Don’t Bogart That Joint, My Friend

(do we have your attention?)

Monday, April 11, 2016
Our Guests

• Thomas J. Ragonetti
  – Otten Johnson Robinson Neff + Ragonetti
    • Denver

• J. Marcus Painter
  – Holland & Hart
    • Boulder
And Your Co-Hosts

• Prof. Daniel R. Mandelker, FAICP
  – Washington University School of Law

• Dwight Merriam, FAICP
  – Robinson & Cole LLP
The Two Biggest Questions

• What CAN local governments do to regulate marijuana?
• What SHOULD local governments do to regulate marijuana?
What CAN Local Governments Do to Regulate Marijuana?

- Impact of federal prohibition?
- What does state law say?
What Is the Risk of Federal Intervention with Real Property?

• Preemption v. preclusion

• Examples
  – CSA applies to use
  – Seizure and liens stripped
What Is on the Horizon?

- President Trump or...?
- U.S. Attorneys
- The Cole memo

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General
Washington, D.C. 20530

August 29, 2013
What SHOULD Local Governments Do to Regulate Marijuana?

• To address impacts
• Examples
  – Marijuana businesses
  – Personal use
“No Smoking” Restrictions and Other Issues?

- A protected class?
- Use on federal property
- Mixed use developments
- Risk of seizure
- Water
- Electricity
- Pesticides
What Are the Employment Issues?

• “Zero Tolerance” rules
• Recent Colorado decision
  – *Coats v. Dish Network*

Brandon Coats works on his computer at his home in Denver in December 2012.
*Ed Andrieski/AP*
Ethical Issues for Lawyers and Planners?

- Violation of federal law
- Examples
  - Marijuana businesses
  - Personal use
    - No new RPC 8.4(b)
    - But see CBA Formal Ethics Opinion 124
RULE 8.6. COUNSELING CLIENTS CONCERNING MARIJUANA

NOTWITHSTANDING ANY OTHER PROVISION OF THESE RULES, A LAWYER SHALL NOT BE IN VIOLATION OF THESE RULES OR SUBJECT TO DISCIPLINE FOR COUNSELING OR ASSISTING A CLIENT TO ENGAGE IN CONDUCT THAT, BY VIRTUE OF (1) ARTICLE XVIII, MISCELLANEOUS, SECTION 14, MEDICAL USE OF MARIJUANA FOR PERSONS SUFFERING FROM DEBILITATING MEDICAL CONDITIONS, OR (2) ARTICLE XVIII, MISCELLANEOUS, SECTION 16, PERSONAL USE AND REGULATION OF MARIJUANA, THE LAWYER REASONABLY BELIEVES TO BE EITHER PERMITTED OR WITHIN AN AFFIRMATIVE DEFENSE TO PROSECUTION UNDER STATE CRIMINAL LAW, AND WHICH THE LAWYER REASONABLY BELIEVES IS IN COMPLIANCE WITH LEGISLATION OR REGULATIONS IMPLEMENTING SUCH PROVISIONS, SOLELY BECAUSE THAT SAME CONDUCT, STANDING ALONE, MAY VIOLATE FEDERAL CRIMINAL LAW.
The Colorado Supreme Court adopted a new comment to Colo. RPC 1.2. On March 24, 2014.

**New Comment [14] to Colo. RPC 1.2 provides:**

[14] A lawyer may counsel a client regarding the validity, scope, and meaning of Colorado constitution article XVIII, secs. 14 & 16, and may assist a client in conduct that the lawyer reasonably believes is permitted by these constitutional provisions and the statutes, regulations, orders, and other state or local provisions implementing them. In these circumstances, the lawyer shall also advise the client regarding related federal law and policy.