

**STATE BAR OF NEVADA
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY**

**Formal Opinion No. 21
March 31, 1995**

QUESTION - May an attorney licensed in the State of California represent Nevada residents in front of the Tahoe Regional Planning Agency concerning land use issues involving property located in Nevada?

ANSWER - The Tahoe Regional Planning Agency has bi-state jurisdiction and statutorily broad purposes. Based on that unique status and applicable law, an attorney licensed in the State of California may represent Nevada residents in front of the Tahoe Regional Planning Agency concerning land use issues involving property located in Nevada.

AUTHORITIES RELIED ON

Nevada Supreme Court Rule 189; Florez v. City of Glendale, 463 P.2d 67 (Ariz. 1969); Denver Bar Association v. Public Utility Commission, 391 P.2d 467, 471 (Colo. 1964); Nevada A.G.O. No. 87-9 (May 11, 1987); Nevada A.G.O. No. 83-14 (October 27, 1983); People v. City of South Lake Tahoe, 466 F.Supp. 527, 537 (E.D. Cal. 1978); Tahoe Regional Planning Agency Compact, Articles III(d), X(b); Tahoe Regional Planning Agency v. McKay, 590 F. Supp. 1071, 1074 (D.Nev. 1984); Nevada Administrative Code § 278.800 et seq.; ABA Model Rule 5.5(a).

INTRODUCTION

The Tahoe Regional Planning Agency ("TRPA") is a bi-state agency established by a Compact, under the Compact Clause of the United States Constitution, Article I, section 10, clause 3. The Nevada and California legislatures and the United States Congress passed the compact and President Jimmy Carter signed it into law. The Compact is codified in NRS § 277.200.

The Compact's purpose is to provide unified rules and regulations for development and conservation of properties within the Lake Tahoe basin. The Agency's jurisdiction includes areas of both California and Nevada. Its office is currently located in Zephyr Cove, Nevada, although the Agency was previously headquartered in California. The Agency's governing body consists of seven members from Nevada and seven members from California. Meetings are held in both states.

DISCUSSION

Supreme Court Rule 189 provides:

A lawyer shall not:

1. Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
2. Assist a person who is not a member of the bar in the Performance of activity that constitutes the unauthorized practice of law.

SCR 189 (1994).

To be guilty of the unauthorized practice of law, the activity in question must necessarily involve the practice of law. Although there are few cases that define the practice of law, several courts have determined what constitutes the practice of law in front of administrative agencies. Generally, the practice of law involves "the preparation for another of matters for courts, administrative agencies and other judicial or quasi-judicial bodies and officials as well as the acts of representation of another before such a

body or officer." *Florez v. City of Glendale*, 463 P.2d 67 (Ariz. 1969); Nevada A.G.O. No. 87-9 (May 11, 1987). One also practices law before an administrative agency when the representative "instructs and advises another in regard to the applicable law on an agency matter so that he may properly pursue his affairs and be informed as to his rights and obligations" or prepares for another procedural papers which require legal knowledge and technique. *Denver Bar Association v. Public Utility Commission*, 391 P.2d 467, 471 (Colo. 1964); Nevada A.G.O. No. 87-9 (May 11, 1987).

The activity at issue here largely consists of obtaining permits from the TRPA for property owners who wish to develop their property and other land use issues. It is difficult to dispute that such activity does not relate to one's "rights and obligations," or involve advice related to "the applicable law on an agency matter." Therefore, the land use issues brought before the TRPA and addressed in this opinion involve the practice of law.

The fact that the representation of Nevada residents and land owners concerning their various land issues constitutes the practice of law does not, however, automatically render SCR 189 applicable to attorneys who practice in front of the TRPA. A bi-state agency is not subject to the laws of either state unless the specific Company reserves to a state the right to impose and enforce laws applicable to the agency's activities. *People v. City of South Lake Tahoe*, 466 F. Supp. 527, 537 (E.D.Cal. 1978). The TRPA Compact provides:

The agency shall have such additional powers and duties as may be hereafter be delegated or imposed upon it from time to time by the action of the legislature of either state concurred in by the legislature of the other.

Article X(b).

An illustration of a specific authorization regarding the applicability of one state's law involves the public nature of TRPA meetings. The Company provides that "(a)ll meetings shall be open to the public to the extent required by the law of the State of California or the State of Nevada, whichever imposes the greater requirement, applicable to local governments at the time such meeting is held." Article III(d). It has been held that Nevada's Open Meeting Law applies to TRPA meeting because Nevada's law imposes greater requirements on local governments to visibly perform their public functions. *Tahoe Regional Planning Agency v. McKay*, 590 F. Supp. 1071, 1074 (D.Nev. 1984). The TRPA Compact does not authorize either state to regulate the licensing requirements of attorneys appearing before the Agency.

At least two Nevada Attorney General Opinions have held that an attorney must be licensed in Nevada in order to represent a client in front of a state agency. A licensed Nevada attorney must represent a state employee who challenges a dismissal, demotion, or suspension pursuant to NRS § 284.390. Nevada A.G.O. 87-9 (May 11, 1987). The opinion reasoned that if the subject matter being heard by the state department of personnel involved the practice of law, then the public interest is served by requiring the participation of licensed attorneys rather than lay persons. Another opinion held that a licensed Nevada attorney must participate in hears before an appeals officer in matters relating to industrial insurance claims under the provision of NRS § 616 et seq. Nevada A.G.). 83-14 (October 27, 1983). The holding relied on the fact that the relevant statutes referred several times to "attorneys" or "private counsel" in a representative capacity. Because of this language and the absence of any statutory exception to the requirements of a licensed attorney, the opinion held that non-attorney representative may not appear at such hearings.

Along these lines, it is necessary to review any rules which address who may practice before the TRPA. The Nevada Administrative Code ("NAC") § 278.840 provides, in part:

1. Any interested person may petition the governing body for the adoption, filing, amendment or repeal of any regulation. The petition must be accompanied by relevant data, view and arguments.

2. The petition need not be in a particular form but must be in writing and include a statement of the applicant's interest, the nature of the request the reasons therefor and such other matters as the applicant believes may be helpful to the governing body in determining the proper action to take in the matter. All petitions must be signed by or on behalf of the applicant.....

NAC § 278.10(1) (1973).

The above opinions and the following NAC provisions should be interpreted together to determine who may appear before the TRPA. In light of TRPA's make up and jurisdiction and the broad rules set forth in the NAC, Nevada A.G.O. 87-9 should be limited to situations involving a purely state agency, such as the state department of personnel. By definition, the TRPA is a bi-state agency. It also has all of the characteristics of bi-state representation. Its governing body consists of an equal number of Nevada and California officials. Its jurisdiction covers areas on both Nevada and California, as the Lake Tahoe basin expands across the two states. Requiring a Nevada land owner to retain Nevada counsel because the Agency is presently headquartered on the Nevada side of the state line, or simply because an issue involving Nevada land is brought before the TRPA, conflicts with these facts and the NAC. It also conflicts with the concept behind the TRPA, that land use issues in the Tahoe basins transcend state boundaries.

SCR 189 is modeled after the language of ABA Model Rule 5.5(a). The ABA discussion of Model Rule 5.5(a) states:

The demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by the states. In furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of the lawyer to handle the legal affairs of his client or upon the opportunity of a client to obtain the services of a lawyer of his choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice.

This language is applicable to the present issue. Attempting to impose a requirement that would require one appearing in front of the TRPA to be a licensed Nevada attorney would be unreasonably impose territorial limitations on California attorneys who are just as able to represent Nevada land owners in the Tahoe basin as are Nevada attorneys. Of even more importance is the interest of the client. It is unreasonable to limit a Tahoe basin landowner's choice of counsel in this situation if the TRPA has not imposed such limitations.

CONCLUSION

The restrictions in the TRPA Compact regarding the applicability of state law to the regulation of the TRPA, the rules set forth in the NAC, and the ABA comments regarding Model Rule 5.5(a) clearly support the conclusion that a California attorney may represent Nevada residents in front of the TRPA concerning land use issues involving property located in Nevada.

This opinion is issued by the Standing Committee on Ethics and Professional Responsibility of the State Bar of Nevada, pursuant to SCR 1225. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, its Board of Governors, any person or tribunal charged with regulatory responsibilities, or any member of the State Bar.