

Cannabis Corner: DEA Commander Turned Pot Co. Advocate

By **Sam Reisman**

Law360 (November 13, 2019, 4:43 PM EST) -- Charles Feldmann has been involved in cannabis law longer than most people — albeit not always as an advocate for the industry.

“My background really came from a heavy law enforcement side,” he told Law360. “Having gone to law school through the Marine Corps, doing federal drug prosecution in the '90s in California, being a [Drug Enforcement Administration] task force commander and narcotics prosecutor, you just kind of had that significant heavy criminal-side perspective.”

But Feldmann, a founding partner of Denver firm Feldmann Nagel Cantafio PLLC, said that when Colorado initiated its “social experiment” in legalizing cannabis, he began to take another look at the then-nascent industry.



Charles Feldmann

“That was our law firm’s first entry into the space, just trying to guide and give strategy for some of our big, high-net-worth clients who were entering that,” he said. “Early on, the criminality of this marijuana experiment was on people’s minds, maybe even more so than it is today.”

Feldmann talked to Law360 about his evolving views on cannabis and the ways the legal needs of the industry have changed. This conversation has been edited for length and clarity.

Personally, when did you reach that inflection between thinking about cannabis as something illegal that needed to be prosecuted and something at least tentatively legal that needed to be defended and advised?

I've described it as an old Ronald Reagan quote. He used this Russian proverb: “Trust but verify.” And that’s how it was for me. I was very suspicious of the industry at the beginning. I was brought up on the war on drugs and all the history and maybe propaganda that went along with that. So I had a cautious personal approach to the industry. Having now been in it for the past 10 years, I can say, I’ve really been able to verify a lot of what we’re seeing around the country. That’s made a huge difference for me. To see some of the actual legitimate cures that [scientists have] come up with, to see this becoming a global commodity, has given me more confidence that it truly is legitimate.

As more lawyers enter the space, what has been your advice to attorneys that are less experienced dealing with cannabis?

Marijuana and hemp, it has a lot sex appeal. Usually, I caution attorneys getting into the space to just ensure you can actually provide good solid legal services. There’s so much of a rush to just get in and be a cannabis lawyer, but if you truly don’t understand the underlying fundamentals of the legal services you’re providing, you’re just not doing your clients any service. A lot of people are jumping in: Yesterday they were doing DUIs, and now they’re going to be a cannabis attorney.

What are those fundamentals lawyers need to have?

It's evolving. I'm seeing more focus these days on the international cannabis side. I see a lot more focus on very traditional business services: transactional work, corporate, a lot more companies now are in fundraising mode. And that raises a whole other layer: securities, specialization. Ten years ago, it was, "You need to understand our regulatory model." [It] has now morphed into companies going public, raising a hundred million dollars. That requires a whole level of higher sophistication.

What are the most pressing legal questions or unknowns in the space?

It's continually asked around the world: Where is U.S. policy? When will federal legalization happen in the U.S.? The rest of the world sees cannabis as a true agricultural commodity. They're off to the races trying to figure that out and build that supply chain. Versus in the States, we're still in the experimental stage. There's still a vibrant moral debate on it. And so for a legal practitioner, that can really become difficult to navigate between policy and traditional legal services. I really try to guide and instruct those who are entering the space to be able to distinguish that with your clients. If you're trying to change the world, that's great. There are people and consultants and lobbyists who can help you with that.

Even in the legal marketplace I see consolidation going on, just like it is for our clients, where the level of sophistication is growing and it's making solo practitioners difficult to be competent and relevant and marketable. Firms are coming together, practice groups are joining each other so they can expand that scope of services.

What can lawyers and law firms do to shield themselves from liability?

As every new state comes online, there's this weird void for ethics for attorneys. For a new state, until those ethics [rules] catch up in that state, there's that period [when] your state ethics may not allow you to work with a cannabis client, to give advice and guide a cannabis client because of that federal criminal illegality.

When our firm went through that process, we had our own ethics counsel advising and guiding us on every step of the way, almost on a monthly basis as that was evolving: what you're allowed to do as an attorney and more specifically what you're not allowed to do. I think for new attorneys in a new state that hasn't had cannabis before, it's a very evolving process that you need to pay attention to. Just because some state legislature has passed some form of medical marijuana does not completely open the door ethically to you as a legal practitioner.

Are you seeing actual enforcement actions against lawyers in this space?

No, I couldn't point you to one. There are numerous instances of close to disciplinary action on the marketing side: attorneys who got too aggressive and too far ahead of their state bar associations, and were actively marketing. There has been some pushback from that.

What I have been seeing is more malpractice cases being brought against attorneys in the cannabis space. So not necessarily a direct ethical bar, but cannabis attorneys who were holding themselves out as having a greater expertise than they really have. You're starting to see some malpractice come up after deals have gone bad, transactions, partnership breakups. It's easy to chase an attorney's malpractice insurance policy, and now we're starting to see some movement, much like there was a huge movement against doctors and medical malpractice. I think you're starting to see some of this now in the cannabis space.

What are the major legal needs for cannabis companies and how have they changed in the 10 years you've been in this field?

The scale has grown over the last decade, so clients that were mom-and-pop operations at the very beginning of Colorado's experiment now are multistate operators and what we could call geo-operators, operating internationally. You're seeing brands and IP, some very sophisticated deals, travel and scale and commoditize, you're seeing international IPOs, the movement of capital and some really sophisticated M&A work, that at the very beginning, 10 years ago, was not existent. There was not money entering the space like there is now, and that just brings a whole other layer of legal services and complexity.

What's the future for the legal industry as it intersects with the cannabis industry?

I think it's still a great new industry. I think there's lots of opportunities. Some people are quick to say if you're not in the industry, you're too late. I adamantly disagree with that. I think it's just getting started. There's so much room nationally and internationally to participate. My advice to attorneys looking at the space is figure out what your core competency and that skill set is and how you can deliver those services to clients in need. It's going to be needed for the long-term future.

If we're really looking out there, I do see the big consolidation in the marketplace. I think what you'll see for legal services is much what you'll see for the actual cannabis industry. There will be some of the big massive players: the Walgreens, the Walmarts and Coors and Big Pharma. But you'll also see a lot of microbrews, still a lot of small distilleries and shops like that. It'll be the same for lawyers and clients. I think the future is wide open. There is more to come than less.

--Editing by Aaron Pelc.