



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

## Pot Attys Org. Enters ABA Debate On Money Laundering Rules

By **Sam Reisman**

Law360 (February 16, 2022, 9:20 PM EST) -- The International Cannabis Bar Association has warned the American Bar Association against adopting a proposed change to the organization's ethical guidelines regarding lawyers' responsibilities to combat money laundering, saying it could ensnare attorneys who advise marijuana ventures.

The proposed changes would broadly extend lawyers' due diligence obligations to be more proactive in verifying the legality of clients' activities and could require them to withdraw representation if they become aware of unlawful money laundering.

But if adopted, the language could have a broad impact on cannabis attorneys, according to a Tuesday comment letter drafted by Christopher Davis, INCBA's executive director; INCBA Chairperson Jessica McElfresh; and Joslin Monahan, a member of the association's ethics committee.

"We fear that the unintended consequences of the proposed comments will force states that have implemented adult-use and medical cannabis regulatory regimes to decline to adopt this guidance, as it discourages or denies legal services to those in the state-legal adult and medical cannabis industry," INCBA's comment said.

INCBA submitted its comments in response to a Dec. 15 ABA memorandum asking stakeholders for feedback on prospective changes to comments on the ABA's Model Rules of Professional Conduct.

According to INCBA's comment, the ABA's language does not take into account emergent industries that exist in a legal gray area — such as cryptocurrencies and nonfungible tokens, or NFTs — and does not acknowledge the conflict between federal and state cannabis laws.

"The proposed language prohibits lawyers from representing cannabis-industry market participants — and could even create barriers for attorneys who represent state and local governments that license operators, or that accept fees or tax payments from those operators," the INCBA comment said.

The ABA draft language **had been created** with an eye toward enhancing lawyers' due diligence in combating money laundering, spurred in part by revelations from the 2016 Panama Papers leak, as well as work by the Paris-based Financial Action Task Force, of which the U.S. is a charter member.

But INCBA said anti-money laundering policies and compliance with the Bank Secrecy Act were already incorporated into most state-legal cannabis regulatory regimes.

"The promulgation of language that does not address the conflict between federal and state law and deprives cannabis industry market participants of legal counsel runs contrary to the stated goals herein of having the legal profession support [Bank Secrecy Act] and [anti-money laundering] compliance," INCBA said.

The association warned that adoption of the proposed language would force state bars to either reject it or accept it in whole or with caveats. Any outcome would make it difficult for attorneys to take on cannabis clients and would further exacerbate differences between states' ethical standards with respect to cannabis law, the INCBA comment said.

The memo concluded, "We urge these Committees to adopt a proposal that is narrowly tailored to achieve the laudable goals of BSA and AML compliance, without prohibiting lawyers from helping the very clients that need our services the most.

--Additional reporting by Andrew Strickler. Editing by Andrew Cohen.