To: Utah Supreme Court
From: Association of Corporate Counsel (ACC)
Re: Proposed Amendments to Utah Court Rules
Date: February 24, 2006

Please accept this comment letter on behalf of the Association of Corporate Counsel (ACC) and our members practicing in Utah. ACC represents the interests of over 19,000 members in the United States and 58 countries.

ACC generally supports the adoption of Utah's proposed amendments to Utah Court Rule 20, Chapter 18, and we commend your bar and its leaders for the work they've obviously invested in this important process.

ACC supported Utah's recent adoption of ABA Model Rule 5.5(d)(1) which granted authorization for full-time in-house counsel who are in good standing in their state of admission to practice exclusively for their employer-client in Utah. ACC generally advises against the adoption of registration rules for in-house practitioners once a jurisdiction has adopted a version ABA Model Rule 5.5. However, we understand that many jurisdictions are uncomfortable with a 5.5(d)(1) authorization that is unaccompanied by a registration process; and so we support those registration rules that are adopted in conjunction with 5.5(d)(1) so long as they avoid burdensome application requirements, additional testing which does little to increase the competence of an experienced lawyer who already is likely at the top of their practice expertise, and the adoption of unnecessary or exorbitant fees. Utah's proposed amendments to Utah Court Rule 20, Chapter 18 avoid these concerns, but we offer two suggestions that we believe would make the rule better: first, we feel that the 20-9(b) letterhead requirement is unnecessary and impractical; and, second we note the rules fail to authorize pro bono services by in-house counsel who are registered under their provisions.

Letterhead Requirement Concerns: ACC requests that the Court remove the requirement that "All business cards, letterhead and directory listings, whether in print or electronic form, [shall state that counsel is] admitted to practice in Utah only as House Counsel or the equivalent." This requirement is not mandated by Rule 5.5(d)(1), and fails to further any legitimate public policy goal. This designation, if affixed to the registered counsel's work, will be confusing to the public and internal corporate clients, as well as unnecessarily discriminatory and demeaning to lawyers "branded" with a title that may diminish the executive title they've worked hard to obtain and are now licensed under the rules to carry. Requiring use of such titles conveys the bar's sense that there are two classes of lawyers in the state: those who are legitimate, and those who are questionable and come with some kind of a warning label. Clearly, the passage by your state of Rule 5.5(d)(1) which authorizes these in-house lawyers to practice in the state was premised on your belief (which we share) that these lawyers are anything but questionable in their qualifications and professionalism.

Rule 20, Chapter 18 lawyers are subject to the same professional rules and disciplinary authority at the bar, fulfill the same MCLE requirements, and will join the same professional organizations. They will represent their clients side by side with other regularly admitted lawyers in the state. Their clients already know whom they've hired and obviously have faith in their skills and qualifications. The only professional difference between the operation and status of these lawyers and their regular-admission colleagues is the bar's prohibition on the registered in-house counsel's ability to appear in court, which is a matter of the state's preferences and not even a reflection on these lawyers' ability to litigate. Since they are not holding themselves out for retention (and thereby possibly

misinforming potential clients of their lack of litigation authorization under the rules), we fail to see how the bar, the public, the courts, or their clients are in any way helped by the inclusion of this brand upon their professional status. ACC believes that this requirement is without merit and serves to contradict the very purpose of the rule: to ensure that all lawyers practicing in the state are treated and regulated equally.

Finally, we note the lack of a clear authorization to allow pro bono in the proposed rules. ACC believes that pro bono legal services are the professional responsibility of every lawyer. Since most pro bono work is essentially local in nature, in-house counsel working in Utah will find their most meaningful opportunities for pro bono representation at the local bar. Counsel authorized to practice under 5.5(d)(1) and Rule 20, Chapter 18, should be allowed to provide these important volunteer services: it would be a waste of fine legal talent and a disservice to the public, which needs more—not less—volunteer legal service from lawyers.

We urge you not to strip in-house lawyers of their ability to return services to the public that invests in their practice as professionals, especially when such a decision would be at the expense of the underserved communities in your state. If there is concern that opening this category of services to non locally licensed in-house counsel could lead to abuses, then our suggestion is to offer it to in-house counsel working under the auspices of state or locally licensed pro bono/legal services providers.

We appreciate the opportunity to comment on the proposed rule under and encourage you to contact us should you require any further information or clarification of our position. Thank you in advance for your consideration of the needs and concerns of corporate counsel working in the state.

Sincerely

Susan Hackett
Senior Vice President and General Counsel
202/293-4103, ext 318
hackett@acca.com

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