



SPECIALIST PROSECUTOR'S OFFICE

Ref: SPO/SP/2017-726-DS

The Hague, 9th March 2017

Ms. Connie Howard, Director

Utah State Bar Staff- CLE/NLTP Services

Utah Law & Justice Center

645 South 200 East

Salt Lake City, Utah 84111

RE: Mandatory Continuing Legal Education Requirements for Active Member not residing or practicing in the State of Utah; Exemption under Rule 14-416, Rules of Professional Conduct

Dear Ms. Howard:

My Utah State Bar number is 2889. I have been a member of the Utah State Bar since I was admitted to practice in 1976. I am currently an Active member. In the past I was granted Inactive status during my work as an international prosecutor and Head of the Special Department for War Crimes in Bosnia and Herzegovina and while I was deployed for four years in Afghanistan. I resumed my Active status after returning from Afghanistan in 2015. I have always been a member in good standing. I have been grateful during all of my time overseas for the consideration the bar has shown me and my situation and for the connection the Bar has helped me maintain with my home state.

While I was still in Afghanistan in 2014, the Secretary of State asked me to take over for Ambassador Clint Williamson as the Lead Prosecutor of the European Union's Special Investigative Task Force. I accepted the assignment and in May 2015, following a short stay in Utah after leaving Kabul, I was appointed a Senior Foreign Service Officer (Limited Term) with a rank equivalent to ambassador and deployed to Brussels. I moved the task force from Brussels to The Hague in June 2016 and was appointed to a four-year term as the Specialist (Chief) Prosecutor of the newly created Kosovo Specialist Prosecutor's Office when it was established on 01 September 2016. Barring any unforeseen circumstance, I will not return to Utah permanently until 2020 when my term expires.

As Specialist (Chief) Prosecutor I oversee the investigation and prosecution of atrocity crime committed during the 1998 to 2000 war fought over the independence of Kosovo from Serbia. I set, implement and enforce policy for the Specialist Prosecutor's Office. I am responsible for all investigation and prosecution activities undertaken by the Specialist Prosecutor's Office. I discharge the "core responsibilities" of the Specialist Prosecutor (e.g. the decision to authorize charges, arrests, detention, etc.). I sign all documents requesting assistance from foreign states. I negotiate with foreign governments on behalf of the Specialist Prosecutor's Office. I represent the Specialist Prosecutor's Office in matters diplomatic and political. I am permitted by Dutch law and the law of Kosovo to practice before the Kosovo Specialist Chambers in The Hague. I appear before all of the courts of the Kosovo Specialist Chambers in The Hague (i.e. pre-trial, trial, appeals, Constitutional Court) in matters related to the work of the Specialist Prosecutor's Office.

As I read the provisions of the Rules of Professional Conduct, Rules 14.101 et seq., I may or may not technically be "practicing law" in the State of Utah, but I am practicing law. What I am doing now will receive extraordinary and intense public scrutiny in the months to come. I am mindful that I must, in my current position, fully comply with my obligations as a lawyer and

advocate licensed to practice in the State of Utah. In the work I do in The Hague I am bound, of course, by the Rules of Professional Conduct and gladly accept the responsibilities they impose on me. I am keen not to assume anything when it comes to my good standing with the Utah State Bar. I am also keen not to bring discredit on the Utah State Bar by anything I do or fail to do, including having my status questioned as part of any of the proceedings I am involved in before the Specialist Chambers.

With all of that in mind, I write to seek advice about how to manage my MCLE requirements. I return infrequently to visit family in Utah. I do no legal work in Utah when I am in Utah. Because of the unpredictability of my work in Brussels and in The Hague, since taking on the new assignment I have not been able to schedule my brief visits to Utah to enable me to attend live CLE programs. There is little likelihood that will change while I am working in The Hague. There are no approved live CLE programs here in The Netherlands. I can do remote CLE and have written for publication, but according to the rules I cannot satisfy my CLE obligation as an Active member by those means alone. As part of my job I frequently speak at public events about international criminal justice and about the international courts and tribunals and the international organizations I work in and with, but none, of course, are approved for CLE credit. Even if they were I could not satisfy the MCLE requirement solely with those credits. I will participate on a panel at the University of Utah on March 30 as part of a CLE approved event and will attend the rest of the sessions that day, but I will only acquire 4.5 hours of live CLE credit for doing so. In short, for reasons that are outside my control, I will not meet my CLE requirement for the reporting period which ends in June this year and will not be able to meet it in future until I return to Utah after I finish this assignment in 2020.

My predicament is this: I am eager to remain Active because of the work I am doing. I cannot, however, meet the MCLE requirements for Active status given where I am and what I am doing. I am aware of Rule 14-416:

A lawyer on active status who is not engaged in the practice of law in Utah may, upon application to the Board, be granted a waiver of the MCLE requirements of Rule 14-404 and obtain a certificate of exemption.

I don't know whether the rule is still in effect or whether, if it is, it can be applied in my circumstances. If it can or if there is some other way for me to keep my Active status and be exempt from the MCLE requirement, please let me know what I must do to formally apply. If this letter is sufficient, please consider it my application for a certificate of exemption.

Again, thank you for taking the time to help me with this.

Respectfully,



David Schwendiman

Specialist Prosecutor

Kosovo Specialist Prosecutor's Office