



Lowenstein Sandler's Regulatory Compliance & Dispute Resolution podcast: Regulatory Matters

Episode 8

It's Not Easy Being Green: How To Comply with the Latest Cannabis Regulations

By [Rachel Maimin](#) and [Peter Slocum](#)

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- Rachel Maimin:** Hello and welcome to Regulatory Matters, a podcast devoted to covering the ever-changing regulatory landscape affecting business today. I'm today's host, Rachel Maimin, here with my partner and today's guest, Peter Slocum. Good morning, Peter. How are you?
- Peter Slocum:** Excellent. And yourself, Rachel?
- Rachel Maimin:** Good. We are here to talk about cannabis regulation, as Peter is one of the premier cannabis lawyers in the state of New Jersey. One of the most interesting things about the fact that this is one of your areas of expertise right now, Peter, is your government background. So why don't you give our listeners a little bit of a primer on what you did before you came to Lowenstein?
- Peter Slocum:** Sure. So one of the reasons I'm team cannabis now is because of my history working for the state of New Jersey. So I spent about five or six years down in Trenton under the Chris Christie administration, starting as a deputy attorney general, then counsel to the governor, then assistant attorney general, first assistant attorney general, a number of titles in the middle, counsel to the AG. But the bottom line is that you spend a long time learning how the state of New Jersey ticks and where the pressure points are and how to reach around and get things done, all in the up and up, of course.
- Peter Slocum:** And when you have those sorts of connections, when large, sophisticated clients need help now that you're on the private side, they wind up calling you. And so this is how I wound up getting into the cannabis space. I never envisioned that I'd be doing it, but you get your first phone call from somebody saying, "I need to navigate a complicated issue in Trenton involving cannabis. Can you help?" The answer is yes. And then before you know it, you represent half of the businesses in one way or another, which we have done. At certain point in time, our firm represented half of all the existing original ATCs in New Jersey.

- Rachel Maimin:** So your main focus is in New Jersey state law and complying with it?
- Peter Slocum:** Yes.
- Rachel Maimin:** So what are the main legal regulatory issues you deal with that you help your clients with?
- Peter Slocum:** Sure. So for existing clients that need to navigate all matter of complicated regulatory compliance issues with respect to new applications, getting their satellites open, converting from medical to recreational, converting from not-for-profit to for-profit, there's an awful lot of issues to tackle with respect to those. They don't really use our firm for some of the minor compliance things. For example, how big does my cage need to be, where to put the security cameras. They can handle that. But for the complicated stuff, you need the big guns, and so we help out there.
- Peter Slocum:** Also represent a great deal of companies that have litigation challenges, whether it be with lenders or with other business partners involved in the cannabis space, helping them navigate those. Additionally, clients that have, well, they want to get into this space. So either they're a large existing MSO from another state that want to get into New Jersey, or they're an existing business in alcohol or food service or whatever industry and they want to branch over to the cannabis space fresh. We help them navigate the regulations and get their applications in.
- Rachel Maimin:** What is, generally speaking, the state of cannabis regulation in New Jersey? Is it done town by town or city by city, or is recreational marijuana legal everywhere? What's the state of play?
- Peter Slocum:** Sure. So medical marijuana is legal across the state, of course, and there are a variety of medical dispensaries. The recreational side came into effect with a law called CREAMMA. And under that statute, municipalities had the authority to decide whether to ban recreational in a municipality on a town-by-town basis. And they had limited period of time to make up their minds. And so a lot of towns did decide to ban it really because they had a small window and they weren't quite ready to make the leap yet. But a great many municipalities have recognized the opportunity and they have embraced it and they have their own regulations to supplement the state regs. So this is largely a state-regulated industry, but the municipalities are allowed to have supplemental regs that don't contradict the state regulations.
- Rachel Maimin:** So that's a lot of regulatory levels that you have to deal with, more than usual for when in the white-collar space.
- Peter Slocum:** Yes.
- Rachel Maimin:** Do you often have to deal with conflicting regulations?
- Peter Slocum:** Yeah. So municipalities, they're smart in their own right. They're trying to do what's good for them and what's best for the public in their view, but a lot of times they might get the law wrong from my perspective. And so you get some conflicts. You know, state regulation says X. Municipality says Y. Can't

be both. And so you need to convince the municipality that they're not actually as correct as they think they are.

Rachel Maimin: So is your job not just in court, but also out of court in terms of talking to these local municipalities and essentially trying to convince them to change their policy?

Peter Slocum: Of course. And you also team up with lobbyists for a lot of issues to make sure you have the right skill sets and the right man and woman power to get the job done for the particular client.

Rachel Maimin: I mean, obviously, you're not a lobbyist. You're not doing lobbying work but...

Peter Slocum: God, no.

Rachel Maimin: ... that type of work, do you enjoy it, because you obviously spent a lot of time in court as well?

Peter Slocum: No. So I'm a litigator by trade, but I have gotten to know the regulatory space sort of a secondary matter. And I do enjoy the regulations. And as far as navigating the politics, I'm happy to lend the advice that is necessary to sort of run herd a little bit, but actually call up the politicians. But as you said, I'm not a lobbyist.

Rachel Maimin: Yeah. How do you answer the question, which I assume you get sometimes from clients, about navigating the fact that marijuana is illegal under federal law, but legal in New Jersey?

Peter Slocum: Sure. So the Rules of Professional Conduct in New Jersey have a special provision that say that when you take on a cannabis client, you're supposed to advise them that this is in fact an illegal substance and I'm not advising you how to break the law, I'm advising you to comply with the state law. And so most clients who retain our services, they get this. They understand completely that at any moment the federal government could change its mind and bring down the hammer. And they're fine with that because they're comfortable enough in the business that they don't think it's going to happen.

Peter Slocum: So our focus is largely on how to comply with state regulatory requirements. Now, as part of that, there are federal overlays that I need to be familiar with so that I can help the clients navigate them, particularly around banking issues and how to structure transactions such that you can get the money from point A to point B. You can have a lease with a landlord who might have a federally insured mortgage and they don't want to rent directly to a cannabis company, so you have an intermediary company in the middle, which is entirely above board, and the state regulator knows about it and accepts it. So there are ways to navigate all of those issues.

Rachel Maimin: Is that the most challenging part about dealing in cannabis regulation as a lawyer, or what is the most challenging part?

Peter Slocum: So I think the most challenging part is not so much navigating the feds, but really staying atop of the state regulations and navigating that piece because New Jersey has been learning as it goes with the state. There's a lot of tremendously talented folks down in Trenton who are doing a wonderful job, but it is a bit of learn-on-the-job training. And so these regulations, when it first came out in medical in New Jersey, the state didn't know where to put cannabis, like where do you put that in the state structure?

Peter Slocum: So they put it within the Department of Health and the Department of Health had people who were saying, "Why am I dealing with how to grow plants? That's really not what I do." And when they had to do investigations, they did know how to do those. So they did background checks with the state police and the Division of Gaming Enforcement. And so there was a lot of MOUs and sort of learning how to regulate this industry as you go.

Peter Slocum: And then over the years, there's a lot of practices that they have done that now trying to codify with the former regulations. And so if you know the space, you know the people, you recognize that the government takes position X on this issue, and you need to remember, well, where exactly have they said that? Is it in the medical regs? Is in the recreational regs? Because sometimes they now take the recreational regs and they apply them to medical-only companies. So you just need to navigate that piece in terms of working with a regulator that is doing a great job, but is still, is getting its sea legs.

Rachel Maimin: Do you ever talk to regulators about potential changes in regulations?

Peter Slocum: So when they post their regulatory proposals, anybody can comment on them. It's called a notice of proposal. And then there's usually 60 to 90 days for the public to submit comments. I have not even had the occasion to speak directly with them, but that is the avenue how you submit your formal comments. And there are tons of people who do comment. You can see the notice of adoptions that come thereafter and they get hundreds, if not thousands of interested people commenting on the regulations from all manner of things, from how you do a probity review to whether greenhouses are acceptable, THC contents, the whole nine yards.

Rachel Maimin: What's a probity review?

Peter Slocum: So that's basically the background check. If you want to be a significantly involved person in any of these companies, the regulator needs to be satisfied that you are on the up and up. So it's not just a criminal background check, but it's also filling up personal history disclosure forms saying this is where I've lived for the past 10 years, these are my bank accounts, these are my tax returns, to make sure that you are someone who they will accept in a highly regulated industry.

Rachel Maimin: Is it more complicated to deal with companies in the recreational area than in the medical area, or is it about the same thing?

Peter Slocum: In some respects, it's a little bit easier in the recreational space because, as I mentioned, the regulator's learning as they go. And so the medical regs were

written pretty bare bones for the Department of Health. And they've since been transferred over to the new regulatory body called the Cannabis Regulatory Commission, which is part of the Treasury. And the regulations are pretty streamlined. The recreational space, because they're learning, they produced a whole new body of regulations just for recreational. And it's actually multiple times longer, has a lot more detail. So it's more to read, but you get answers more readily because there's a clear place to look to get your answer.

Rachel Maimin: What's been the most important, surprising thing to you about working in this space?

Peter Slocum: So I think it's the perception of who the client is and what it is they do. A lot of people think cannabis, these are a bunch of hippies growing it in dirt in their basement or in their backyard. And that is decidedly not the case. These are sophisticated businesspeople who have state-of-the-art technologies. Had the pleasure of touring multiple facilities and it's really mind boggling because I'm not a horticultural guy, but to see what they're able to do on a conveyor belt in an enclosed warehouse. They don't have dirt. It's a biosecure facility. And it's basically you get from seed to the blooming plants on conveyor belts, all automated. It's really fascinating. And so it's a huge industry with sophisticated businesspeople who are doing cutting-edge technology work. And that's just getting the plant.

Peter Slocum: And then when you talk about extractions of taking the flower and taking out the oil and adjusting, and this is where I get above my pay grade because they don't need my help on the science. I just know that they do, and it's fascinating. You get PhDs with multimillion-dollar equipment extracting concentrates out of the flower. It's really fascinating stuff. So that is a very interesting aspect of this, and the people have some learning to do.

Peter Slocum: I have a story from a client who they were in a particular municipality, municipality accepted them for medical. They banned them for rec because they didn't understand the business. But as soon as the powers that be in the town got a tour and realized how sophisticated and cutting edge this is, they realized you guys aren't hippies in a basement, you are a legitimate horticultural business. They changed their law, and now they're able to go recreational.

Rachel Maimin: Well, I'd really like to ask you about how you grow plants without dirt, but I am not an expert either. So I probably wouldn't understand the response.

Peter Slocum: It's called rockwool.

Rachel Maimin: I want to thank you very much for being with us today and sharing with us some of your experiences and expertise in the cannabis world and cannabis regulation.

Peter Slocum: My pleasure. My pleasure. Thanks so much for having me.

Rachel Maimin: Thank you, Peter.

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