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Serving as Local Counsel

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With few exceptions, most lawyers love it when they receive a call from an old classmate or colleague asking them to lend their expertise as local counsel on a case. Acting as local counsel has the benefit of keeping you connected to both your colleagues and new clients, and it is also an opportunity for you to build your reputation and referral network.

While your role as local counsel might range from acting as co-counsel at a major trial to occasional hearing attendance, oftentimes lead counsel expects local counsel to provide little more than a bar number and a mailing address. Lead counsel's expectation may be that you only take a cursory glance at a motion to ensure compliance with local procedure and file it with little thought or effort, to keep client expenses low.

This relationship works great, until something goes wrong. If the client is dissatisfied with the representation, the client may sue both lead and local counsel for malpractice, regardless of local counsel's involvement. Moreover, if lead counsel commits some sort of discovery abuse or ethical transgression, local counsel may be held responsible. In such situations, relying on the fact that you were "only local counsel," may not be persuasive.

So how can you limit exposure when acting as local counsel? The first step is to recognize that you still have ethical obligations to the client, court, and third parties even though your role may be limited.

Rule 14-806 of the rules governing the Utah State Bar sets out

the basic requirements for acting as local counsel. It requires that local counsel "consent to appear as associate counsel," "sign the first pleading filed," continue as counsel of record in the case, and be available to communicate with opposing counsel and the court. Sup. Ct. R. Prof'l Practice 14-806(f). Moreover, you may be required to appear at all hearings, and local counsel must have the responsibility to act for the client if non-Utah counsel is unavailable.

Given these potentially broad responsibilities, ensuring compliance with the Utah Rules of Civil Procedure, the Utah Rules of Professional Conduct, and any other applicable rules for the duration of the case is essential.

For instance, local counsel must ensure that any documents signed or filed by them comply with Rule 11 of the Utah Rules of Civil Procedure. This requires that local counsel conduct "an inquiry reasonable under the circumstances" to ensure filings are not presented for an improper purpose, that any contentions are warranted by existing law (or a nonfrivolous argument for an expansion of the law), and that any assertions or denials have proper evidentiary support. Utah R. Civ. P. 11(b). Whether an inquiry is reasonable is a somewhat squishy standard. While Utah courts likely will not require "perfect or exhaustive research," it is unclear how much inquiry local counsel must actually make when out-of-state counsel is taking the lead.

Local counsel must also remember their obligations under the rules of professional conduct. They must provide competent

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representation under Rule 1.1 of the Utah Rules of Professional Conduct, “act with reasonable diligence and promptness,” Utah R. Prof'l Conduct 1.3, “keep the client reasonably informed,” *see id.* R. 1.4, exercise candor in dealing with the court, *see id.* R. 3.3, and deal fairly with the opposing party and counsel, *see id.* R. 3.4. If lead counsel is failing to comply with the rules of professional conduct, local counsel needs to ensure compliance and must be cautious not to inadvertently ratify unprofessional conduct. *See id.* R. 5.1.

Given the murky ethical standards and lack of specific guidance in Utah, this would be a good topic for consideration by the Supreme Court Advisory Committee on the Rules of Professional Conduct or the Ethics Advisory Committee. One open question is the extent to which local counsel may rely on lead counsel to supply the “diligence,” “competence,” and “communication” required by the rules.

Meanwhile, the best way for local counsel to protect himself or herself is to lay the ground rules with lead counsel up front. Establish early, preferably in writing, what you expect and explain that you must have enough involvement in the case to be

aware of what is going on. If lead counsel expects you to simply sign and file documents with minimal review, this may be a relationship you want to avoid. Make sure you fully disclose your limited role to the client and get the client's consent in writing to your role and anticipated channels of communication. Never agree to simply be a mailbox and a bar number. If something does not “feel right,” ask questions and conduct appropriate due diligence. Lastly, if non-Utah counsel is permitted to file electronically, ensure that you are able to review all documents before filing, and if that is not possible, promptly review after filing.

Ultimately, acting as local counsel is not as easy as providing a bar number and a mailing address, collecting fees, and walking off into the sunset. But if local counsel is cognizant of his or her professional responsibilities throughout the representation, it can be a rewarding experience and a great way to grow your network and personal reputation.

Every case is different. This article should not be construed to state enforceable legal standards or to provide guidance for any particular case.