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IN THE SUPREME COURT OF THE STATE OF UTAH

IN RE:)	
)	
)	PETITION TO ADOPT
UTAH STATE BAR)	HOUSE COUNSEL ADMISSION
Petitioner.)	RULE
)	
)	

The UTAH STATE BAR (the "Bar") by and through its General Counsel, files this Petition to amend the Rules Governing Admission to adopt a House Counsel Rule. The new rule will provide much needed guidance about what an out-of-state licensed lawyer who works in-house in a Utah business or non-profit organization is permitted to do. Such a rule benefits both the Bar and the out-of-state licensed attorney because it provides clear answers to increasing questions about the authorized and/or unauthorized practice of law within our state. Against the background of growing cross-border legal practice and this Court's recent approval of Utah Rule of Professional Conduct 5.5 governing multi-jurisdictional practice, the timing is right to join a number of other jurisdictions and to enact an admission rule that recognizes and sensibly accommodates the

changing legal landscape. A copy of the proposed House Counsel Rule is attached as Exhibit "1".¹

DISCUSSION

Currently, there are 22 other states which require that in-house attorneys obtain a form of limited licensure (also sometimes referred to as "registration") if they have not taken the bar examination or been otherwise admitted to practice in that state.² A 2004 article in the "American Corporate Counsel Association/Law.Com" (which at the time recognized nine states which had in-house counsel requirements) reported that 16 other states were in the process of adopting similar procedures, and the remaining 25 jurisdictions had committees studying the issue. This is not an unexpected response as jurisdictions continue to study and adopt the ABA's new Model Rule of Professional Conduct 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law).³ It tracks, in

¹ Exhibit "1" contains the proposed rule in both the current and the pending AOC re-numbered/reformatted versions.

² The 22 states that have adopted a form of an in-house counsel rule are: California, Colorado, Delaware, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Nevada, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, Virginia and Washington. See Exhibit "2" for a June 2005 chart prepared by the ABA Center for a Professional Responsibility Joint Committee on Lawyer Regulation [Referencing] In-House Corporate Counsel Rules. Delaware's Supreme Court recently approved an in-house counsel rule on September 13, 2005 (effective December 2005), after the ABA's chart was prepared. A copy of the Delaware order is also attached at Exhibit "2". A minority of states have expressly concluded that in-house counsel practice does not constitute the practice of law as those jurisdictions define it. See, for example, Alabama or North Carolina. Others, like Utah or Alaska, however, which have not enacted a house counsel rule to date, rely on admission by motion – where reciprocity is recognized – or expect the in-house lawyer to otherwise become admitted and licensed to practice with the jurisdiction.

³ Utah Rule of Professional Conduct Rule 5.5 permits some categories of the practice of law under some circumstances by non-Utah licensed lawyers. Subsection (d)(1) provides that, "a lawyer admitted in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction may provide legal services in this jurisdiction that: are provided to the lawyers employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission" Comment [17] accompanying this subsection states, "If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the

fact, what has occurred in Utah as the Bar and the Court's Advisory Committee on the Utah Rules of Professional Conduct continued to evaluate the changes in professional conduct rules via the ABA's Ethics 2000 major overhaul. When Utah began studying the ABA's Model Rule 5.5 in 2003, the Bar's MJP and Admissions Committees concurrently begin their study of a house counsel rule.

For those jurisdictions that consider at least some of the conduct of an in-house counsel may well constitute the practice of law in that state, the appeal of a limited license is evident. Obtaining the limited license through an enhanced registration and licensing process is less onerous than taking a bar examination and it clarifies any legal ambiguity related to the in-house counsel's attorney status. A limited license admission rule makes it clear what an out-of-state licensed attorney is authorized to do in a particular state. Finally, it enables a bar association to gain a handle on what types of conduct the general counsel may be engaged in, which promotes uniformity and consistency when unauthorized practice of law issues arise.

There are benefits to enacting a House Counsel Rule for the unlicensed Utah practitioner as well. First and foremost, it clearly authorizes an in-house counsel to advise its employer organization and its employees on pertinent aspects of Utah law. It also clearly authorizes the lawyer to work with opposing counsel on issues which may involve Utah law. The proposed rule also provides an easily accessible source for information about what the in-house counsel is

purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education." For those jurisdictions adopting the ABA's Model Rule of Professional Conduct 5.5, it is pursuant to Comment [17] that they have enacted a rule with additional registration or

permitted to do, which is not the current case. Moreover it avoids problematic future scenarios when changing jobs or locations. For instance, if the in-house counsel who is licensed elsewhere fails to obtain full licensure in the state where he or she works, when the attorney assumes a new job in a state that requires licensing or tries to go into private practice, the new resident jurisdiction may consider that attorney was formerly engaged in the unauthorized practice of law. An example of the potential problem is illustrative: A Utah based in-house counsel is promoted to the company's new position in a New Hampshire subsidiary. Because the attorney had not been licensed in Utah, the New Hampshire Bar, which requires limited admission for in-house lawyers, could deny the attorney the ability to practice within its borders, concluding that the lawyer had violated ethical rules governing the practice of law. A copy of a recent article in the *American Corporate Counsel Association* "Corporate Counsel Guidelines" is attached as Exhibit "4". The article highlights the multijurisdictional nature of in-house corporate law practice and the difficult and largely unanswered questions about the unauthorized practice of law in jurisdictions that have not taken steps to clarify these issues.

A number of factors argue in favor of the Court adopting the proposed House Counsel Rule. Perhaps foremost is the fact that a rule is necessary in order to regulate to some extent these attorneys within our borders. Even without the new protections afforded by new Utah Rule of Professional Conduct 5.5, the Bar is aware that some attorneys have been serving as house counsel

limited licensing requirements. A copy of Utah Rule of Professional Conduct 5.5 is attached as Exhibit "3".

for Utah businesses without obtaining a license here. The Bar's experience is that a significant number of these attorneys do not apply for admission because they do not want to spend the time necessary to prepare for and pass the Bar examination. Furthermore, in recent years house counsels' work, along with the business of corporate clients, has grown increasingly national and global in nature. American society and business is much less defined by geographic borders than in the past. New technology allows lawyers to easily do legal research across state borders and to familiarize themselves with state-specific case law, state codes, and the procedural and administrative rules of other states and to give competent advice to their clients, no matter where those clients are located. But this ability needs to be balanced with some protections.

From a regulatory perspective, a limited license makes sense since a house lawyer is under the scrutiny of a relatively sophisticated employer. An attorney who is employed to represent an organization on an ongoing basis poses less of a risk to the client and the public than an attorney retained by an individual on a one-time basis. Permitting an out-of-state attorney to be licensed under the House Counsel Rule recognizes that the sophisticated client is often in the best position to make an informed choice about which attorney can handle his or her legal work in the most economical and efficient manner. At the same time, the public will be protected under the House Counsel Rule because house counsel applicants will go through the same admissions process as any other applicant, with the Character and Fitness Committee completing a comprehensive review of these attorneys before they are granted a House Counsel license.

Currently, the Bar cannot readily identify the out-of-state attorneys who might be serving as house counsel in Utah. Thus, the Bar is in a poor position to regulate the conduct of these attorneys or instigate disciplinary action if warranted. By eliminating the obstacle of the Bar examination, we believe that out-of-state attorneys serving as house counsel for Utah businesses will be more likely to file an application for admission for a limited license. The application process will enable the Bar to identify the out-of-state attorneys who are operating as house counsel in Utah, and allow the Bar to more readily oversee their professional conduct when necessary. By allowing out-of-state attorneys to be admitted to practice in Utah on a limited basis, the House Counsel Rule allows for better protection of the public than the current scenario where the attorneys serving as house counsel deliberately avoid contact with the Utah Bar. Finally, the Bar has an interest in maintaining an active and vibrant organization. One of the important roles attorneys serve in the state is to volunteer on court and bar committees. Once licensed, house counsel attorneys will be eligible to serve on these committees and hopefully, make significant contributions.

The Bar's MJP and Admissions Committees completed their work and the proposed rule was submitted to the Board of Bar Commissioners (the "Commission") for its October 2005 meeting. The Commission approved the proposed rule on October 7, 2005.

PROPOSED RULE

Under the House Counsel Rule, applicants will be required to submit an application to the Bar's Admissions Office, where their past conduct will be

carefully reviewed. House Counsel attorneys are required to maintain an active license and be in good standing in at least one U.S. jurisdiction. As noted above, the House Counsel Rule places limitations on the attorney's practice. For example, the attorney is not allowed to appear in court and his or her practice is limited to the full-time, legal representation of the business employer. In recognition of the fact that there are non-Utah licensed attorneys currently operating as house counsel in Utah, the House Counsel Rule incorporates a "one-year grace period" in which out-of-state attorneys can file applications and receive house counsel licenses without concern that having engaged in the practice of law in the state will disqualify them for admission. The one-year safe harbor period to file an application is timed from the date the Utah Supreme Court adopts the rule and it becomes effective.

A copy of the proposed House Counsel Rule is attached as Exhibit "1". For consistency purposes, the proposed rule sensibly attempts to mirror the existing admission Rule 5 governing out-of-state licensed attorneys who qualify to be admitted through reciprocity which is the admission on motion process. (A copy of current Rule 5 – Admission on Motion – is attached as Exhibit "5" for comparison purposes.) The more substantive provisions of the proposed rule are summarized below:

Section 20-1. Scope of Practice. This provision contains the much needed description of what the limited practice license permits the house counsel to do. As a practical matter, most in-house counsel attorneys do not appear before courts of records in the normal course of their employment. Those attorneys, however, who need or desire to do so should obtain full licensure through the Bar

since they do not qualify for pro hac vice admission.⁴ The second part of this section clearly restricts the house counsel's legal practice to that of the lawyer's client – the employer; it does not permit the lawyer to engage in outside practice for which in order to do, the individual should become fully licensed in Utah.

Section 20-2. Requirements of House Counsel Applicants. Section 20-2 sets forth the registration requirements for a house counsel limited license. The applicant must establish, in part, by clear and convincing evidence (the same standard applying to other applicants for admission to the Bar) that he or she is licensed to practice and on active status in good standing in another jurisdiction. This requirement helps to insure that the attorney is subject to attorney discipline affecting the attorney's primary license should the case arise. It also helps ensure, just as in the case of out-of-state lawyers applying for reciprocal admission, that the applicant is of good moral character and fit to practice law within our state.

Section 20-4. Unauthorized Practice of Law. Because a number out-of-state licensed attorneys serving as house counsel appear to be unclear on Utah's current requirement that they should be licensed in Utah if they are engaged in the practice of law, this section provides a safe harbor period of one year for those individuals who have not obtained licensure but who practice law here.⁵ It also makes clear that those attorneys who do not seek admission and obtain a

⁴ Rule 11-302 governing pro hac vice admission in Utah state courts prohibits out-of-state licensed attorneys who reside in Utah from using the rule to facilitate practicing their legal practice without first becoming licensed here. The reasoning underlying this prohibition is that to permit such practice would circumvent the requirements to become licensed to practice in Utah.

⁵ As noted above, the period of one year will begin with the effective date of the new rule, if approved by the Court.

license to practice law (whether it is a limited house counsel license or full licensure as a student or attorney or reciprocal applicant) are subject to unauthorized practice of law investigations.⁶ The Bar plans to heavily publicize the proposed rule to maximize the opportunities for lawyers to learn of the new requirements in such places as newspapers throughout the state, the *Bar Journal*, various business magazines, notices to large corporate businesses, appropriate continuing legal education seminars, and other areas. As a matter of equal treatment and principle, however, out-of-state licensed attorneys should be held to a standard of definitively ascertaining whether an approved rule states that a license is required to perform their legal duties within Utah after the one-year grace period expires.

Section 20-5. Continuing Legal Education Requirement. The reasons underlying Utah's current requirement that lawyers who practice law should stay abreast of current developments in the law and continually sharpen their practice skills will apply to house counsel lawyers.

Section 20-6. Application Regulations and Section 20-7. Discipline.

Attorneys who are licensed out-of-state but who live and work in Utah and obtain a limited house counsel license, are expressly subject to the same rules and regulations as other Utah lawyers. Most significantly, house counsel must abide by the Utah Rules of Professional Conduct and are expressly "subject to the same professional discipline in the same manner and to the same extent as a member of the Bar."

⁶ Heretofore, the Bar has been somewhat lenient and has investigated and pursued only the most egregious cases that have come to its attention by the filing of a complaint.

CONCLUSION

The proposed House Counsel Rule affords many benefits to the Bar, the corporate lawyer, the organizational corporate client and the public. It also recognizes the changing legal landscape and accommodates those changes. For these and other reasons discussed above, the Bar requests the Court to approve the proposed admission rule.

Dated this ____ day of November 2005.

Katherine A. Fox
Utah State Bar General Counsel

1 Rule 20. Qualifications for admission of house counsel applicants.

2 Rule 20-1. Scope of practice. An attorney admitted to the Bar as House Counsel
3 shall limit his or her legal representation to the business of his or her employer. House
4 Counsel shall not:

5 (a) Appear before a court of record as an attorney or counselor in the State of Utah;

6 or

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

12 Rule 20-2. Requirements of house counsel applicants. To be recommended for
13 admission to the Bar as House Counsel, a person must establish by clear and
14 convincing evidence that he or she meets each of the following requirements:

15 (a) Filed with the Admissions Office a Complete Application for admission to the Bar
16 and paid the prescribed application fee;

17 (b) Be at least twenty-one years old;

18 (c) Graduated with a first professional degree in law (Juris Doctorate or Bachelor of
19 Laws) from an Approved Law School;

20 (d) Be licensed to practice law and in active status in a sister state or United States
21 territory or the District of Columbia;

22 (e) Either (1) be a bona fide resident of the State of Utah or (2) maintain an office as
23 the employer's House Counsel within the State of Utah;

24 (f) Be employed exclusively as House Counsel for a corporation, its subsidiaries or
25 affiliates, an association, a business, or other legal entity whose lawful business
26 consists of activities other than the practice of law or the provision of legal services;

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

30 (h) Be of good moral character and have satisfied the requirements of Rule 8;

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

33 (j) File with the application a certificate from the entity having authority over
34 professional discipline for each jurisdiction where the Applicant is licensed to practice
35 which certifies that the Applicant is not currently subject to lawyer discipline or the
36 subject of a pending disciplinary matter;

37 (k) Complied with the oath and enrollment provisions of Rule 16 and paid the
38 licensing fees required for active status.

39 Rule 20-3. Application. An Applicant requesting a license to serve as House Counsel
40 must file a Complete Application for admission.

41 (a) An application under this rule may be filed at any time.

42 (b) The processing time of a House Counsel application is approximately 90 to 180
43 days.

44 (c) Applicants must meet all House Counsel admission requirements in accordance
45 with Rule 20-2.

46 (d) Upon approval by the Board of an application, the Applicant will be admitted in
47 accordance with Rule 16-2.

48 Rule 20-4. Unauthorized practice of law.

49 (a) No attorney who is not a member of the Bar and is acting as an attorney in Utah
50 for an employer shall be denied a House Counsel license solely because of the
51 attorney's prior failure to seek admission to the Bar, provided that an application
52 pursuant to this rule is filed within one year of the Court's adoption of this rule.

53 (b) After the one-year enrollment period referred to in Rule 20-4(a), an attorney who
54 provides legal advice to his or her employer but is not an active member of the Bar or
55 licensed as a House Counsel pursuant to this rule may be referred for investigation for
56 the unauthorized practice of law.

57 Rule 20-5. Continuing legal education requirement. House Counsel shall:

58 (a) File with the Board of Mandatory Continuing Legal Education ("MCLE Board"), by
59 January 31 of each year, a Certificate of Compliance from the jurisdiction where House
60 Counsel maintains an active license establishing that he or she has completed the

61 hours of continuing legal education required of active attorneys in the jurisdiction where
62 House Counsel is licensed;

63 (b) Pay the designated filing fee at the time of filing the Certificate of Compliance. A
64 House Counsel admitted under this rule who fails to comply with the CLE filing
65 requirement by the January 31 deadline shall be assessed a late fee. Any House
66 Counsel who fails to file within thirty (30) calendar days of the January 31 deadline may
67 be subject to suspension and a reinstatement fee.

68 Rule 20-6. Applicable regulations. House Counsel is subject to and must comply
69 with the Utah Rules of Professional Conduct, the Rules Governing Admission to the
70 Utah State Bar, the Rules for Integration and Management of the Utah State Bar, the
71 Rules of Lawyer Discipline and Disability, and all other rules and regulations governing
72 the conduct and discipline of members of the Bar.

73 Rule. 20-7. Discipline. House Counsel is subject to professional discipline in the
74 same manner and to the same extent as a member of the Bar. Every person licensed
75 under this rule is subject to control by the courts of the State of Utah and to censure,
76 suspension, removal, or revocation of his or her license to practice as House Counsel in
77 Utah regardless of where the conduct occurs.

78 Rule 20-8. Notification of change in standing.

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

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

85 Rule 20-9. No Solicitation.

86 (a) House Counsel is not authorized by anything in this rule to hold out to the public
87 or otherwise solicit, advertise, or represent that he or she is available to assist in
88 representing the public in legal matters in Utah.

89 (b) All business cards, letterhead and directory listings, whether in print or electronic
90 form, used in Utah by House Counsel shall clearly identify House Counsel's employer

91 and that House Counsel is admitted to practice in Utah only as House Counsel or the
92 equivalent.

93 Rule 20-10. Cessation of activity as house counsel. A House Counsel license
94 terminates and the House Counsel shall immediately cease performing all services
95 under this rule and shall cease holding himself or herself out as House Counsel upon:

96 (a) Termination of employment with the qualified employer as provided in Rule 20-
97 2(f);

98 (b) Termination from residence, or the maintenance of his or her office in the State of
99 Utah as provided in Rule 20-2(e);

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

104 (d) Completion of any disciplinary proceeding in Utah or any other jurisdiction, which
105 warrants suspension or termination of the House Counsel license;

106 (e) An attorney who seeks admission to practice in this state as House Counsel and
107 who previously had a Utah House Counsel license that was terminated due to a
108 disciplinary proceeding pursuant to Rule 20-10(d) or whose license was terminated for a
109 period longer than six months pursuant to Rule 20-10(a), (b) and/or (c) must file a new
110 application under this rule.

111 Rule 20-11. Reinstatement after temporary lapse in license. An attorney terminated
112 pursuant to Rule 20-10(a), (b) and/or (c) shall be reinstated to practice law as a House
113 Counsel if within six months from the termination the attorney is able to demonstrate to
114 the Admissions Office that he or she has:

115 (a) Employment with a qualified employer and has provided the required verification
116 of employment pursuant to Rule 20-2(g) of this rule;

117 (b) Established a residence or maintains an office for the practice of law as House
118 Counsel for the employer within the State of Utah; and/or

119 (c) Active status in a sister state or United States territory or the District of Columbia
120 and has complied with the Bar's annual licensing requirements for House Counsel.

121 Rule 20-12. Notice of change of employment. House Counsel shall notify, in writing,
122 the Licensing Office of the termination of the employment pursuant to which the House
123 Counsel license was issued.

124 Rule 20-13. Full admission to the Utah State Bar. A House Counsel license will be
125 terminated automatically once the attorney has been otherwise admitted to the practice
126 of law in Utah as an active member of the Bar. Any person who has been issued a
127 House Counsel license may qualify for full membership by establishing by clear and
128 convincing evidence that he or she meets the following requirements:

129 (a) Filed a complete written request for a change of status with the Admissions
130 Office in accordance with the filing deadlines set forth in Rule 7-2. The request for a
131 change of status must include:

132 (a)(1) A Reapplication for Admission form updating the information provided in the
133 original application, including payment of the prescribed application fee. If the original
134 application for admission is more than two (2) years old, a new Complete Application for
135 admission must be filed;

136 (a)(2) A criminal background check dated no more than 180 days prior to the filing of
137 the change of status request;

138 (a)(3) Satisfactory proof of both admission to the practice of law and that House
139 Counsel is a member in good standing in all jurisdictions where admitted;

140 (a)(4) A certificate from the entity having authority over professional discipline for
141 each jurisdiction where House Counsel is licensed to practice which certifies that House
142 Counsel is not currently subject to lawyer discipline or the subject of a pending
143 disciplinary matter.

144 (b) Be of good moral character and have satisfied the requirements of Rule 8;

145 (c) Successfully passed the Bar Examination as prescribed in Rule 10;

146 (d) Successfully passed the MPRE as prescribed in Rule 13; and

147 (e) Complied with the provisions of Rule 16 concerning licensing and enrollment
148 fees.

149

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 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 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.

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

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

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

[5] There are occasions in which a lawyer admitted to practice 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 under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

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

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

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

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

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

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

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services 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. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

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

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign or international law.

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

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

[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 may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[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 federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

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

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

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

[21a] Utah Rule 5.5 differs from the ABA Model Rule 5.5 in Comment [2], where the second sentence has been modified to reflect and be consistent with Chapter 13A, Rule 1.0, Authorization to Practice Law, or the Supreme Court Rules of Professional Practice, which both defines the "practice of law" and expressly authorizes nonlawyers to engage in some aspects of the practice of law as long as their activities are confined to the categories of services specified in that rule. Similarly, the last sentence in ABA Model Rule 5.5 Comment [13] has been omitted to comport with Utah's definition of the "practice of law".