

Agenda

Supreme Court's Advisory Committee on the Rules of Professional Conduct

November 3, 2014
5:00 to 7:00 p.m.

Law and Justice Center
645 South 200 East
Board Room

Welcome and approval of minutes: May 19, 2014 meeting	Tab 1	Steve Johnson
Comments to the Model Rules	Tab 2	Steve Johnson
Next meeting		Steve Johnson

Tab 1

SUMMARY OF MINUTES OF SEPTEMBER 15, 2014 MINUTES OF THE RULES OF PROFESSIONAL CONDUCT COMMITTEE

Note: The minutes of the September 15, 2014, meeting were destroyed in a catastrophic computer failure. This constitutes a summary of minutes as recollected by the secretary and as gathered from other contemporaneous notes at the time.

Ms Van Frank moves to approve minutes with one change: page 3, changing Mr to Ms, so they now read, "Ms Frank moves". A member seconded the motion, and it carried.

It was decided to put the approved minutes and agendas on the Bar website.

The discussion then moved to Changes to the Advertising Rules. It was noted that the Supreme Court considered advertising rules at end of a July meeting on rules. Several suggestions were discussed in that meeting.

The committee then discussed particular text changes. All of the amendments to the rules discussed in this summary accompany these minutes as Appendix 1 to these minutes. The manner of approval of these amendments follows.

A motion was made to add the word "achieve" after "can" in the first of the rules to be considered. The motion carried.

Attention then turned to Comment 4a. A motion was made to take out reference to (d), and this carried. Thus, Rule 7.1 (d) has now become (c).

Next there was a discussion of the term "Advertisement." The question arose of whether a conversation could be false or misleading. Ms Van Frank moved that the committee remove the definition of "advertisement" (lines 2-4). This motion carried.

Mr. Walker then made comments about what is "public."

[minutes truncate at this point. Please refer to Appendix A for the results of the committee's actions]

APPENDIX A

From Tab 2 of the 9/15 Meeting:
Advertising Rules

Here are the Advertising Rules sections that the justices found to be problematic:

Rule 7.1

- Rule 7.1(b): They would add the word "achieve" after "expectation about the results the lawyer can..." **APPROVED.**
- Rule 7.1(c): Justice Lee asked, "What about puffing?" I have in my notes that we may want to be more specific here, but that that could be problematic, too. **MOVE TO TAKE (C) OUT. PASSES WITH 1 OPPOSED.**
- (From Tim's notes) Rule 7.1(d): substitute "which" with "that": **APPROVED.**
- (From Tim's notes) Rule 7.1, Comment [4a]: Definition of "false or misleading": private vs. public context, puffing exception. **RESOLVED BY TAKING (C) OUT, ALSO MODIFIED TO TAKE (D) OUT OF SENTENCE.**

Rule 7.2

- Rule 7.2: They suggested that the definition of "advertisement" may be overly broad. They suggested reconsidering the breadth of the definition and to give thought to whether private statements could be considered to be "advertisements." A distinction may need to be drawn between broadcasting and personal communications. **TAKE OUT THIS SENTENCE: MOTION PASSED.**
- Comment 5 to Rule 7.2, line 67: They said that rule 1.5(e) only applies to attorneys. They asked, does the committee want non-lawyer client referrals to continue? Justice Lee and other justices said they assume that the committee doesn't want to foreclose this business model by completely keeping out all non-lawyers (who are not subject to rule 1.5(e)) from offering referrals, so it will need to be re-worded. **MODIFIED: SEE COPY**
- Comment 6 to Rule 7.2, lines 78-80: The justices understood that this section addressed the concern about attorneys potentially profiting from the referral process and getting, essentially, double fees. They suggested changing "a" to "the" where it reads, "or who is employed by a legal referral service...." **OK: CHANGED, AND ALSO IN NEXT LINE. (ALSO CHANGED: SUPPOSED TO BE LAWYER REFERRAL SERVICE, NOT LEGAL REFERRAL SERVICE)**

The justices requested that the advertising rules come back to them in an amended version rather than a petition.

Model Rules

With respect to the Model Rules, the justices had just a couple of edits, and these do not need to go back before the Supreme Court:

GARY SACKETT:

Rule 1.0

- Line 123: change “has” to “have.”: **OK PASSED**
- **Comment [10]**, “definitions” should be plural. **PASSED**

Rule 1.6

- Rule 1.6(b)(7): add “To the limited extent necessary to resolve conflicts of interest,” and take out “to detect and resolve conflicts of interest.” **OK LEFT AS IS. THIS WAS NOT GRAMMATICALLY CORRECT AND REST OF SENTENCE ANSWERED THIS CONCERN.**
 - **Steve: we determined *not* to include the “to the limited extent necessary” language because of the limiting language already found in the first part of 1.6(b), in the “but only if” language of (b)(7), and in Rule 1.6(c). Also, the guidance in Comment [13] and Comment [14] helps lawyers to understand the limited disclosures allowed.**
- Rule 1.6(b)(2): Justice Durham had a concern with the language “and in furtherance of which the client has used or is using the lawyer’s services” but no one else seemed to share her concern. This can probably be left as is. **OK LEFT AS IS.**

Rule 1.17

- Rule 1.17, comment [2], line 33: change “Judiciary” to “judicial.” : **OK PASSED**

GARY SACKETT:

Rule 8.5:

- Line 30: change back to “that”: **OK PASSED.**

Tab 2



Nancy Sylvester <nancyjs@utcourts.gov>

Public Comments to Rules of Professional Conduct

Alison Adams-Perlac <alisonap@utcourts.gov>

Wed, Oct 15, 2014 at 8:53 AM

To: Nancy Sylvester <nancyjs@utcourts.gov>

Nancy,

The comment period for rules 1.0, 1.1, 1.4, 1.6, 1.17, 1.18, 4.04, 5.03, 5.05, and 8.05 of the Rules of Professional Conduct has now closed. The proposals received the following comments:

The Utah State Bar (Bar) objects to the proposed amendments to the Utah Rules of Professional Conduct ("URPC") Rule 5.5(d) because subsections (d)(1) and (d)(2) would allow attorneys admitted in another jurisdiction to set up "an office or other systematic and continuous presence" in Utah and provide legal services either to an employer or to practice federal law with no other restrictions. In contrast to proposed URPC Rule 5.5(d)(1), house counsel attorneys are required to be licensed in Utah, and the federal practice exception referred to in (d)(2) is much narrower than the language implies.

The Proposed URPC Rule 5.5(d)(1) effectively nullifies Rule 14-719 of the Rules Governing Admission to the Utah State Bar ("RGA") which requires attorneys practicing as house counsel to have a Utah license. While Comment 17 to URPC Rule 5.5 advises house counsel attorneys that they "may be subject to registration or other requirements," the comments to the URPC are only advisory. Many attorneys do not read the comments and will not recognize that they need to be licensed to practice as house counsel in Utah. See RGA Rule 14-719(d) (stating that attorneys practicing as house counsel who do not file a timely application are engaging in the unauthorized practice of law). As written, proposed URPC Rule 5.5(d) and Comment 17 are inadequate to put attorneys working as house counsel on notice of Utah's licensing requirements.

Utah is not unique in its position that out-of-state lawyers who establish an office and/or systematic presence in Utah as house counsel should be reasonably regulated. Currently, 36 U.S. jurisdictions have house counsel licensing requirements similar to Utah's. RGA Rule 14-719 requires attorneys serving as house counsel to file an application, prove that they are in good standing in another jurisdiction, and agree to be bound by Utah rules governing attorney conduct and discipline before being admitted. However, to ensure flexibility in hiring, a number of requirements normally imposed on attorney applicants are absent from RGA Rule 14-719. For example, house counsel attorneys are not required to take the bar examination and are not required to have a J.D. from an ABA-approved law school. In addition, under the safe-harbor provision, non-Utah attorneys are allowed to work in Utah as house counsel while their application is pending, provided that they file an application within six months of accepting employment. See Rule 14-719(d)(2). Thus, under RGA Rule 14-719, Utah businesses are free to hire the house counsel of choice while the Bar retains the tools needed to ensure that lawyers working in the state are ethical and subject to Bar discipline.

Similarly, proposed URPC Rule 5.5(d)(2) also implies that non-Utah attorneys may practice federal law here without a license. To the contrary, the United States District Court for the District of Utah requires Utah residents to be active members of the Utah Bar and temporary admission is only granted to resident attorneys not licensed in Utah who are able to affirm in their motion for pro hac vice admission that they either have taken the Utah bar examination and are awaiting the results or are scheduled to take the next bar examination. See DUCivR 83-1.1(d)(2). The only other exception provided under the District Court's practice rule is for attorneys

employed by the federal government who are allowed to work in Utah for up to 12 months before they are required to have a license here. Id. at (e). In addition, the Bar is aware of specialized federal courts, such as immigration courts or courts handling social security disability requests that permit attorneys who are not licensed in Utah to represent clients. However, other than these limited exceptions, the Bar is not aware of any federal law that permits a resident, non-Utah attorney to practice federal law without having a Utah license. Furthermore, Comment 18, the comment to URPC Rule 5.5(d)(2), does nothing to clarify the licensing requirements for attorneys practicing federal law in Utah.

Subsection (d) serves no functional purpose as Rule 14-719 addresses house counsel licensing and existing federal court rules already identify the instances where out-of-state attorneys are permitted to practice federal law in Utah; therefore, the most effective way to eliminate confusion about Utah's licensing requirements is simply to remove subsection (d) from URPC Rule 5.5, and the associated comments. Alternatively, if the Court prefers to retain subsection (d), the Bar offers the following revision.

Rule 5.5 Unauthorized Practice of law, Multijurisdictional Practice of Law.

. . . .

(d) A lawyer admitted in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction may only provide legal services through an office or other systematic and continuous presence in this jurisdiction without first obtaining a license if:

(d)(1) the services are provided to the lawyer's employer or its organizational affiliates while the lawyer has a pending house counsel application and are not services for which the forum requires pro hac vice admission; or
 (d)(2) the services provided are authorized by specific federal law or other law or rule of this jurisdiction.

Comment

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer is subject to Utah admission and licensing requirements, including assessments for annual licensing fees and client protection funds and mandatory continuing legal education. See Rule 14-718 of the Supreme Court Rules of Professional Practice, Licensing of Foreign Legal Consultants, and 14-719 of the Supreme Court Rules of Professional Practice, Qualifications for Admission of House Counsel Applicants.

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by a specific federal law or court rule. See, e.g., Rule DUCivR 83-1.1, Rules of Practice of the United States District Court of the District of Utah, or Rule 14-804 of the Supreme Court Rules of Professional Practice, Special Admission Exception for Military Lawyers.

. . . .

Posted by Joni Seko, Utah State Bar Deputy General Counsel for Admissions, Elizabeth Wright, Utah State Bar General Counsel, Utah State Bar Admissions Committee October 9, 2014 10:09 AM

The Bar is opposed to the amendments to Rule 5.5(d) because it nullifies our current Rule 14-719 that requires house counsel attorneys register with the Bar. The proposed amendment allows non-Utah attorneys to practice in Utah "through an office or other systematic and continuous presence." The Bar and the Admissions Committee intend to submit comments voicing our objections to the proposed amendments. Since the amendments have already gone out for comment, this seems like our only option for voicing our concerns unless you have any other suggestions?

Elizabeth Wright, submitted by email, September 11, 2014

Can you post the amendments to RPC as they will actually read? Telling me that they will conform to ABA Model Rules is not helpful.

Posted by Neil Crist August 27, 2014 09:52 AM

This comment applies generally, but specifically to roc 05.05. It is a really bad idea to adopt a rule that is less than a page long that takes more than 3 pages to explain. This is so turgid and oblique that it can be interpreted many different ways. Why not just go the whole way and say, 'anything we don't like you will be punished for.' Since the rule itself is not specific, and the comments are not binding, that is what this amounts to.

Posted by Timothy Miguel Willardson August 27, 2014 08:15 AM

Please let me know when these rules are final so that I can publish them.

Thank you,

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Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(b)(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(b)(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(c)(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(c)(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(c)(3) are in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(c)(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(d)(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(d)(2) are services that the lawyer is authorized to provide by federal law or other law or rule of this jurisdiction.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer's assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. The "practice of law" in Utah is defined in ~~Chapter 13A, Rule 1-0~~ Rule 14-802(b)(1),

38 Authorization to Practice Law, of the Supreme Court Rules of Professional Practice. This Rule does not
39 prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so
40 long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

41 [3] A lawyer may provide professional advice and instruction to nonlawyers whose employment
42 requires knowledge of the law; for example, claims adjusters, employees of financial or commercial
43 institutions, social workers, accountants and persons employed in government agencies. Lawyers also
44 may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a
45 jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who
46 wish to proceed pro se.

47 [4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in
48 this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other systematic and
49 continuous presence in this jurisdiction for the practice of law. Presence may be systematic and
50 continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public
51 or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a)
52 and 7.5(b).

53 [5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction,
54 and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a
55 temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the
56 interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The
57 fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the
58 exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or
59 other systematic and continuous presence in this jurisdiction without being admitted to practice generally
60 here.

61 [6] There is no single test to determine whether a lawyer's services are provided on a "temporary
62 basis" in this jurisdiction and may therefore be permissible under paragraph (c). Services may be
63 "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an
64 extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or
65 litigation.

66 [7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States
67 jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United
68 States. The word "admitted" in ~~paragraph~~ paragraphs (c) and (d) contemplates that the lawyer is
69 authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while
70 technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

71 [8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer
72 admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For
73 this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively
74 participate in and share responsibility for the representation of the client.

75 [9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a
76 tribunal or an administrative agency to appear before the tribunal or agency. This authority may be
77 granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the
78 tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears
79 before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this
80 jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro
81 hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to
82 obtain that authority.

83 [10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary
84 basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or
85 hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably
86 expects to be admitted pro hac vice. Examples of such conduct include meetings with the client,
87 interviews of potential witnesses and the review of documents. Similarly, a lawyer admitted only in
88 another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending
89 litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear,
90 including taking depositions in this jurisdiction.

91 [11] When a lawyer has been or reasonably expects to be admitted to appear before a court or
92 administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that
93 lawyer in the matter, but who do not expect to appear before the court or administrative agency. For
94 example, subordinate lawyers may conduct research, review documents and attend meetings with
95 witnesses in support of the lawyer responsible for the litigation.

96 [12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform
97 services on a temporary basis in this jurisdiction if those services are in or reasonably related to a
98 pending or potential arbitration, mediation or other alternative dispute resolution proceeding in this or
99 another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a
100 jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro
101 hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so
102 require.

103 [13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services
104 on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice
105 in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3).

106 [14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the
107 lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a
108 relationship. The lawyer's client may have been previously represented by the lawyer or may be resident
109 in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although
110 involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases,
111 significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of

112 the matter may involve the law of that jurisdiction. The necessary relationship might arise when the
113 client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a
114 multinational corporation survey potential business sites and seek the services of their lawyer in
115 assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized
116 expertise developed through the regular practice of law on behalf of clients in matters involving a
117 particular body of federal, nationally-uniform, foreign or international law.

118 [15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in
119 another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction,
120 may establish an office or other systematic and continuous presence in this jurisdiction for the practice of
121 law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and
122 (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or
123 other systematic or continuous presence in this jurisdiction must become admitted to practice law
124 generally in this jurisdiction.

125 [16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the
126 client or its organizational affiliates, i.e., entities that control, are controlled by or are under common
127 control with the employer. This paragraph does not authorize the provision of personal legal services to
128 the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government
129 lawyers and others who are employed to render legal services to the employer. The lawyer's ability to
130 represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the
131 interests of the employer and does not create an unreasonable risk to the client and others because the
132 employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

133 [17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for
134 the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other
135 requirements, including assessments for client protection funds and mandatory continuing legal
136 education. [See Rule 14-718 of the Supreme Court Rules of Professional Practice, Licensing of Foreign](#)
137 [Legal Consultants, and 14-719 of the Supreme Court Rules of Professional Practice, Qualifications for](#)
138 [Admission of House Counsel Applicants.](#)

139 [18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the
140 lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule,
141 executive regulation or judicial precedent. [See, e.g., Rule 14-804 of the Supreme Court Rules of](#)
142 [Professional Practice, Special Admission Exception for Military Lawyers.](#)

143 [19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is
144 subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

145 [20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c)
146 or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For
147 example, that may be required when the representation occurs primarily in this jurisdiction and requires
148 knowledge of the law of this jurisdiction. See Rule 1.4(b).

149 | [21] Paragraphs (c) and (d) do not authorize communications advertising legal services ~~to prospective~~
150 | ~~clients~~ in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how
151 | lawyers may communicate the availability of their services ~~to prospective clients~~ in this jurisdiction are
152 | governed by Rules 7.1 to 7.5.

153 | [21a] Utah Rule 5.5 differs from the ABA Model Rule 5.5 in Comment [2], where the second sentence
154 | has been modified to reflect and be consistent with ~~Chapter 13A, Rule 14-802(b)(1-0),~~ Authorization to
155 | Practice Law, ~~or of~~ the Supreme Court Rules of Professional Practice, which both defines the "practice of
156 | law" and expressly authorizes nonlawyers to engage in some aspects of the practice of law as long as
157 | their activities are confined to the categories of services specified in that rule. Similarly, the last sentence
158 | in ABA Model Rule 5.5 Comment [13] has been omitted to comport with Utah's definition of the "practice
159 | of law". Utah's Rule also differs from the ABA Model Rule 5.5 in that Utah has not adopted the ABA's
160 | provisions dealing with foreign lawyers. Utah has its own Rule 14-718 of the Supreme Court Rules of
161 | Professional Practice, *Licensing of Foreign Legal Consultants*, covering this matter.

162

Rule 14-719. Qualifications for admission of House Counsel Applicants.

(a) *Scope of practice.* An attorney admitted to the Bar as House Counsel shall limit her or his practice of law including legal representation only to the business of her or his employer. House Counsel shall not:

(1) Appear before a court of record or not of record as an attorney or counselor in the State of Utah except as otherwise authorized by law or rule; or

(2) Offer legal services or advice to the public or hold herself or himself out as being so engaged or authorized, except as permitted under Rule 5.5 of the Utah Rules of Professional Conduct. An attorney granted a House Counsel license is not prevented from appearing in any matter pro se or from fulfilling the duties of a member of the active or reserve components of the armed forces or the National Guard.

(b) *Requirements of house counsel applicants.* To be recommended for admission to the Bar as House Counsel, a person must establish by clear and convincing evidence that she or he:

(1) has filed with the Admissions Office a Complete Application for admission to the Bar and paid the prescribed application fee;

(2) is at least 21 years old;

(3) graduated with a First Professional Degree in law from an Approved Law School or equivalent degree, or an Unapproved Law School located within a U.S. state, territory or the District of Columbia;

(4) is licensed to practice law and in active status in a U.S. state, territory or the District of Columbia;

(5) either (A) is a bona fide resident of the State of Utah or (B) maintains an office as the employer's house counsel within the State of Utah;

(6) is employed and practices law exclusively as House Counsel for a corporation, its subsidiaries or affiliates, an association, a business, or other legal entity whose lawful business consists of activities other than the practice of law or the provision of legal services;

(7) has provided an affidavit signed by both the Applicant and the employer that the Applicant is employed exclusively as House Counsel and that Applicant has disclosed to the employer the limitations on House Counsel's license of practicing under this rule;

(8) is of good moral character and satisfies the requirements of Rule 14-708;

(9) has presented satisfactory proof both of admission to the practice of law and that she or he is a member in good standing in all jurisdictions where currently admitted;

(10) has a proven record of ethical, civil and professional behavior and has never been disbarred or resigned with discipline pending, or their equivalent, in an jurisdiction, and is not currently subject to lawyer discipline or the subject of a pending disciplinary matter; and

(11) has complied with the oath and enrollment provisions of Rule 14-716 and paid the licensing fees required for active status.

(c) *Timing of application and admission.* An application under this rule may be filed at any time but the Applicant must be able to demonstrate that she or he satisfies the requirements of this rule as of the date the application is filed.

(1) The processing time of the application and the character and fitness investigation require a minimum of four months to complete.

(2) Upon approval the Applicant must comply with the provisions of Rule 14-716 concerning licensing and enrollment fees.

(3) A person licensed as House Counsel shall pay annual license fees which shall be equal to the fees required to be paid by a member of the Bar on Active status.

(d) *Unauthorized practice of law.*

(1) It is the unauthorized practice of law for an attorney not licensed in Utah to practice law in the state except as otherwise provided by law.

(2) An attorney who complies with the requirements of subsection (b)(1) may provide services to an employer in Utah while the application is pending as long as the application is filed within six months of the out-of-state attorney accepting a House Counsel position

(3) An attorney who provides legal advice to her or his employer but is not an active member of the Bar or licensed as a House Counsel pursuant to this rule may be referred for investigation for the unauthorized practice of law.

(e) *Continuing legal education requirement.* House Counsel shall pay the designated filing fee and file with the MCLE Board by July 31 of each year a Certificate of Compliance from the jurisdiction where House Counsel maintains an active license establishing that she or he has completed the hours of continuing legal education required of active attorneys in the jurisdiction where House Counsel is licensed;

(f) *Subject to disciplinary proceedings.* A person licensed as House Counsel shall be subject to professional discipline in the same manner and to the same extent as members of the Bar and specifically shall be subject to discipline by the Supreme Court as delegated by rule and shall otherwise be governed by Chapter 13, the Rules of Professional Conduct, Chapter 14 Article 5, Lawyer Discipline and Disability, and other applicable rules adopted by the Supreme Court, and all applicable statutory provisions.¹

(h) *Notification of change in standing.*

(1) House Counsel shall execute and file with the Licensing Office a written notice of any change in that person's membership status, good standing or authorization to practice law in any jurisdiction where licensed.

¹Rule 14-719 as published on the Court's website skips subsection (g). West's Utah Court Rules Annotated has redesignated the Court's subsections (h)–(m) as (g)–(l).

(2) House Counsel shall execute and file with the Office of Professional Conduct a written notice of the commencement of all formal disciplinary proceedings and of all final disciplinary actions taken in any other jurisdiction.

(i) *No Solicitation.* House Counsel is not authorized by anything in this rule to hold out to the public or otherwise solicit, advertise, or represent that he or she is available to assist in representing the public in legal matters in Utah.

(j) *Cessation of activity as house counsel.* A House Counsel license terminates and the House Counsel shall immediately cease performing all services under this rule and shall cease holding herself or himself out as House Counsel upon:

(1) termination of employment with the qualified employer as provided in subsection (b)(6);

(2) termination of residence, or the maintenance of his or her office in the State of Utah as provided in subsection (b)(5);

(3) failure to maintain active status in a sister state or United States territory or the District of Columbia, or to satisfy the Bar's annual licensing requirements, including compliance with mandatory continuing legal education requirements as provided for in this rule;

(4) completion of any disciplinary proceeding in Utah or any other jurisdiction, which warrants suspension or termination of the House Counsel license; or

(5) an attorney who seeks admission to practice in this state as House Counsel and who previously had a Utah House Counsel license that was terminated due to a disciplinary proceeding pursuant to subsection (j)(4) or whose license was terminated for a period longer than six months pursuant to subsection (j)(1), (j)(2), or (j)(3) must file a new application under this rule.

(k) *Reinstatement after temporary lapse in license.* An attorney whose House Counsel license is terminated pursuant to subsection (j)(1), (j)(2), or (j)(3) shall be reinstated to practice law as a House Counsel if within six months from the termination the attorney is able to demonstrate to the Admissions Office that she or he has:

(1) employment with a qualified employer and has provided the required verification of employment pursuant to subsection (b)(7);

(2) established a residence or maintains an office for the practice of law as House Counsel for the employer within the State of Utah; and

(3) active status in a U.S. state, territory or the District of Columbia and has complied with the Bar's annual licensing requirements for House Counsel.

(l) *Notice of change of employment.* House Counsel shall notify, in writing, the Licensing Office of the termination of the employment pursuant to which the House Counsel license was issued.

(m) *Full admission to the Utah State Bar.* A House Counsel license will be terminated automatically once the attorney has been otherwise admitted to the practice of law in Utah as an active member of the Bar. Any person who has been

issued a House Counsel license may qualify for full membership by establishing by clear and convincing evidence that she or he:

(1) has filed a complete written request for a change of status with the Admissions Office in accordance with the filing deadlines set forth in Rule 14-707(b). The request for a change of status must include:

(A) a Reapplication for Admission form updating the information provided in the original application, including payment of the prescribed application fee. If the original application for admission is more than two years old, a new Complete Application for admission must be filed;

(B) a criminal background check dated no more than 180 days prior to the filing of the change of status request;

(C) satisfactory proof of both admission to the practice of law and that House Counsel is a member in good standing in all jurisdictions where currently admitted; and

(D) has a proven record of ethical, civil and professional behavior and has never been disbarred or resigned with discipline pending, or their equivalent, in any jurisdiction and is not currently subject to lawyer discipline or the subject of a pending disciplinary matter.

(2) is of good moral character and satisfies the requirements of Rule 14-708;

(3) has successfully passed the Bar Examination or qualifies for admission under Rule 14-705;

(4) has successfully passed the MPRE; and

(5) complies with the provisions of Rule 14-716 concerning licensing and enrollment fees.