

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. AF 09 - 0688

IN RE: PETITION TO)
 REVISE THE MONTANA)
 RULES OF PROFESSIONAL)
 CONDUCT BY ADOPTING)
 RULE 5.5(d)(1) OF THE)
 MODEL RULES OF)
 PROFESSIONAL CONDUCT)
)
)

Affidavit of Colby Branch

FILED

NOV 20 2014

STATE OF MONTANA)
 : ss.
 COUNTY OF YELLOWSTONE)

Ed Smith
 CLERK OF THE SUPREME COURT
 STATE OF MONTANA

Colby L. Branch, being first duly sworn, upon oath, deposes and says:

1. I am the President of the Montana Petroleum Association ("MPA"). I have held this position since August 28, 2013. I have served on the MPA's Board of Directors for approximately 14 years.

2. I am a partner with Crowley Fleck PLLP in Billings, Montana, where I primarily practice oil and gas law. I am licensed to practice law in Montana, North Dakota, and Wyoming.

3. The MPA's Board of Directors has authorized the filing of the accompanying Petition to Revise the Montana Rules of Professional Conduct by Adopting Rule 5.5(d)(1) of the Model Rules of Professional Conduct (the

“Petition”). This Affidavit is executed in support of the Petition. The representations and opinions herein are based upon my personal knowledge.

4. MPA is a non-profit, membership, trade association. Its purpose is to strive to maintain a positive business climate for the petroleum industry in Montana. Through its education program, MPA fosters public awareness of the industry’s contributions to the state and nation.

5. MPA also represents its members on technical, legislative, and regulatory issues that may affect their interests.

6. MPA has approximately 180 member companies, which pay annual membership dues and are actively engaged in the oil and gas industry in Montana and North America. Member companies include oil and natural gas producers, gathering and pipeline companies, petroleum refineries, service providers, and consultants. Many MPA members have operations in Montana, but headquarters in other states.

7. A significant number of MPA’s member companies employ attorneys as “in-house counsel.” In-house counsel work exclusively for a particular company and its affiliates. A company employs in-house counsel to work on federal and state legal questions relevant to its operation in multiple states and to develop competence on issues and operations specific to the company’s business. In-house counsel are generally trusted advisors who provide their employers an

essential service by helping to incorporate the laws of multiple jurisdictions into a cohesive and functional set of policies and procedures, which is necessary to ensure that business operations in multiple jurisdictions are conducted in an efficient and lawful manner.

8. Frequently, in-house counsel employed by MPA members maintain offices on company premises outside of Montana and do not have an Office of General Counsel office space in Montana. It is rare that in-house counsel for MPA member companies are based in Montana or are members of the Montana Bar. It is also uncommon for an in-house lawyer to be physically present in Montana for a majority of time in a typical month. For some member companies, the in-house lawyers based outside of Montana come to Montana on a periodic basis to confer on legal issues specific to Montana law with employees engaged in Montana operations.

9. I am aware of the existence of MPA member companies which utilize in-house counsel who (1) are not members of the Montana Bar, (2) work outside of the State of Montana for a majority of their work hours in an average month, and (3) dedicate a small percentage of their work hours to Montana-specific legal issues.

10. It is rare that in-house counsel working on Montana legal issues are focused exclusively, or even primarily, on legal issues arising in Montana

operations. In my experience, in-house counsel for member companies readily engage members of the Montana Bar for advice on legal issues arising as a result of Montana-based operations. That advice is then generally incorporated into the member companies' business plans and policies.

11. I know of no in-house lawyers for MPA member companies operating in Montana that represent individuals or business entities other than their employer. In my experience, in-house counsel do not hold themselves out to the public for hire. The individual company employing the in-house counsel has thus internalized any risk of poor or incompetent practice by the lawyer. It is my opinion, based on the facts set forth above, that the public is not at risk if an in-house lawyer has not taken the Montana Bar examination and become an active member of the Montana Bar. It is my opinion that in-house counsel for MPA member companies will continue to utilize the services of members of the Montana Bar if the Court adopts a rule consistent with MPA's Petition.

12. I have reviewed the Petition being filed with the Court and am familiar with the issue presented by the Petition. If the Court modifies the Montana Rules of Professional Conduct as outlined in the Petition, it will allow certain MPA members to have the benefit of utilizing specialized in-house counsel without incurring the risk that the lawyer is engaged in the unauthorized practice of law in Montana.

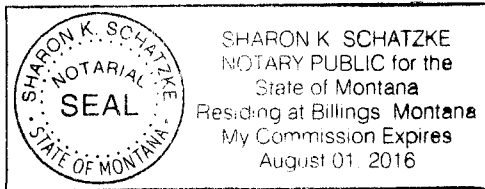
Dated this 18th day of November, 2014.

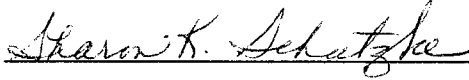


Colby L. Branch

SUBSCRIBED AND SWORN TO before me this 18th day of November,
2014.

(SEAL)





[Type or Print Name]
Notary Public for the State of _____
Residing at _____
My Commission expires _____