictions).

104. *See id.* (recognizing there are increasing differences in the rules of professional responsibilities in different jurisdictions). *But see* William L. Reynolds & William M. Richman, *Multi-Jurisdiction Practice and the Conflict of Laws*, ABA CTR. PROF. RESP., http://www.americanbar.org/groups/professional_responsibility/committees_commissions/commission_on_multijurisdictional_practice/mjp_wreynolds.html (last visited May 12, 2016) (stating there are rarely many differences in

lawfully provides legal services that do not constitute an ethical violation in one state but do so in another state where he is licensed? Has the attorney still violated the rules of professional conduct?¹⁰⁵

III. THE RULES OF PROFESSIONAL CONDUCT AND THEIR EFFECT ON MULTISTATE PRACTICE FOR CANNABUSINESSES

The practice of attorneys is not regulated on a national scale;¹⁰⁶ instead, each state has adopted its own set of disciplinary rules to govern attorney conduct within its jurisdiction.¹⁰⁷ These rules, while not uniform,¹⁰⁸ are largely based on the American Bar Association's Model Rules of Professional Conduct.¹⁰⁹ The current Model Rules were developed in 1983¹¹⁰ to promote uniformity among the states with regard to the laws governing attorney conduct;¹¹¹ however, ultimate authority to promulgate these rules rests with each state's supreme court.¹¹² The states modified

disciplinary practices because most of the conduct that is punished "is so egregious that it would be sanctioned anywhere").

105. See Kamin & Wald, *supra* note 7, at 871 (recognizing the ethical issues that arise due to discrepancies in federal and state law relating to marijuana); see also Finnemore, *supra* note 12, at 19 (indicating the legalization of recreational marijuana in Washington led to questions about the proper role of attorneys in a way that the legalization of medical marijuana did not); Frezza, *supra* note 7, at 538 (noting that representing marijuana dispensaries could be an ethical violation); Rensberger, *supra* note 10, at 801 (noticing the potential for different professional responsibilities laws to lead to difficulties for lawyers to know if their conduct constitutes an ethical violation).

106. See *Model Rules of Professional Conduct*, ABA CTR. PROF. RESP., http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html (last visited May 12, 2016) (explaining the Model Rules of Professional Conduct are merely a guideline developed by the American Bar Association to assist the states in developing their own rules of professional responsibility and noting only California declined to use its template).

107. See Rensberger, *supra* note 10, at 801 (observing more states have begun differentiating their professional conduct rules from the ABA's model rules); see also Green, *supra* note 88 (noting state courts regulate ethics within their own jurisdiction and indicating it is not regulated on the national level).

108. See Rensberger, *supra* note 10, at 801 (finding a lack of uniformity in the rules governing attorneys conduct throughout the United States due to states adopting their own variations of the Model Rules of Professional Responsibilities over time); see also Reynolds & Richman, *supra* note 104 (acknowledging, although the rules of ethics in each jurisdiction are generally similar, each has some ways in which they are different, leading to some choice of law problems). Only California resisted the trend to adopt a version of the Model Rules. *Model Rules of Professional Conduct*, *supra* note 155.

109. *Model Rules of Professional Conduct*, *supra* note 106.

110. See *id.* (explaining the history behind the implementation of the current Model Rules of Professional Conduct).

111. See *id.* (stating the Model Rules of Professional Conduct were implemented to assist the states with developing their own rules of ethics).

112. See Green, *supra* note 88 (indicating state courts regulate the conduct of lawyers once they are admitted to the bar).

the Model Rules while going through the process of implementing them.¹¹³ Many states also publish interpretive comments that vary the effect of the rules within their respective jurisdictions.¹¹⁴ These variations on the Model Rules create issues for lawyers who practice in more than one state.¹¹⁵ Lawyers who practice in more than one state must take note of the slight differences among the ethical rules in each state they intend to practice.¹¹⁶

A. *Model Rules Prohibit Attorneys from Assisting Clients Criminal Acts*

The Model Rules of Professional Conduct prohibit lawyers from engaging in many different practices considered to be unbecoming in the practice of law.¹¹⁷ Unsurprisingly, the Model Rules prohibit attorneys from counseling or assisting clients in the commission of criminal or fraudulent activities.¹¹⁸ The Texas Supreme Court, which based its Disciplinary Rules of Professional Conduct largely on the Model Rules,¹¹⁹ prohibits facilitation of a client's criminal activity in Disciplinary Rule 1.02(c).¹²⁰ This rule prohibits attorneys from

assist[ing] or counsel[ing] a client to engage in conduct that the lawyer

113. See Rensberger, *supra* note 10, at 801 (remarking each state has adopted its own modifications of the Model Rules of Professional Conduct over the years).

114. See, e.g., COLO. RULES PROF'L CONDUCT r. 1.2(d) cmt. 14 (West 2014) (providing an example of a unique comment a state has adopted to explain how the Model Rule of Professional Conduct relating to the prohibition of lawyers assisting client criminal activities should be implemented within its own jurisdiction).

115. See Rensberger, *supra* note 10, at 801 ("A lawyer may be permitted to engage in a certain type of conduct by one jurisdiction, but forbidden to do so by another.").

116. See *id.* (noting the differences in the ethical rules of each state pose problems for the unwary lawyer who attempts to practice in different jurisdictions).

117. See MODEL RULES OF PROF'L CONDUCT r. 1.5 (AM. BAR ASS'N 2013) (mandating lawyers only charge reasonable fees for their services); *id.* r. 3.5(a) (prohibiting attorneys from trying to influence judges or jurors in a manner prohibited by law). See generally *id.* r. 8.4 (listing a number of activities that constitute misconduct for attorneys to engage in).

118. The Model Rule 1.2 states:

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.

Id. r. 1.2(d).

119. See *Model Rules of Professional Conduct*, *supra* note 106 (noting Texas is among the states to adopt a set of disciplinary rules that follow the Model Rules).

120. Compare MODEL RULES r. 1.2(d) (prohibiting lawyers from contributing to their clients criminal endeavors), with TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.02(c), reprinted in TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A (West 2013) (TEX. STATE BAR R. art. X, § 9) (mandating lawyers must not assist a client in a known violation of the law).

knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning or application of the law.¹²¹

As stated earlier, possession and sale of marijuana are crimes in Texas.¹²² Thus, if a Texas attorney assists a Texas client in acquiring or selling marijuana, it would certainly be an ethical violation.¹²³ Less certain, however, is what would occur if an attorney does the same for a client in a state, like Colorado, where marijuana can be freely bought and sold.¹²⁴

Colorado also prohibits an attorney from assisting a client in criminal activity.¹²⁵ The recent legalization of recreational marijuana creates an ethical dilemma.¹²⁶ Although the drug may be legal under Colorado law,¹²⁷ it is still a banned substance under federal law.¹²⁸ While the legalization of medical marijuana inspired considerable debate in the legal community, legalizing recreational marijuana created even more. Legal scholars are divided on the issue of whether attorneys can lawfully and ethically represent clients in the marijuana business;¹²⁹ although, the arguments on both sides are the same regardless of whether the debate centers on recreational or medical marijuana.¹³⁰ Some debate has ensued over the question of whether even Colorado attorneys can represent their neighborhood dispensary without facing disciplinary sanctions.¹³¹ There

121. TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.02(c).

122. TEX. HEALTH & SAFETY CODE ANN. § 481.061 (West 2013).

123. *See id.* § 481.070 (declaring the dispensing of any Schedule One drug is illegal in Texas); TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.02(c) (prohibiting attorneys from assisting the criminal behavior of clients).

124. *See* COLO. REV. STAT. ANN. § 12-43.4-402 (West 2013) (identifying the legal sale of marijuana in Colorado).

125. COLO. RULES PROF'L CONDUCT r. 1.2(d) (West 2014).

126. *See* Kamin & Wald, *supra* note 7, at 870 (indicating the legalization of recreational and medical marijuana has created an "ethical (and sometimes criminal) quandary" in those states that have opted for more liberalized marijuana laws).

127. COLO. CONST. art. XVIII, § 16, cl. 3.

128. *See* 21 U.S.C. § 812(c)(c)(10) (2012) (placing marijuana in the most restricted schedule under federal law); *id.* § 841(a)(1) (prohibiting the distribution of controlled substances such as marijuana).

129. *See* Finnemore, *supra* note 12, at 19 (noting few gave any consideration to ethical issues involved under medical marijuana statutes, but more people are raising ethical questions under recreational marijuana regimes).

130. *See id.* at 19–20 (indicating the ethical ramifications of a recreational and medical marijuana regime are effectively the same).

131. *See* Kamin & Wald, *supra* note 7, at 871 (opining, due to uncertainty in the law, any attorney who represent marijuana dealers exposes himself to the risk of ethical and criminal

is a consensus in states that have legalized marijuana, for either medical or recreational purposes, that lawyers are permitted to counsel their clients regarding the state and consequences of the law pertaining to their business.¹³² The debate centers on what other services a lawyer may provide.¹³³

Some observers have asserted attorneys would be better off abstaining from practicing on behalf of marijuana dispensaries;¹³⁴ others have argued lawyers should feel free to assist cannabusinesses if they so choose.¹³⁵ But even those commentators who oppose disciplining these attorneys recognize their services constitute a facial transgression of the rules of professional responsibility.¹³⁶ Nevertheless, they argue these states should permit attorneys to practice on behalf of marijuana dispensaries anyway.¹³⁷ Drawing from accomplice and conspiracy law,¹³⁸ they argue attorneys should not be subjected to professional discipline unless they act with intent to further a violation of federal law.¹³⁹ In their opinion, as long as attorneys provide the same services at the same rates to non-

violations).

132. *See id.* at 917–19 (noting, even under a reading that only looks at the plain meaning of Rule 1.2(d) and criminal laws, a lawyer may counsel client as to the state of the applicable federal and state laws or provide criminal defense for clients); Frezza, *supra* note 7 at 552 (advising the only advice a lawyer should give clients in medical marijuana jurisdictions relates to the state of the law and opining further advice would constitute assisting clients' criminal activities); *see also* Alec Rothrock, *Is Assisting Medical Marijuana Dispensaries Hazardous to a Lawyer's Professional Health?*, 89 DENV. U. L. REV. 1047, 1057 (2012) (concurring with other commentators that lawyers are permitted to counsel clients as to the state of applicable laws).

133. *Compare* Kamin & Wald, *supra* note 7, at 919–21 (advocating attorneys may provide more services than mere advice regarding the state of the law, which may include work to insure compliance with regulations and drafting employment contracts), *with* Frezza, *supra* note 7, at 552 (positing the only services an attorney can safely provide to marijuana dealers is to inform them of the state of federal and state laws).

134. *See* Frezza, *supra* note 7, at 552 (counseling lawyers to proceed with caution in representing marijuana clients and advising that to assist such companies as they would other clients is likely an ethical violation); Rothrock, *supra* note 132, at 1058 (opining attorneys who represent medical marijuana dispensaries unavoidably violate Rule 1.2(d) of the Colorado Rules of Professional Conduct).

135. *See* Kamin & Wald, *supra* note 7, at 869 (proposing, although the plain text of Rule 1.2(d) and the Controlled Substances Act indicate marijuana lawyers are in violation of the Rules of Professional Conduct, attorneys should still be allowed to provide some services to marijuana clients so long as they do not form an intent to further the violation of federal law).

136. *Id.* at 903.

137. *See id.* at 906–14 (rejecting the traditional reading of Rule 1.2(d) and advocating one that takes into account the attorney's intent in assisting marijuana clients).

138. *See* Kamin & Wald, *supra* note 7, at 871, 886–99 (examining the specific intent requirement for accomplice liability and applying it to Rule 1.2(d) violations).

139. *Id.* at 920–24.

marijuana clients, they run no risk of violating the ethical rules.¹⁴⁰ But if an attorney actively tries to help a client expand her business by “providing the necessary connections,” these commentators would conclude the attorney has impermissibly furthered his client’s criminal activities.¹⁴¹ These commentators would also permit Colorado attorneys to help marijuana dispensaries with employment contracts and compliance with state regulations but nothing further.¹⁴² Therefore, even they caution attorneys from openly providing every service they would to other clients.¹⁴³

The proponents of prohibiting attorneys from serving marijuana dispensaries have rejected the argument that proof of intent to further a client’s criminal activity should be required to subject an attorney to professional discipline.¹⁴⁴ They argue, because Rule 1.2(d) says nothing about intent to further a criminal activity, the attorney does not need to have a specific intent to benefit from a marijuana dispensary client to contravene the rule.¹⁴⁵ The intent argument also fails because an attorney would know, by nature of the assistance he provides, precisely whether his client is engaging in an activity prohibited under federal law. Consequently, the attorney would know any service he provides would, by definition, facilitate the sale and distribution of marijuana.¹⁴⁶ They could not simply claim to know some *might* use their services for criminal purposes (as the operators of a telephone-answering service might);¹⁴⁷

140. *See id.* at 920–22 (suggesting attorneys violate the prohibition of assisting a criminal violation if the services they provide to marijuana dispensaries are not the same kind of services they provide to their other clients or if they give themselves an economic incentive to benefit from the criminal enterprise).

141. *See* Kamin & Wald, *supra* note 7, at 922 (noting attorneys often serve as intermediaries for their clients’ businesses and opining that doing so for a marijuana dispensary would be an impermissible action by an attorney because the attorney would be taking too active a role in the enterprise).

142. *See id.* at 917–24 (opining attorneys may assist in the non-controversial services, such as criminal defense, and providing information on the state of the law and the more controversial services, such as assistance in complying with state regulations and drafting of employment contracts; however, acknowledging there are limitations to the services attorneys can provide clients).

143. *See id.* at 870–71, 921–22 (recognizing limitations to a more liberal reading of Rule 1.2(d) to prevent lawyers from providing all possible services to marijuana clients).

144. Rothrock, *supra* note 132, at 1057.

145. *See id.* (noting Rule 1.2(d) nowhere indicates a requirement of specific intent to hold an attorney in violation of the rule and stating intent is generally irrelevant in disciplinary proceedings except on the issue of gravity of the sanctions imposed).

146. *See id.* (insisting lawyers will know when clients are procuring their services to establish and run a marijuana dispensary).

147. *See* *People v. Lauria*, 59 Cal. Rptr. 628, 674–75 (Ct. App. 1967) (holding the defendant lacked sufficient intent to further prostitution when he merely knew prostitutes used his answering

these attorneys would know exactly how their clients violate federal law.¹⁴⁸ Marijuana clients would (as advocates of marijuana attorneys admit) seek assistance to grow their business—conduct that openly transgresses federal law.¹⁴⁹ While accomplice liability may not provide the best justification for avoiding ethical sanctions, attorneys should still be permitted to represent these marijuana dispensaries without fearing reprobation in those states that permit recreational use of marijuana.

Opponents of punishing attorneys for taking on marijuana businesses as clients also note punishment would prevent entire segments of the business community from receiving common legal services and invariably lead them to enter into potentially disastrous contracts and make it very difficult for cannabusinesses to navigate the body of state regulations.¹⁵⁰ They remark that preventing lawyers from assisting businesses that operate under a color of legality will further compound the businesses' issues given the existing uncertainty surrounding the enforceability of their contracts because of the current legal landscape.¹⁵¹ Also, cannabusinesses are required to follow a rigid set of state regulations to operate in a legalized marijuana state.¹⁵² Regulatory bodies are inherently complex and often difficult to navigate without assistance from an attorney.¹⁵³ Denying marijuana dispensaries legal counsel could doom this fledgling legislative

services).

148. See Rothrock, *supra* note 132, at 1056–57 (stating knowledge may be inferred from the circumstances). *Contra* Kamin & Wald, *supra* note 7, at 897 (claiming lawyers do not actually form an intent to further the illegal sale of marijuana unless they charge higher rates to marijuana clients).

149. See Kamin & Wald, *supra* note 7, at 903 (admitting cannabusiness clients are uninterested in procuring legal services for the purpose of determining the state of the laws but rather for underlying purpose of the services sought).

150. See Sam Kamin, *Cooperative Federalism and State Marijuana Regulation*, 85 U. COLO. L. REV. 1105, 1113–17 (2014) (stating that precluding attorneys from helping marijuana dispensaries navigate state regulatory systems creates “a trap for the unwary” and noting clients may be tempted to rely on harmful “self-help” if not assisted with contract work); see also Kamin & Wald, *supra* note 7, at 870–71, 907 (noting that preventing lawyers from practicing for medical and recreational marijuana dispensaries causes such businesses to face their state regulatory systems alone, potentially obstructing the progress of a policy decision of those states that chose to legalize marijuana).

151. See Kamin, *supra* note 150, at 1113–14 (“Because marijuana remains illegal at the federal level, much of the predictability that comes from enforceable contracts is unavailable to marijuana practitioners.”).

152. See COLO. REV. STAT. ANN. § 12-43.4-309 (West 2014) (“A retail marijuana establishment may not operate until it is licensed by the state licensing authority pursuant to this article and approved by the local jurisdiction. If an application is denied by the local licensing authority, the state licensing authority shall revoke the state-issued license.”).

153. See Kamin, *supra* note 150, at 1115–17 (noting the mutable nature of marijuana rules and regulations at the state level creates a highly complex system, which is difficult for clients to navigate on their own).

experiment to failure from the beginning.¹⁵⁴ This would violate the policies of those states that have chosen to permit adults to lawfully possess and distribute small quantities of marijuana.¹⁵⁵

Others argue the plain language of the federal statute and the rules of professional responsibility, when read together, clearly evince the impermissibility of lawyers assisting marijuana businesses.¹⁵⁶ Their syllogistic argument holds: (1) the sale and distribution of marijuana are criminal activities under federal law;¹⁵⁷ (2) the rules of professional conduct prohibit an attorney from assisting clients' criminal activities;¹⁵⁸ therefore, (3) assisting companies that sell marijuana violates the rules of professional conduct.¹⁵⁹

As some commentators have indicated, medical marijuana statutes have been on the books in many of these states for years, and no one in that time even considered the ethical dilemmas those laws pose.¹⁶⁰ The ethical issues that arise from recreational marijuana are effectively the same as those for medical marijuana,¹⁶¹ and no attorneys have faced ethical violations in those states.¹⁶² If a state like Colorado begins to reprimand

154. *Cf.* Kamin & Wald, *supra* note 7, at 870–71, 884–85 (opining the illegal nature of marijuana at the federal level could prevent marijuana businesses from operating due to the difficulty of doing business).

155. *See id.* at 871 (“Without the participation of attorneys, important state policies will be frustrated.”).

156. *See* Frezza, *supra* note 7, at 552 (examining the express wording of Rule 1.2(d) and recommending attorneys be wary of practicing for medical marijuana businesses); Rothrock, *supra* note 132, at 1058 (asserting the “plain wording” of Rule 1.2(d) makes it an ethical violation to represent medical marijuana dispensaries); *see also* Kamin & Wald, *supra* note 7, at 903 (recognizing the traditional approach to Rule 1.2(d) would hold an attorney in violation of professional ethics for practicing for a marijuana dispensary).

157. *See* 21 U.S.C. § 841(a)(1) (2012) (“[I]t shall be unlawful for any person knowingly or intentionally . . . to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense a control substance . . .”).

158. *See* MODEL RULES OF PROF'L CONDUCT r. 1.2(d) (AM. BAR ASS'N 2013) (“A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent . . .”).

159. *See* Frezza, *supra* note 7, at 552 (noting the potential violation of the rules of professional conduct when legally assisting a client in marijuana practices that are mandated to be legal by the state); *see also* Rothrock, *supra* note 132, at 1058 (declaring, due to the federal prohibition of marijuana, attorneys who assist marijuana clients necessarily violate Rule 1.2(d)).

160. *See* Finnemore, *supra* note 12, at 19–20 (“We’ve had medical marijuana on the statutes for 15 years and no one gave legal ethics a thought or requested an ethics opinion.”).

161. *See id.* at 20 (“The legal ethics issues that arise under a recreational marijuana law differ little from those that would be considered under a medical marijuana statute . . .”).

162. *See* Rothrock, *supra* note 132, at 1058 (“No Colorado lawyer has been publicly disciplined, or even subjected to public charges, based on counseling or assisting a client to participate in the medical marijuana business in compliance with state law.”).

its attorneys for taking on marijuana dispensaries as clients, the state would violate the clearly announced and actively pursued public policy approved by its people.¹⁶³ This would set up the state's purposely-created system for failure¹⁶⁴ and would create a variety of inefficiencies by making it difficult for companies to make beneficial contracts and work their way through the regulatory system.¹⁶⁵ It would be hypocritical, to say the least, for a state to punish an attorney for aiding a client in conduct it explicitly permitted. As one commentator noted, a state should be estopped from punishing attorneys for assisting marijuana businesses if it explicitly permits possession and sale of the drug.¹⁶⁶ The Colorado Ethics Committee, in an attempt to quiet any unrest in the legal community, issued a comment to its rules of professional conduct stating attorneys who represent recreational marijuana dispensaries should not be found guilty of ethical violations in its jurisdiction.¹⁶⁷ As neither the American Bar Association nor the federal government possesses an attorney-ethics board capable of chastising attorneys for assisting a violation of the Controlled Substances Act, what states like Colorado say will govern attorney conduct in their states.¹⁶⁸ Attorneys in Colorado should not fear punishment for practicing for marijuana companies.

B. *Rules on Practicing in Multiple States*

Colorado's comment to its rules of professional conduct, although absolving attorneys in its jurisdiction, says nothing about how other states may choose to treat these actions in their own tribunals.¹⁶⁹ As mentioned

163. See Kamin & Wald, *supra* note 7, at 871 (opining that punishing attorneys who practice for marijuana dispensaries would run contrary to a policy chosen by the state in permitting those over the age of twenty-one to possess marijuana).

164. *Cf. id.* at 870–71, 884–85 (declaring that pursuing policies that treat the marijuana industry negatively could hinder the marijuana industry).

165. See Kamin, *supra* note 150, at 1113–17 (noting the potentially disastrous consequences of denying marijuana clients full representation).

166. Kamin & Wald, *supra* note 7, at 929. To punish these attorneys would be unjust after the state explicitly promoted the industry. *Id.*

167. Rule 1.2 of the Colorado Rules of Professional Conduct states:

A lawyer may counsel a client regarding the validity, scope, and meaning of Colorado constitution article XVII, 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.

COLO. RULES OF PROF'L CONDUCT r. 1.2(d) cmt. 14 (West 2014).

168. See Green, *supra* note 88 (noting states, not a national body, regulate the conduct of attorneys who are admitted to the bar).

169. *Cf. id.* (observing individual state bodies regulate the conduct of attorneys licensed in their state).

earlier, the multistate practice of law is a growing reality.¹⁷⁰ It is entirely possible for a firm in Texas to have offices also in a state like Colorado, which permits the sale and distribution of marijuana.¹⁷¹ It is also possible for an attorney to be licensed to practice both in Texas and in Colorado.¹⁷² Attorneys who wish to practice in multiple states, or who represent clients in more than one state should be aware of the rules that govern multistate practice.¹⁷³

The Rules of Professional Conduct prohibit attorneys from providing services that are considered within the “practice of law” without authorization from that state.¹⁷⁴ Attorneys may not “practice law in a jurisdiction in violation of the regulation of the legal profession” of that state.¹⁷⁵ What exactly constitutes the practice of law in a particular jurisdiction is not very well defined; however, it is generally seen as those services which lawyers typically provide.¹⁷⁶ For a Texas attorney to practice in a state like Colorado, for example, he would need to pass the bar there or have the exam waived by the state courts.¹⁷⁷

An attorney can be punished in one jurisdiction for ethical violations committed in another jurisdiction.¹⁷⁸ This usually means that an attorney cannot escape punishment by merely leaving the state in which he has committed an ethical violation.¹⁷⁹ It is unclear whether an attorney could

170. See Rensberger, *supra* note 10, at 800–01 (acknowledging changes in the law have led to an increase in the number of attorneys who practice in more than one state).

171. See *id.* (observing an increase in the number of firms that practice in more than one state); Schneyer, *supra* note 10, at 4 (noting the increase in number of firms with offices in more than one state).

172. Cf. Rensberger, *supra* note 10, at 800–01 (indicating many attorneys today are practicing in more than one state).

173. See MODEL RULES OF PROF'L CONDUCT r. 5.5 cmt. 1 (AM. BAR ASS'N 2013) (explaining only attorneys who are admitted to the bar can practice in a particular jurisdiction); see also Rensberger, *supra* note 10, at 801 (advising, due to discrepancies in the law in different jurisdictions, attorneys who choose to practice in more than one jurisdiction must be aware of these differences).

174. MODEL RULES r. 5.5.

175. *Id.* r. 5.5(a).

176. See TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 5.05 cmt. 2, reprinted in TEX. GOV'T CODE ANN. tit. 2, subtit. G, app. A (West 2013) (TEX. STATE BAR R. art. X, § 9) (indicating often the definition of practice of law is “whatever lawyers do or are traditionally understood to do”); see also MODEL RULES r. 5.5 cmt. 2 (noting the definition of practice of law varies by jurisdiction).

177. *Application and Admission Requirements*, COLO. SUP. CT., <http://www.coloradosupremecourt.com/BLE/Forms/AboutApplicationandAdmission.pdf> (last visited May 12, 2016); see Green, *supra* note 88 (stating the traditional method by which an attorney is admitted to the bar includes taking the bar exam in that state, although there are exceptions to that general rule).

178. MODEL RULES r. 8.5.

179. See *id.* r. 8.5 cmt. 1 (noting the purpose of Rule 8.5 is to protect the citizens of a jurisdiction and providing for reciprocal punishments furthers this goal by ensuring that violators will be punished).

be subject to discipline for an act that violates the rules of professional conduct in one state but not in another.¹⁸⁰ The next section analyzes this issue and makes a proposal for how the Texas Professional Ethics Commission should treat attorneys who practice on behalf of medical or recreational marijuana dispensaries in states in which they are licensed.

IV. SHOULD TEXAS ATTORNEYS REFRAIN FROM REPRESENTING MARIJUANA DISPENSARIES?

As stated earlier, the Colorado Ethics Committee declared, in a comment to Rule 1.2(d), that practicing for medical and recreational marijuana businesses does not constitute a violation of its rules of professional conduct.¹⁸¹ This means attorneys who practice in Colorado should not abstain from practicing for marijuana dispensaries merely from fear of disciplinary proceedings.¹⁸² However, attorneys licensed to practice in more than one state are both subject to the disciplinary authority of all states where they are licensed to practice¹⁸³ and can face discipline in one state for their conduct in another jurisdiction.¹⁸⁴ This has profound ramifications for the Texas attorney who represents a Colorado marijuana business. While Colorado permits the sale of marijuana¹⁸⁵ and its ethics commission permits attorneys to assist marijuana companies,¹⁸⁶ the sale remains a crime under federal¹⁸⁷ and Texas law.¹⁸⁸ Every time a Texas attorney assists a marijuana dispensary in Colorado, or other state, they are assisting a violation of federal law.¹⁸⁹

180. *See id.* r. 8.5(b)(2) (providing the law of the jurisdiction where the lawyer's conduct occurred should govern in a choice of law dispute between states).

181. COLO. RULES OF PROF'L CONDUCT r. 1.2(d) cmt. 14 (West 2014).

182. *See id.* (exempting from the scope of "criminal fraudulent and prohibited transactions" a lawyer's counseling of a client inasmuch as the subject matter pertains to a medical marijuana business); Kamin & Wald, *supra* note 7, at 931 (stating how, for the sake of preserving the attorney-client relationship, criminal law should "defer to legal ethics and the disciplinary apparatus when it comes to the regulation of lawyers").

183. MODEL RULES r. 8.5(a).

184. *See id.* (providing anyone licensed to practice law in more than one state can be disciplined for their conduct in another state "regardless of where the lawyer's conduct occurs").

185. *See* COLO. CONST. art. XVIII, § 16, cl. 4 (detailing the lawful operation of marijuana related facilities).

186. COLO. RULES r. 1.2(d) cmt. 14.

187. *See* 21 U.S.C. § 841(a)(1) (2012) (stating it is a federal crime "to manufacture, distribute, or dispense, or possess" a controlled substance).

188. *See* Tex. HEALTH & SAFETY CODE ANN. § 481.070 (West 2013) ("[A] person may not administer or dispense a controlled substance . . .").

189. *See* Frezza, *supra* note 7, at 552 (indicating any attorney who assists a marijuana dispensary "aids a client in an activity that is expressly criminal under federal law").

Although Colorado declares such actions permissible, Texas does no such thing.¹⁹⁰ Can Texas attorneys who are also licensed in a legalized marijuana state represent these businesses, or would they potentially face disciplinary proceedings? The answer lies in choice of law provisions.¹⁹¹

Multistate practice of law necessarily implicates the crucial question of determining whose law applies in any given situation, and professional ethics are no different from other areas of the law.¹⁹² Rule 8.5(b)(2) of the Model Rules of Professional Conduct provides the ethical rules of the jurisdiction in which the conduct occurred should apply in any disciplinary proceedings.¹⁹³ This means, under the Model Rules, a Texas lawyer practicing in Colorado would be subject to the ethical rules of Colorado for services rendered in that state.¹⁹⁴ This would seem to indicate the multistate attorney should be able to represent a marijuana dispensary in the same manner as local lawyers.¹⁹⁵ However, this is merely a Model Rule, which while massively influential, has no binding effect on states that have drafted their own set of ethical rules.¹⁹⁶ Texas courts will use their own choice of law provision to determine which ethical rules apply.¹⁹⁷ In

190. Compare COLO. RULES r. 1.2(d) cmt. 14 (West 2014) (allowing legal representation of medical and recreational marijuana dispensaries), with TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 1.02(c), reprinted in TEX. GOV'T CODE ANN. tit. 2, subtit. G, app. A (West 2013) (TEX. STATE BAR R. art. X, § 9) (providing the rule by which an attorney is proscribed from assisting a client's criminal activity and failing to include, unlike Colorado, a comment related to the representation of marijuana dispensaries due to the unequivocal illegality of the drug in Texas).

191. See Rensberger, *supra* note 10, at 800–01 (noting each state has adopted its own rules of professional responsibilities, which creates a choice of law problem).

192. See *id.* (acknowledging multistate practice initiates a dilemma as to which state's ethical rules apply in any given transaction); see also Reynolds & Richman, *supra* note 104 (recognizing there are differences in each state's rules of ethics leading to choice of law problems). However, ethics issues rarely create a choice of law problem in practice because much of the conduct for which attorneys are punished are so bad they are violations of ethical principles everywhere. *Id.*

193. MODEL RULES PROF'L CONDUCT r. 8.5(b)(2) (AM. BAR ASS'N 2013).

194. See *id.* (providing, when ethical rules of different jurisdictions vary, the rules of the jurisdiction where the conduct occurred should apply to the multistate attorney).

195. See *id.* (holding out-of-state attorneys to the same ethical conduct as in-state attorneys); COLO. RULES r. 1.2(d) cmt. 14 (permitting attorneys in Colorado to practice for recreational marijuana businesses without fear of disciplinary action); see also Kamin & Wald, *supra* note 7, at 931 (stating attorneys should be free to represent marijuana clients in legalized or decriminalized states despite the illegality of the drug at the federal level). But see Frezza, *supra* note 7, at 552 (advocating lawyers should use caution when representing marijuana clients due to the illegal nature of the drug at the federal level).

196. *Model Rules of Professional Conduct*, *supra* note 106.

197. See TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 8.05 cmt. 4, reprinted in TEX. GOV'T CODE ANN. tit. 2, subtit. G, app. A (West 2013) (TEX. STATE BAR R. art. X, § 9) (providing, in Texas, courts apply the ethical rules of the state where the conduct occurred); *c.f.* Compaq Comput. Corp. v. Lapray, 135 S.W.3d 657, 672 (Tex. 2004) (acknowledging, before the court could resolve an interstate issue, it had to determine which law applied, requiring it to apply Texas choice of

deciding whether an attorney should be punished for representing a marijuana dispensary, one must look to the Texas choice of law provision in regards to that conduct.

Rule 8.05 of the Texas Disciplinary Rules of Professional Conduct allows for attorneys to be disciplined for their conduct in another jurisdiction.¹⁹⁸ This seems to indicate, notwithstanding the Colorado State Bar turning a blind eye to the violation of federal law committed by attorneys and their marijuana clients within its borders,¹⁹⁹ Texas might not do the same.²⁰⁰ This rule represents the principle of reciprocity, which provides for more equitable enforcement of ethical rules.²⁰¹ Attorneys could face discipline for any violation of the ethical rules in any jurisdiction in which they are licensed.²⁰² Rule 8.05 is primarily intended to ensure attorneys who commit wrongdoing cannot escape discipline by merely leaving the jurisdiction.²⁰³ But what about conduct that is permitted in the jurisdiction in which it occurs and is forbidden in another jurisdiction?²⁰⁴ Texas's ethics rules provide some assistance to solving this problem.²⁰⁵

Comment 3 to Rule 8.05 of the Texas Disciplinary Rules of Professional Conduct recognizes the rules of professional responsibility in different jurisdictions can impose different obligations on attorneys.²⁰⁶ The comment provides Texas will not discipline attorneys for unethical conduct committed in another state unless such conduct also violates Texas Rule 8.04.²⁰⁷ Rule 8.04 lists a variety of actions considered

law principles).

198. *See* TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 8.05(a) (declaring all attorneys licensed by the state of Texas are subject to disciplinary measures in the state).

199. *See* COLO. RULES r. 1.2(d) cmt. 14 (allowing attorneys to assist marijuana businesses in Colorado despite the federal illegality of the drug).

200. *See* TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 8.05(a) (stating Texas attorneys "may be disciplined [in Texas] for conduct occurring in another jurisdiction or resulting in . . . discipline in another jurisdiction, if it is professional misconduct under Rule 8.04").

201. *Cf.* MODEL RULES PROF'L CONDUCT r. 8.5 cmt. 1 (AM. BAR ASS'N 2013) (noting reciprocity promotes the purposes behind Rule 8.5 upon which Texas Rule 8.05 is based).

202. *See* TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 8.05(a) (providing Texas attorneys may answer to the Texas State Bar for conduct that occurs in another jurisdiction).

203. *See id.* R. 8.05 cmt. 2 (noting attorneys often engage in multijurisdictional practice and providing Texas attorneys who do so "remain subject to the governing authority of this state").

204. *See* Rensberger, *supra* note 10, at 800–01 (noting multistate practice of law requires a court to examine which law applies even in disciplinary proceedings).

205. *Cf.* TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 8.05 cmt. 3 (acknowledging multistate practice can impose differing obligations on attorneys and providing a solution to the issue).

206. *Id.*

207. *Id.*

misconduct in Texas, which include fraud, obstruction of justice, the improper influence of the judicial system, the commission of a serious crime, and knowingly violating or assisting another to violate the rules of ethics.²⁰⁸ Serious crimes, as defined by this rule are those that include moral turpitude, theft, or barratry.²⁰⁹

This may mean Texas will permit attorneys who are also licensed in Colorado to take on marijuana dispensaries as clients.²¹⁰ The violation of the Controlled Substances Act does not appear to be a felony involving moral turpitude,²¹¹ nor could this conduct be considered theft or barratry. A more difficult hurdle to overcome is Rule 8.04(a)(1), which provides that attorneys are guilty of misconduct if they violate, or assist another to violate, the Disciplinary Rules of Professional Conduct even if that breach arises out of the attorney–client relationship.²¹² Marijuana dispensaries violate federal law by selling marijuana to their customers.²¹³ Attorneys who represent marijuana clients assist them in violating federal law.²¹⁴

208. *See generally id.* R. 8.04 (listing actions lawyers are not allowed to commit).

209. *See id.* R. 8.04(b) (“[S]erious crime means barratry; any felony involving moral turpitude, any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.”).

210. *See id.* R. 8.05 cmt. 4 (deferring to the rules of professional conduct in other jurisdictions when the conduct of a Texas attorney occurred there); COLO. RULES OF PROF'L CONDUCT r. 1.2(d) cmt. 14 (West 2014) (permitting attorneys in Colorado to represent recreational marijuana businesses).

211. Moral turpitude is defined as crimes that “involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflect adversely on a lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.” *Duncan v. Bd. of Disciplinary Appeals*, 898 S.W.2d 759, 761 (Tex. 1995); *see also Moral Turpitude*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining moral turpitude as “[c]onduct that is contrary to justice, honesty, or morality”). Another court has further expounded on moral turpitude in the lawyer disciplinary context to include:

- 1) anything done knowingly contrary to justice, honesty, principle, or good morals.
- 2) an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men or to society in general.
- 3) something immoral in itself, regardless of whether it is punishable by law. The doing of the act itself, and not its prohibition by statute, fixes the moral turpitude.
- 4) immoral conduct is that conduct which is willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community.

Turton v. State Bar, 775 S.W.2d 712, 716 (Tex. App.—San Antonio 1989, writ denied) (citing *Muniz v. State*, 575 S.W.2d 408, 411 (Tex. Civ. App.—Corpus Christi 1978, writ ref'd n.r.e.)). It is unlikely assisting a client to sell marijuana would qualify as a crime involving any of these categories.

212. TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 8.04(a)(1).

213. *See* 21 U.S.C. § 841(a)(1) (2012) (prohibiting the creation, distribution, or possession of a controlled substance).

214. *See* TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 1.02(c) (proscribing attorneys from assisting their clients in committing a crime).

On its face, this remains a violation of the disciplinary rules²¹⁵ and indicates Texas could still punish an attorney for representing a marijuana dispensary, as such practice likely constitutes a violation of Rule 8.04.²¹⁶ While violations of the Controlled Substances Act may not be considered a “serious crime” under Rule 8.04,²¹⁷ violating the Act is still a serious violation of federal law.²¹⁸ Texas, like the federal government, has adopted a policy against the sale and distribution of marijuana²¹⁹ and could choose to impose sanctions on any of its attorneys who assist cannabusinesses.²²⁰

Texas attorneys should be permitted to represent recreational and medical marijuana businesses in states like Colorado (provided they are licensed there), so long as their services and advice take place while the attorney is physically present in that state. These businesses have been granted a color of legitimacy by the state in which they exist²²¹ and, as mentioned earlier, policy considerations weigh in favor of affording these businesses access to legal assistance.²²² Texas’s stated policy in Rule 8.05 is to permit lawyers to practice in other jurisdictions just as attorneys of that jurisdiction could,²²³ and states generally defer to the other state when rules like this differ and the conduct occurred in the other state.²²⁴ Comment 3 to Rule 8.05 represents Texas’s attempt to defer to the policy

215. *Id.*; Kamin & Wald, *supra* note 7, at 903.

216. *See id.* R. 8.04(a)(1) (declaring attorneys may not violate the rules of professional conduct or assist another to do so); *id.* R. 1.02(c), (proclaiming attorneys are forbidden to assist clients in knowing violations of the law).

217. *See id.* R. 8.04(b) (defining a serious crime as one that involves moral turpitude, theft, or barratry among others).

218. *See* Kamin & Wald, *supra* note 7, at 871 (acknowledging that selling marijuana, even in states that permit such actions, is “a serious violation of federal law”).

219. *See* 21 U.S.C. § 841(a)(1) (2012) (criminalizing the sale of Schedule One drugs, such as marijuana, throughout the United States); TEX. HEALTH & SAFETY CODE ANN. § 481.070 (West 2013) (prohibiting the sale of a Schedule One substance in Texas, which includes marijuana).

220. *See* TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 8.05(a) (declaring all attorneys licensed in Texas can be disciplined in Texas even if their conduct occurred in another state).

221. *See* COLO. CONST. art. XVIII, § 16, cl. 4 (allowing the sale and distribution of marijuana for recreational purposes within the state of Colorado); *see also* COLO. REV. STAT. ANN. § 12-43.4-201-405 (LexisNexis 2013) (regulating businesses which sell marijuana in the state of Colorado).

222. *See* Kamin, *supra* note 150, at 1117 (proposing policy considerations support the argument attorneys should be permitted to practice for marijuana businesses in states that have legalized the drug).

223. *See* TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 8.05 cmt. 3 (deciding Texas will not punish attorneys for conduct committed in another jurisdiction that complies with that state's ethical rules when that conduct violates Texas's rules).

224. *See* Reynolds & Richman, *supra* note 104 (indicating state courts often apply the law of the other jurisdiction out of deference to its superior interest in the cause of action or because the parties relied on the law of that forum).

decisions of other states, like Colorado, for actions that take place within their borders.²²⁵

Colorado permits the sale of marijuana,²²⁶ and it explicitly permits attorneys to assist companies in the sale of the drug.²²⁷ As long as the multistate attorney represents marijuana dispensaries that are in compliance with the laws of Colorado,²²⁸ and they only operate within Colorado,²²⁹ Texas should defer to the Colorado Rules of Professional Conduct with regards to the attorney's practice in that state.²³⁰ Texas attorneys who are licensed to practice in a legalized or decriminalized state should not fear disciplinary proceedings in Texas for the representation of their marijuana clients in those states.

V. CONCLUSION

Despite the recent legalization of recreational marijuana in several jurisdictions,²³¹ the drug remains a forbidden substance under federal law.²³² No one may legally sell or distribute the drug.²³³ Under the plain wording of Rule 1.2(d) of the Model Rules of Professional Conduct, any attorney who assists companies engaged in the distribution of marijuana is guilty of an ethical violation;²³⁴ however, there are strong policy

225. *See* TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 8.05 cmt. 3 (deferring to the ethical rules of another jurisdiction when a Texas attorney practices there, so long as the attorney's conduct does not consist of misconduct as defined by Rule 8.04).

226. *See* COLO. CONST. art. XVIII, § 16, cl. 4 (stating "manufacture, possession, or purchase of marijuana accessories or the sale of marijuana accessories to a person who is twenty-one years of age or older" is not unlawful).

227. *See* COLO. RULES OF PROF'L CONDUCT r. 1.2(d) cmt. 14 (West 2014) (detailing how attorneys may counsel a client regarding the scope, validity, and meaning of Colorado marijuana laws).

228. *See* COLO. CONST. art. XVIII, § 16, cl. 4 (permitting businesses to sell marijuana); *see also* COLO. REV. STAT. ANN. § 12-43.4-201-405 (West 2013) (regulating businesses that sell marijuana in Colorado).

229. *See* COLO. CONST. art. XVIII, § 16, cl. 4 (allowing the sale of marijuana only within the jurisdiction of Colorado).

230. *See* TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 8.05 cmt. 3 (advocating the ethical rules of the jurisdiction where the conduct took place should be applied unless the conduct constitutes misconduct under Rule 8.04); COLO. RULES r. 1.2(d) cmt. 14 (West 2014) (permitting attorneys practicing in Colorado to provide legal services to marijuana dispensaries).

231. *See* COLO. CONST. art. XVIII, § 16, cl. 3 (authorizing the possession of marijuana within Colorado); WASH. REV. CODE ANN. § 69.50.4013 (West 2014) (allowing Washington citizens over twenty-one to possess marijuana for recreational purposes); *see also* Sullum, *supra* note 75 (informing readers that Alaska, Oregon, and the District of Columbia all legalized recreational marijuana in the 2014 midterm elections).

232. 21 U.S.C. § 812(c)(10) (2012).

233. *Id.* § 841(a)(1).

234. *See* MODEL RULES OF PROF'L CONDUCT r. 1.2(d) (AM. BAR ASS'N 2013) (denying

considerations which indicate these attorneys should be permitted to assist these businesses.²³⁵ To deny marijuana clients access to attorneys would set the experiment these states purposely chose up for failure,²³⁶ and would create a needless legal quagmire.²³⁷ Federal officials have explicitly stated they will allow the states to continue their experimentation with legalization of marijuana,²³⁸ and no federal body regulates legal practice throughout the United States.²³⁹ As long as professional ethics are controlled at the state level, it is unlikely any attorney will face disciplinary action for representing a marijuana client.²⁴⁰ Colorado expressly states it does not punish attorneys practicing in the recently legalized industry,²⁴¹ and other states are likely to do the same.²⁴²

Uncertainty remains over whether a multistate attorney could, or would face disciplinary actions in other states that proscribe the sale of marijuana; however, similar arguments and deference to other states' policy decisions should protect multistate attorneys from ethical concerns. If a state, such as Colorado, has explicitly allowed lawyers to assist marijuana companies, these lawyers should not be prevented from doing so merely because they happen to also be licensed in another state in which they fear discipline. This uncertainty will remain as long as marijuana remains a Schedule One drug because, despite all the efforts of those states who have legalized the drug, it continues to be illegal. Only removing the drug from the federal

attorneys the ability to assist their clients in known violations of the law); Frezza, *supra* note 7, at 552 (opining that assisting medical marijuana dispensaries is a violation of the rules of professional conduct because the sale of marijuana is prohibited under federal law); *see also* Rothrock, *supra* note 132, at 1058 (declaring the plain language of Rule 1.2(d) prohibits attorneys to practice for marijuana dispensaries).

235. *See* Kamin, *supra* note 150, at 1117 (advocating, due to policy considerations, attorneys should be permitted to practice for marijuana dispensaries).

236. *Cf.* Kamin & Wald, *supra* note 7, at 870–71, 884–85 (proposing that pursuing federal policies against marijuana companies will make it next to impossible to continue operating).

237. *See* Kamin, *supra* note 150, at 1113–17 (identifying legal problems, such as unenforceable or poorly made contracts and difficulty navigating the regulatory bodies, created by denying marijuana businesses access to legal services).

238. *See* Abdullah, *supra* note 13 (indicating, although initially reluctant to permit the legalization of recreational marijuana, the Obama administration is taking a hands-off approach to marijuana in the legalized states).

239. *See* Green, *supra* note 88 (noting the states, not a federal body, regulate the practice of law within their jurisdictions).

240. *Cf.* Rothrock, *supra* note 132, at 1058 (admitting there is a dearth of examples of attorneys who have faced disciplinary proceedings due to representing recreational marijuana).

241. COLO. RULES OF PROF'L CONDUCT r. 1.2(d) cmt. 14 (West 2014).

242. *See* MODEL RULES PROF'L CONDUCT r. 8.5(b)(2) (AM. BAR ASS'N 2013) (declaring the ethical rules of the jurisdiction where the conduct occurred should take precedence over that of other states when the multijurisdictional practice of law is implicated).

schedule can completely eliminate the possibility of punishment, but no attorney to date has faced ethics proceedings related to his representation of recreational marijuana clients. Texas attorneys who are licensed in Colorado, or another state that has legalized recreational marijuana, should not fear discipline for their actions.