

Santa Barbara County Bar Association  
Bench Bar Conference 2019  
Judges Panel  
Bullet Points

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- **Federal v. State Laws:**

- Federal law classifies marijuana as a Schedule 1 drug under federal law (meaning it has no currently accepted medical use and a high potential for abuse)
- Possession, cultivation, or distribution of any amount of marijuana is a federal crime.
- Thirty-three states and the District of Columbia currently have passed laws broadly legalizing marijuana in some form
- The District of Columbia and 10 states -- Alaska, California, Colorado, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont and Washington -- have adopted the most expansive laws legalizing marijuana for recreational use
- California's revamp of laws re: possession and/or cultivation reduce what used to be felony conduct and permit prior convictions to be reduced/dismissed and records sealed.

- **Asset Forfeiture:**

- Asset forfeiture laws allow the federal government to seize assets (e.g., bank accounts, cash, vehicles, homes, or other buildings) that the government alleges are tied to the distribution or production of controlled substances (including cannabis)
- Asset forfeiture laws are used against cannabis businesses, leading to the nature of cash-only basis for much of the cannabis industry
- Leads to security concerns (robberies, violence), the need for extensive and expensive security systems, issues with paying taxes
- Federal government utilizes asset forfeiture to seize property that under state law would be legal; burden of proof is different than in criminal cases (beyond a reasonable doubt) and only a "preponderance of the evidence" is required

- **Bar Ethics Opinions:**

- San Francisco Bar Association Ethics Opinion (June 2015)
  - Summary: A California attorney may ethically represent a California client in respect to lawfully forming and operating a medical marijuana dispensary and related matters permissible under state law, even though the attorney may thereby aid and abet violations of federal law. However, the attorney should advise the client of potential liability under federal law and relevant adverse consequences and should be aware of the attorney's own risks. "We conclude that the lawyer may ethically represent the client, even if doing so might violate federal laws or the Rules of Professional Conduct."
- Los Angeles County Bar Association Ethics Opinion 527
  - SUMMARY: A member may advise and assist a client regarding compliance with California's marijuana laws provided that the member does not advise the client to violate federal law or assist the client in violating federal law in a manner that

would enable the client to evade arrest or prosecution for violation of the federal law. In advising and assisting a client to comply with California's marijuana laws, a member must limit the scope of the member's representation of the client to exclude any advice or assistance to violate federal law with impunity. In so doing, the member must advise the client regarding the violation of federal law and the potential penalties associated with a violation of federal law.

- CJEO 2017-010
  - Extra-Judicial Involvement in Marijuana Enterprises
    - “Is it ethical under the California Code of Judicial Ethics for a judicial officer to have an interest in an enterprise that involves the sale or manufacture of medical or recreational marijuana?”
    - Summary: An interest in an enterprise involving the sale or manufacture of marijuana that is in compliance with state and local law is still in violation of federal law pursuant to the Controlled Substances Act. (21 U.S.C. §§ 801-904.) A violation of federal law violates a judge's explicit obligation to comply with the law (Canon 2A) and is an activity that involves impropriety or the appearance of impropriety (Canon 2). Moreover, such extrajudicial conduct may cast doubt on a judge's capacity to act impartially. (Canon 4A(1).) Therefore, the committee advises that a judicial officer should not have an interest in an enterprise that involves the sale or manufacture medical or recreational marijuana.