

## Joint wills and pot trusts: Marijuana and the estate planner

by Gerry W. Beyer\* and Brooke Dacus\*\*

With the legalization of medical or recreational marijuana in almost half of the states, practitioners need to be aware of the interface between marijuana and estate planning. This *Study* provides a discussion of the major issues that arise in this context, including:

- Impact of marijuana use on capacity
- Interpretation of clauses conditioning benefits on the non-use of illegal drugs
- Life insurance issues
- Marijuana-based assets in a decedent's estate

Twenty-three states and the District of Columbia currently exempt qualified users of medicinal marijuana from penalties imposed under state law.<sup>1</sup> Additionally, Alaska, Colorado, Oregon, Washington, and the District of Columbia legalize, regulate, and tax small amounts of marijuana for non-medicinal (“recreational”) uses by individuals over the age of 21. Regardless, the federal Controlled Substances Act continues to prohibit the cultivation, distribution, and possession of marijuana other than to conduct federally approved research. Thus, the current legal status of marijuana is contradictory and in a state of flux. As a matter of federal law, marijuana-related activities are prohibited and punishable by criminal penalties, but at the state level, certain marijuana use is permitted. Consequently, estate planners in the marijuana-friendly jurisdictions must be cognizant of the special issues that they face.

### IMPACT ON TESTAMENTARY CAPACITY

*Game show host: “And here’s your first question, Bob: What is your name? You have sixty seconds.”*

*Bob: “Uhhh . . . I knew it when I came in here.”<sup>2</sup>*

### The Problem

Opinions on the impact of marijuana on a person’s mental state and consequently his or her testamentary capacity vary greatly. On the one hand, we have had dire warnings such as:

Its first effect is sudden, violent, uncontrollable laughter; then come dangerous hallucinations—space expands—time slows down, almost stands still—fixed ideas come next, conjuring up monstrous extravagances—followed by emotion-

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al disturbances, the total inability to direct thoughts, the loss of all power to resist physical emotions leading finally to acts of shocking violence ending often in incurable insanity.<sup>3</sup>

On the other hand, another segment of society, including President Barack Obama, views the impact of marijuana on an individual's capacity to be the same as or less than the reasonable consumption of beer, wine, or liquor.<sup>4</sup>

Marijuana today is much different from what it was 40 years ago. The average amount of tetrahydrocannabinol (THC), marijuana's active ingredient, in seized marijuana samples is an overwhelming 15.1% compared to levels in 1983, which averaged 3.9%.<sup>5</sup> This denotes a more than tripling in marijuana potency.

Recent research indicates that cannabis users who begin smoking the drug at an early age show a significant decline in IQ.<sup>6</sup> Memory, the ability to think quickly, and other cognitive functions worsen over time with marijuana use in all ages. Not only does marijuana threaten to impair cognitive functioning, but evidence of the drug's physical harm is also accumulating rapidly.<sup>7</sup>

Whether a will can be invalidated for lacking the requisite testamentary capacity because the testator used marijuana is a question courts have yet to address. Despite nonexistent direct precedent, parallel cases address the creation of a will while the testator was under the influence of intoxicants or mind-altering substances.<sup>8</sup>

When determining whether a decedent had the capacity to make a will, the court places weight on the mindset and knowledge of the testator at the time of the will's execution. Courts strongly favor the notion that habitual drug use does little to impair capacity. However, the effects of long-term past exposure to an intoxicant, such as marijuana, alcohol, or other drugs and medications, can be an important factor when assessing capacity.<sup>9</sup>

When determining the capacity of the testator, the crucial time frame is the moment when the testator executed the will. If the testator used intoxicants on the day of the will's execution, the validity of the will may come into question. *In re Coles' Estate* illustrates a scenario where a testatrix was injected with pain-reducing narcotics two hours before signing her will.<sup>10</sup> The court found that

her decision to give 95% of her estate to a church that she had joined only recently was made without testamentary capacity.

Another question concerns whether testamentary capacity was affected by the testator's long-term use of intoxicants, days, months, or years prior to will execution. Many courts generally hold that unless the long-term effects of intoxicants so permanently damage the mind that it is not capable of producing the judgment that the law requires, then testamentary capacity will be deemed to exist. In *McGrail v. Schmitt*, the court stated: "[A] person is incompetent to make a will where due to the excessive use of intoxicating liquor his mind is so impaired and enfeebled as to produce unsoundness of mind sufficient to degree to affect testamentary capacity."<sup>11</sup> Similarly, *In re Underhill* involved a decedent who was addicted to morphine and cocaine.<sup>12</sup> The decedent used these drugs up to the day that he executed the will and thereafter. Although the decedent experienced hallucinations, the hallucinations failed to manifest on the date of the will's execution. The court found that the hallucinations and illusions were the product of a diseased mind created by the excessive use of cocaine, and, consequently, testamentary capacity did not exist.

## Recommendations

Estate planning professionals must be cognizant of a client's marijuana use when evaluating a client's testamentary capacity. Because courts often look to when the will was executed in relation to when the testator was impaired, it is important that the attorney ascertain the last time that the client used marijuana. If used within the past few months, the attorney should document that the client understood what a will does (that is, dispose of property at death), appreciated what property the client owned, and knew the client's family members. If possible, the attorney should not have the client execute the will until at least one week has elapsed since the client last used marijuana.

## PROVISIONS CONDITIONING BENEFITS ON NON-USE OF "ILLEGAL" DRUGS

*I was gonna go to class before I got high*

*I coulda cheated and I coulda passed but I got high*

*I am taking it next semester and I know why*

*'Cause I got high<sup>13</sup>*

Conditional trusts are hardly a new phenomenon. For decades, parents have sought to influence the behavior of their children through financial rewards. An incentive trust imposes conditions that encourage positive behavior. Incentive trusts can be used to promote a sober, family-oriented lifestyle and discourage substance abuse. Settlers may also require drug testing or counseling as a condition of receiving trust income.

### **The Key Issues**

Assume that a testator or settlor includes a provision that in some way limits or restricts distributions to the beneficiary if the beneficiary uses “illegal drugs.” How is the clause to be interpreted or applied?

The first issue is to determine when to ascertain whether marijuana is an illegal drug. Here are some possible interpretations:

- The law when the testator or settlor wrote the will or trust.
- The law when the testator or settlor dies.
- The law when the beneficiary first accepted trust benefits.
- The law as it exists now.

The second issue to determine is whether illegality is based on state law or federal law. If state law is to be applied, is legality based on medical or recreational use in the states where both types of uses are authorized? If federal law is used, then marijuana use would always be illegal and, thus, disqualify the beneficiary from receiving benefits.

If state law is applied, a third issue arises, that is, which state’s law is applicable? For example, would the court apply the state law:

- Where the testator/settlor lived when the will/trust was written?
- Where the testator/settlor lived when he or she died?
- Where the beneficiary lived when he or she first accepted benefits?
- Where the beneficiary currently lives?

Marijuana use may become an issue even if there is no applicable will or trust provision. A U.S. Representative from California, Linda Sanchez, believes that children who want to inherit from their parents should have to submit to drug testing, even if their parent’s will or trust does not contain such a condition.<sup>14</sup> She thinks it is unfair that a single parent who wants governmental assistance to purchase food needs to be drug tested, but a child who may inherit \$1 million or more does not need to be drug tested.

### **Analogous Cases**

Although there are no will or trust cases directly on point, courts are beginning to grapple with situations where companies deny employee benefits for legal marijuana use. In *Coats v. Dish Network*, a quadriplegic licensed to use marijuana was pitted against his employer.<sup>15</sup> Here, the Colorado Supreme Court held that the state’s “lawful activities statute,” which bars employers from firing employees for engaging in lawful activities off the job, applied only to activities lawful under both Colorado and federal law. Because marijuana is illegal under federal law, its use is unlawful and can, therefore, be a lawful basis for termination.

### **Recommendation**

Applied in the context of estate planning, a testator or settlor may deny a beneficiary benefits for reasons mirroring the standard policies of a company, or for federal law preemption of state marijuana laws. Whether a beneficiary can inherit in spite of marijuana use will largely boil down to the intent of the settlor. Thus, a person who includes a provision regarding drug use should specifically address each of the issues discussed above.

### **LIFE INSURANCE**

Life insurance is a key retirement planning tool that may be used to protect a loved one’s savings for his or her family upon death or to reduce financial liability for inheritance and estate taxes for one’s beneficiaries. With states adopting widely divergent approaches, insurance companies still are trying to determine how to treat marijuana use for life insurance purposes.

## **Insurability**

Because marijuana has yet to be scientifically proven to treat illness, many life insurance companies are hesitant in providing full coverage to a marijuana user.<sup>16</sup> While some life insurance carriers may treat marijuana smokers as traditional cigarette or cigar smokers and merely impose higher premiums, other carriers may refuse coverage for marijuana users altogether.

There is no simple guideline as to how life insurance companies classify marijuana users. Different companies employ different standards, with some being more lenient than others. How an insurance company rates an individual typically depends on the frequency of marijuana use.<sup>17</sup> According to underwriters, as with tobacco, the less an insured smokes, the better the insured's health classification will be and the lower the premiums.

### **Rates – Recreational User**

Smoking marijuana regularly is likely to disqualify insureds from receiving preferred non-smoker rates. What matters more than anything else is the degree of usage. As is the case with all health concerns associated with applying for life insurance, a company will examine the risks surrounding each applicant. Thus, if an applicant is a good overall health risk, the effect of marijuana usage will have less impact. Each insurer has distinct guidelines and underwriting rules; therefore, each company views marijuana usage differently.

### **Rates – Medical User**

If an applicant's medical records and application for coverage indicate marijuana usage with a prescription, some insurance companies classify the applicant as a non-smoker, and no penalty is applied. Other insurance companies treat medical marijuana users as smokers, thereby increasing rates two to four times more than for non-smokers.

While medicinal users could obtain life insurance penalty free, insurers may deny coverage for any pre-existing conditions. Consequently, medical marijuana is a double-edged sword. The substance treats debilitating conditions; yet, if a condition is not serious enough to necessitate a prescription, an individual likely will pay smoker's insurance rates.

But if the condition is serious, and a prescription is warranted, the medical condition itself may be the cause of rate increases or uninsurability.

### **Failure to Disclose**

It is imperative that clients forego the urge to lie to their insurance companies regarding their marijuana use. Failure to disclose marijuana use on a life insurance application is fraud, and a small lie may lead to outright rejection by all insurance carriers. If a life insurance company discovers that an insured has misrepresented his or her marijuana use, that person will be reported to the Medical Information Bureau (MIB). Moreover, if the insured dies within the contestability period (typically, two years), and the company discovers marijuana use, the company may deny payment to the insured's beneficiaries. Note that health privacy laws protect users who disclose, so the company cannot report marijuana use to the authorities.

### **Fraudulent Statements**

With marijuana laws changing the legal landscape, lines become blurred in determining whether marijuana is an "illicit" drug. In *West Coast Life Ins. Co. v. Hoar*, the court looked at an insured's fraudulent statements in the context of hazardous hobbies.<sup>18</sup> In this Tenth Circuit case, the court analyzed the facts using Colorado law to see if the deceased policyholder's statements were material misrepresentations. To determine if an applicant made a false statement, a court "must look beyond the applicant's mere knowledge she engaged in the activity which was allegedly required to be disclosed in the open-ended insurance question," which means the standard that a court must use is a reasonable person standard. This standard is "whether a reasonable person, with the applicant's physical or mental characteristics, under all the circumstances, would understand that the question calls for disclosure of specific information."<sup>19</sup>

In *Hoar* the insured answered a question about hazardous hobbies in the negative, despite the fact that he participated in heli-skiing. The court asked if a reasonable person in the insured's position would know if heli-skiing would constitute a hazardous activity and held that a reasonable person would have reported their heli-skiing activi-

ties to the insurance company. The court further explained that the applicant's belief that heli-skiing was a non-hazardous activity was contradicted by the applicant's knowledge of the significant risks, specialized training, waivers that he signed, and specialized equipment used in heli-skiing. Thus, the court found that the applicant made a false statement as a matter of law.

When determining whether an applicant answered reasonably when disclosing marijuana use, this standard could guide both courts and insurance companies. This would require a determination as to what a reasonable person should expect when reading questions pertaining to drug use and then applying that standard to the facts of a particular case. While decisions would vary between states, the federal illegality of marijuana likely would lead courts to hold that a reasonable person would disclose his or her marijuana use.

### ***Material Misrepresentation and Insurer Reliance***

The second step to a court's analysis is a subjective one. The insurance company must show that knowledge of the misrepresented facts would have caused the insurer to forego issuing the same policy at a similar premium. This means that for a misrepresentation to matter depends heavily on the underwriting procedures of the insurance company. A court would need to ask what effect, if any, the answer to the illegal-drug question would have on the applicant. The materiality is not limited to the disclosure of any specific fact; it covers any information that might have flowed from the disclosure of the fact. This requirement would depend heavily on the facts of the case, but as long as the insurer can establish material reliance then there is a possibility of avoiding paying the insurance policy.

If the company entered into an insurance contract with the individual and later learned of the insured's use of marijuana in a state where such use is legal, then the insurance company may have the option to rescind the policy or deny coverage.

### ***Policy Considerations***

Aside from insurance law, existing cases might inform a court when deliberating on whether coverage should be provided to an applicant who failed to disclose marijuana use. In several cases involving deaths caused by the use of Schedule I sub-

stances, courts have opined that paying insurance proceeds to the beneficiaries of individuals who died as a result of using Schedule I drugs would be against public policy.<sup>20</sup>

## **ESTATES CONTAINING MARIJUANA-BASED ASSETS**

How should an attorney handle a client who owns marijuana-based assets—ranging from a full-fledged growing or dispensary business to a small stash—and wants to control where this property goes upon death? The conflicting policies regarding marijuana exemplify the confusion associated with the states' ability to pursue policies that deviate from those advanced by the federal government. Broad legalization efforts stand in stark contrast to federal law, which makes the cultivation, distribution, or possession of any amount of marijuana, a criminal offense.<sup>21</sup> Given the federal government's ability to enforce its own prohibition, it cannot be said that states legalizing marijuana create a true right to grow, sell, or use the substance. The extent to which federal authorities will seek to prosecute individuals owning marijuana-based assets remains uncertain. Yet, either in addition to, or in lieu of bringing criminal prosecutions, the U.S. Department of Justice may choose to rely on the civil forfeiture provisions of the Controlled Substances Act to disrupt the operation of marijuana dispensaries and production facilities. Thus, it becomes pertinent that estate planning professionals understand the consequences that their clients face before preparing estate planning documents dealing with marijuana-based assets.

### **Bequeathing Marijuana-Based Assets**

Whether a lawyer may ethically assist a client in drafting a will or trust concerning illegal assets is an issue of great concern for estate planners in states that have legalized medical or recreational marijuana. Although no state has yet directly addressed the marijuana-estate planning interface, several states have dealt with the general attorney-marijuana situation by taking widely varying approaches. For example, an Arizona ethics opinion states that it is permissible for a lawyer to assist clients wishing to start businesses or engage in other actions permit-

ted under the Arizona Medical Marijuana Act.<sup>22</sup> However, a Connecticut ethics opinion explains that, although a lawyer may advise and represent a client as to state requirements for licensing and regulation of marijuana businesses, the attorney must inform the client that such businesses violate federal criminal statutes and that the lawyer may not assist the client in criminal conduct.<sup>23</sup> Illinois recently amended its professional responsibility rules to state that “[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 . . . counsel or assist a client in conduct expressly permitted by Illinois law that may violate or conflict with federal or other law, as long as the lawyer advises the client about that federal or other law and its potential consequences.”<sup>24</sup>

Accordingly, attorneys actually have little direction when confronted with estate planning issues relating to marijuana-related assets. By analogy, cases that concern the bequeathing of items legal in the decedent’s estate and illegal in the hands of the beneficiary may be instructive, such as the inheritance of a gun by a registered felon. For example, in *United States v. Davis*, Davis was convicted of possession of a non-registered firearm and possession of a firearm by a felon.<sup>25</sup> Davis received the firearm from his father’s estate and kept it in his closet, where officers subsequently discovered the weapon. The Seventh Circuit held that possession of the weapon in his residence and under his control violated the law. His admittance that the gun was an inheritance only bolstered evidence that the weapon was in his possession.

### **Administering Marijuana-Based Assets**

Another potential problem is the exposure to civil and criminal liability of the client’s fiduciaries, such as the executor or administrator of an estate, property management agent, or trustee if the person’s property includes marijuana-based assets. The client may find it difficult to saddle a family member, friend, or professional fiduciary with this property. A cautious fiduciary may decline to serve because there is no clear answer as to fiduciary liability.

An analogous bankruptcy case is instructive. In *In re Arenas* a Colorado marijuana farmer and

his wife filed for bankruptcy.<sup>26</sup> They petitioned to convert the case from one under Chapter 7 to one under Chapter 13. The court denied the motion explaining:

In this case, the debtors are unfortunately caught between pursuing a business that the people of Colorado have declared to be legal and beneficial, but which the laws of the United States—laws that every United States Judge swears to uphold—proscribe and subject to criminal sanction. For this reason, neither a Chapter 7 nor Chapter 13 trustee can administer the most valuable assets in this estate. Without those assets or the marijuana-based income stream, the debtors cannot fund a plan without breaking the law, and are therefore ineligible for relief under Chapter 13. . . . Administering the debtors’ Chapter 7 estate would require the Trustee to either violate federal law by possessing and selling the marijuana assets or abandon them. If he or she did the former, the Trustee would be at risk of prosecution; if he or she did the latter, the creditors would receive nothing while the debtors would retain all of their assets and receive a discharge as well.<sup>27</sup>

### **ESTATE TAX ISSUES**

Although an item may be illegal to own, a “market” nevertheless may exist in which to measure the value of that property. For example, in *Estate of Sonnabend* estate appraisers valued an iconic Rauschenberg artwork with an attached rare stuffed bald eagle at zero because it would be illegal to sell.<sup>28</sup> The IRS and the Art Advisory Council took a different view of the painting, valuing the piece at \$65 million, thereby demanding a \$29.2 million estate tax payment. Although no legal market for this artwork existed, there may be an “extralegal avenue,” taking into consideration the true intrinsic value of the art compared to its stunning quality. While Rauschenbergs are a rarity, estate tax issues surround items that seemingly have no legal market, including marijuana-based assets. Despite marijuana’s illegality on the federal level, the IRS may seek to establish ownership and value for purposes of taxation. Thus, the IRS might require the asset to be valued even though that asset is illegal.

Because marijuana-based assets must be includ-

ed in the gross estate, a value also must be assigned to them. Internal Revenue Code § 2031(a) provides that the value of the gross estate is determined by including the value at the time of death of all property wherever situated. Section 2031(b) provides that the value of every item of property includible in the decedent's gross estate is the fair market value at the time of the decedent's death.

In determining the value of illicit drugs held by a taxpayer, the IRS is entitled to use any reasonable means to establish the grade of the drugs held by the decedent at his death and the market in which the drugs would have been sold. In *Caffery v. Commissioner* the taxpayer was engaged in the importation and distribution of marijuana. In reconstructing the taxpayer's income earned from his drug activities, the IRS computed the unreported income based on the "street value" of the marijuana.<sup>29</sup>

## CONCLUSION

Legalized medical and recreational marijuana is having widespread impact on society and the area of estate planning is no exception. Evidence exists that clients even consider marijuana laws in selecting the state in which to retire.<sup>30</sup> Prudent attorneys, especially those living in states where marijuana is legal, must start inquiring about the client's marijuana use and marijuana-based assets.<sup>31</sup> If the client is a user, be it as a patient or a stoner, such use must be evaluated when determining the client's capacity to execute a will and other estate planning documents. In addition, the use may impact the client's ability to obtain life insurance and the premiums paid for coverage. If the client has a marijuana business, the ability of the client to transfer that business to the desired beneficiaries may be hindered. Even if the client is neither a marijuana user nor a business owner, the client may wish to limit the marijuana use of beneficiaries. Only by careful inquiry and planning, may the client's intent be carried out to the maximum amount allowed under current law.

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## FOOTNOTES

1 Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington.

2 CHEECH & CHONG, *Let's Make a Dope Deal*, on BIG BAMBU (Ode Records/Warner Bros. Records/WEA 1972).

3 REEFER MADNESS (Motion Pictures Ventures 1936); see also MARIHUANA (Roadshow Attractions 1936) ("Marihuana gives the user false courage, and destroys conscience, thereby making crime alluring . . .").

4 Jen Christensen & Jacque Wilson, *Is marijuana as safe as—or safer than—alcohol?*, CNN (Jan. 20, 2014) (quoting President Obama as stating, "As has been well-documented, I smoked pot as a kid, and I view it as a bad habit and a vice, not very different from the cigarettes that I smoked as a young person up through a big chunk of my adult life . . . I don't think it is more dangerous than alcohol.").

5 See generally MAHMOUD EL-SOHLI, NAT'L INSTITUTE ON DRUG ABUSE, QUARTERLY REPORT POTENCY MONITORING PROJECT REPORT 104, at 26 (2009).

6 Fran Lowry, *Cannabis Use in Teens Linked to Irreparable Drop in IQ*, MEDSCAPE MULTISPECIALTY (Apr. 26, 2013).

7 See generally *Highlights of the 2011 Drug Abuse Warning Network Findings on Drug-Related Emergency Department Visits*, DAWN REPORT 2 (2013).

8 See *In re Estate of Byrd*, 749 So. 2d 1214 (Miss. Ct. App. 1999) (concerning the use of antipsychotic drugs); see also *In re Estate of Coles*, 205 So.2d 554 (Fla. Dist. Ct. App. 1968) (concerning a pain-reducing narcotic); *McGrail v. Schmitt*, 357 S.W.2d 111 (Mo. 1962) (concerning excessive use of alcohol); *Naylor v. McRuer*, 154 S.W. 772 (1913) (concerning the use of morphine and other narcotics).

9 D.E. Buckner, Annotation, *Testamentary Capacity As Affected By Use of Intoxicating Liquor or Drugs*, 9 A.L.R.3d 15 (1966).

10 *In re Estate of Coles*, 205 So. 2d 554, 555 (Fla. Dist. Ct. App. 1968). See also *In re Estate of Byrd*, 749 So. 2d at 1217–18 (ruling that the testator lacked capacity when heavily sedated with an anti-psychotic drug on the date of execution).

11 357 S.W.2d 111, 119 (Mo. 1962) (citing *Naylor v. McRuer*, 154 S.W. 772, 784 (Mo. 1913)) (finding that mental unsoundness such as an enfeebled mind will constitute testamentary incapacity and may be produced by excessive use of intoxicating liquor).

12 *In re Will of Underhill*, 10 Ohio Dec. Reprint 487, 488 (1889).

13 AFROMAN, *BECAUSE I GOT HIGH* (Columbia T-Bones 2001).

14 See Rachel Stoltzfoos, *Dem Suggests Kids Should Be Drug-Tested Before They Can Inherit From Their Parents*, DAILY CALLER (Mar. 18, 2015).

15 Coats v. Dish Network, LLC, 303 P.3d 147 (Colo. App. 2013).

16 See Barbara Marquand, *When the Smoke Clears, Will Your life Insurance Quotes Be High?*, INSURE (Feb. 23, 2012).

17 Adam Cecil, *Getting high on insurance: how marijuana impacts life insurance rates*, POLICYGENIUS (Mar. 23, 2015). Additional issues may arise if the user does not smoke the marijuana but instead bakes it into brownies, cookies, or other edibles.

18 See West Coast Life Ins. Co. v. Hoar, 558 F.3d 1151, 1154 (10th Cir. 2009).

19 *Id.*

20 See generally State Farm Fire and Cas. Co. v. Baer, 745 F. Supp. 595 (N.D. California 1990) (holding that both statute and public policy were against contracts having a violation of law as their object and precluded coverage); State Farm Fire and Cas. Co. v. Schwich, 749 N.W.2d 108 (Minn. Ct. App. 2008) (holding the insurer had no duty to pay insured because of Schedule I drug use).

21 21 U.S.C.A. §§ 841(a), 844(a) (2010).

22 Ariz. Comm. On Prof'l Ethics, Formal Op. 11-01

(2011).

23 Conn. Comm. on Prof'l Ethics, Informal Op. 2013-02 (2013).

24 ILL. SUP. CT. R. PROF'L CONDUCT, R. 1.2(d)(3) (2016).

25 United States v. Davis, 15 F.3d 1393, 1397 (7th Cir. 1994).

26 535 B.R. 845 (2015).

27 *Id.* at 854; see also Vivian Cheng, Comment, *Medical Marijuana Dispensaries in Chapter 11 Bankruptcy*, 30 EMORY BANKR. DEV. J. 105 (2013).

28 Patricia Cohen, *Art's Sale Value? Zero. The Tax Bill? \$29 Million.*, N.Y. TIMES (July 22, 2012).

29 Caffery v. Comm'r, 60 T.C.M. (CCH) 807 (1990).

30 Chris Taylor, *Seniors Are Seeking Out States Where Marijuana is Legal*, MONEY (July 22, 2015).

31 At least one law school already is teaching a course on marijuana law. See Lorelei Laird, *Law school offers a marijuana law class*, A.B.A. J. (May 1, 2015) (reporting that a course entitled *Representing the Marijuana Client* is being offered at the University of Denver Sturm College of Law).

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