

## Ethics Advisory Opinion Committee

### Ethics Opinion 22-01

Issued January 12, 2022

#### Issues

1. Is an in-house attorney for a Utah-based company required to obtain an in-house counsel license from the Utah State Bar if the attorney is a resident of another state, physically located outside the state of Utah, and the Utah-based company also has a presence in the attorney's resident state?

#### Opinion

2. An in-house attorney for a Utah-based company is not required to obtain an in-house counsel license from the Utah State Bar if the attorney is not a resident of the state of Utah and does not maintain a systematic and continuous presence in the state of Utah for the practice of law.

#### Discussion

3. According to Rule 14-719 of the Rules Governing the Utah State Bar<sup>[1]</sup>, in-house counsel are required to obtain an in-house counsel license with the Utah State Bar. Among the requirements for admission as an in-house counsel licensee, Rule 14-719(b)(6) requires an applicant to be "either (A) a bona fide resident of the State of Utah or (B) house counsel for an employer located in Utah."
4. Rule 14-719 dovetails with Rule 5.5 of the Utah Rules of Professional Conduct which restricts attorneys from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. Among other things, Rule 5.5 prohibits an attorney from establishing an office or other "systematic and continuous presence" in this jurisdiction for the practice of law without being licensed in that jurisdiction. According to Comment 4 to Rule 5.5, a lawyer may be deemed to have established a "systematic and continuous presence" under Rule 5.5 "even if the lawyer is not physically present in Utah."<sup>[2]</sup>
5. In the question presented to the Committee for consideration, "Company" is a multi-state corporation with its corporate headquarters in Salt Lake City, Utah. Company also has an office in California. Company employs several "Lawyers" licensed in other jurisdictions who physically reside in California and work primarily at Company's California office.<sup>[3]</sup>

6. These in-house Company attorneys work from home on a regular basis. Their business cards list the California office as their business address and each receives physical mail at the California office. None have a physical office in Utah, although they visit the corporate headquarters in Utah a few times each year, occasionally participate in online meetings or conference calls with management in Utah, and consult generally on corporate matters for the company. The Lawyers do not appear in Utah courts or hold themselves out as Utah attorneys. Because Company is a multi-state corporation, the Lawyers regularly apply the law of many jurisdictions in their practice, including Utah. However, the Lawyers do not exclusively practice Utah law.
7. In Utah Ethics Op. 19-03, issued on May 14, 2019, this Committee opined that the focus of Rule 5.5 is on regulating the practice of law within the state of Utah to protect the interests of potential clients in Utah. In that opinion, we addressed the question of whether an out-of-state attorney physically located in Utah could represent out-of-state clients without becoming licensed in Utah. We held that Rule 5.5 was not violated so long as the attorney did not establish a public office in Utah or solicit Utah clients. Simply living in Utah while continuing to handle cases from the attorney's home state does not constitute establishment of a systematic and continuous presence in Utah *for practicing law in Utah*. See Utah Ethics Op. 19-03, ¶¶ 7-8. The Committee reached the conclusion that the Utah State Bar has no interest in regulating an out-of-state lawyer's practice for out-of-state clients simply because he or she has a private home in Utah. at ¶ 16.
8. The present question presents a new twist on this subject. In the present circumstance, an out-of-state attorney wishes to practice law in another state for the benefit of a client based in Utah. Based on the client-focused analysis in Utah Ethics Op. 19-03, one could argue that Utah has an interest in regulating the practice of law by out-of-state attorneys on behalf of a Utah resident. The Committee might reach the same conclusion if an out-of-state attorney injected themselves into the state for the sole purpose of soliciting Utah clients and practicing Utah law.
9. However, in the present case, the "client" also resides in California. Although its headquarters are in Utah, Company also has a physical office in California and this is the office where the Lawyers are based and practice. This fact allows the Lawyer to take advantage of subpart (c)(4) to Rule 5.5, which allows a lawyer admitted in another jurisdiction to provide legal services on a temporary basis in Utah that "arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice." See Utah R. Prof'l Cond. 5.5(c)(4).[\[4\]](#)

10. In the Committee’s opinion, the circumstance presented does not require licensure in Utah as in-house counsel. Attorneys located in another state and practicing at an office in another state do not fall within the jurisdiction of the Utah State Bar simply because their employer also has a location in Utah. Occasional visits to Utah or consultations with Utah-based management are not sufficient to establish a “systematic and continuous presence” in Utah under Rule 5.5, nor would they be considered establishment of a “public-facing” presence in the state.
11. It would be virtually impossible to police every in-house attorney for every multi-state company with an office in Utah simply because the impact of the lawyer’s practice may be felt in Utah. We have found no authority in any other jurisdiction supporting such a proposition.
12. The Committee’s opinion in this matter is based in part on the fact that the in-house Lawyers in question are not only physically located in another state, but are primarily connected to an office of Company in that state. Were Company to eliminate its California office such that the Lawyers would become solely linked to Company’s Utah office, the Committee may reach a different conclusion. In the meantime, the Lawyers are subject to regulation by the state bar of the jurisdiction where they are licensed and physically located, consistent with Utah R. Prof’l Cond. 5.5(a).

[1] The Ethics Advisory Opinion Committee is charged with interpreting and offering opinions on the Utah Rules of Professional Conduct, but is not authorized to interpret other law except as necessary to an opinion. In rendering this opinion, the Committee’s analysis is focused on interpreting and providing guidance on Rule 5.5 of the Utah Rules of Professional Conduct. The Committee is not offering an opinion on Rule 14-719 of the Rules Governing the Utah State Bar, but necessarily applies this rule in the course of addressing Rule 5.5.

[2] A proposed amendment to Rule 5.5 is presenting pending that would remove “systematic and continuous presence” from the rule in favor of a focus on whether the lawyer establishes a “public-facing” presence in the state.

[3] Company also employs several Utah-licensed attorneys who reside in Utah and work from Company’s Utah office. These attorneys are licensed as in-house counsel with the Utah State Bar.

[4] As is noted in Comment 6 to Rule 5.5, “*Services may be ‘temporary’ even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time. . . .*”