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## Cannabis Law Is Changing, and Big Law Is Taking Over the Space

BY JUSTIN HENRY

*Of the Legal Staff*

Once a niche filled by criminal and regulatory boutiques, cannabis law in more recent years has seen entry by Big Law firms, whose practice area mix and geographic reach give them an advantage with clients who are lobbying for the continued expansion of their nascent industry in various jurisdictions.

Pennsylvania's medicinal cannabis industry boomed in the wake of Gov. Tom Wolf's move to legalize medical marijuana in 2016, followed by a permitting process for dispensaries, granting access for patients starting in 2018.

"Once the permit process started, then the big firms realized that there's going to be a bonanza here," Andrew Sacks, managing partner of Philadelphia-based litigation firm Sacks Weston Diamond, said.

Sacks said before ethics rules at state bar associations were reformed to allow



**SACKS**



**BOGOT**

attorneys to ethically engage in legal matters related to a federally prohibited substance, practicing cannabis law was like "always walking on eggshells," keeping many Big Law lawyers away.

"The rules said you can't advise a client to violate the law and medical marijuana or marijuana in and of itself is federally prohibited," Sacks said. But in October 2017, the state Supreme Court adopted a change to its Rules of Professional Conduct to allow lawyers to counsel a client regarding conduct expressly permitted by Pennsylvania law.

*Cannabis Law continues on 11*

The legal cannabis market in New York could create more than 30,000 jobs, according to a 2019 report from the SUNY Rockefeller Institute of Government. In 2020, a report by Arcview Market Research projected that the New York cannabis market will be worth more than \$1.6 billion by 2025.

Lawyers in the cannabis law space have noticed a movement toward larger firms for this work as well, and to more traditional practice areas.

"We've been predicting and we're starting to see consolidation within the industry, so of course, we're going to see more M&A activity and probably more financing as well," William Gay, a corporate and securities partner at Wilson Elser, said. "As [the cannabis industry] becomes more legitimate ... we're seeing the application of traditional legal concepts to it, whether it's in finance with securities disclosures or it's in banking or insurance."

Fox Rothschild launched its cannabis law practice in 2015 when it brought on lateral partner hire William Bogot as a partner in the firm's Chicago office. He used to focus the majority of his practice on gaming regulations before co-chairing the firm's cannabis law practice.

"As the clients have gotten bigger, I really find myself oftentimes acting as a traffic cop to try to find the right people for these more complicated issues to help companies that have gotten larger and more sophisticated," Bogot said, noting that cannabis legal work takes up 95% of his day-to-day client engagements.

Prior to starting the practice, Bogot said he surveyed Fox Rothschild's existing capabilities to take on client matters. As it turned out, he found the firm had real estate attorneys involved in zoning work for cannabis clients, intellectual property lawyers in Princeton, New Jersey, who were working on some state trademark issues and a Denver-based tax partner working with cannabis clients on the state's new tax code.

"We basically cobbled all those people together into the group to begin with and everyone's practice over the years just kept growing and growing and growing," Bogot said. "It was interesting to learn that we did have a cannabis practice; we just didn't necessarily know it."

At Troutman Pepper cannabis-related legal issues are handled by the relevant existing practice areas like tax law and securities law, rather than going to a distinct cannabis practice group.

The firm's offices in New York and New Jersey made it equipped to take on matters in both jurisdictions, said Jay Dubow, Philadelphia-based partner in the firm's securities investigations and enforcement practice. Dubow's work involves counseling cannabis industry clients on corporate and regulatory issues, he said.

"It's more opportunity to work with cannabis clients with business interests in those states," Dubow said, noting that "as the industry matures a bit ... you're probably going to see more litigation as well."

Sacks, of Sacks Weston Diamond, handled some of Pennsylvania's first cannabis-related legal matters and advocated for the state bar association to revise the ethics rules so lawyers can advise cannabis clients. But, he said, he's largely withdrawn from this area of law. Big Law firms like Fox Rothschild and Troutman Pepper now outcompete boutiques by offering a wider array of services on a broader geographic footprint.

"I don't fault them for that," Sacks said. "In the beginning, I was aggravated that we couldn't compete because we didn't have a contact in Colorado for a Colorado company that was worth \$50 million and Fox Rothschild did. They were all jumping in and they have the multi-divisional capabilities because they'll have zoning, they'll have real estate, they'll have employment so that they can advise the out-of-staters about the Pennsylvania

rules and the Pennsylvania crimes and issues."

"I'm happy that they're doing what they're doing, and I am happy that they're consolidating industry because we both know that within three years, something's going to happen on the federal level," Sacks added.

But for many leading law firms, federal illegality remains a barrier, restricting access to financing and insurance, cannabis law attorneys interviewed for this story said. And some others are pressured to stay out of the emerging area by important firm clients who object to them doing business with cannabis companies.

Gay added, many firms have clients in industries that historically "don't look kindly upon the cannabis industry," like gaming and alcohol.

Some attorneys think federal legality and removal from Schedule 1 status is all but inevitable in the coming years and the work could be at risk of drying up—or cannabis legal practices will dissolve into other business and health-oriented industry groups, noted Ian Stewart, Los Angeles-based co-chair of the national cannabis and hemp law practice at Wilson Elser. But he doesn't agree with that prediction.

"I think that if anything, there's going to be more work to do, because the industry is going to grow and it's going to actually become more chaotic in the short-term," he said.

Gay noted that the patchwork of state-level regulatory and tax rules will keep cannabis law practices alive and busy.

"There's going to be taxes, registration, licensing, and there will still be plenty of ways that you can run afoul of the law such as it exists in the future," Gay said. "And because a lot of large firms don't have a criminal law department ... we could co-counsel with those lawyers in their small firms or as solo practitioners."

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