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Delaware Justices Deny In-House Atty's Limited Practice Bid

By [Rose Krebs](#) | 2024-10-24 12:02:14 -0400 · [Listen to article](#)

The Delaware Supreme Court has denied a limited practice application filed by an in-house attorney for a real estate closing services company, in part because the business doesn't have an office in the state.

In [an order](#) Tuesday, a three-justice panel ruled that the Board of Bar Examiners of the Supreme Court, which reviews applications for admission to the state's bar and certificates for limited permission to practice, properly denied attorney Geoffrey Polk's application in January.

"Polk's application was inconsistent with the conclusion that he was 'employed in the state as a lawyer working exclusively for a for-profit or a nonprofit ... entity ... the business of which is lawful and is other than the practice of law or the provision of legal services,'" the panel's order said, citing the rule that sets the process for non-Delaware lawyers to register as in-house counsel in the First State.

The order explained that although "the requirement that the applicant be employed 'in this state' relates to where the lawyer is practicing law," there are provisions that "an in-house lawyer might have a systematic and continuous presence in Delaware if the employer's legal department is located in Delaware and the lawyer works remotely from a home office in another state."

The applicant must supply an affidavit "identifying the employer's 'principal place of business in Delaware,'" the order said.

In Polk's case, he submitted an affidavit as the president of Presidential Title LLC and gave a Dover address as the "principal place of business in Delaware." But records from the Delaware Division of Corporations showed the address was that of Presidential Title's registered agent, the panel said.

"Polk does not contend that Presidential Title has a place of business in Delaware," the panel said.

"Rather, he argues that the denial letter improperly relied on 'evidence' outside the four corners of his application package in reaching the conclusion that it does not." But the panel said Polk cited no authority that would deny use of publicly available information — including Division of Corporations records and Presidential Title's website — in considering an application for a certificate of limited practice.

In the denial letter, the chief staff attorney for the Delaware Supreme Court said on behalf of the board that "under Delaware law, real estate closings involve the practice of law and must be done by a Delaware attorney," according to the order.

The panel told Polk that he can reapply for a limited practice certificate "if his circumstances change."

In an emailed statement to Law360 Pulse on Wednesday, Polk said that "the ruling was certainly disappointing as I wholeheartedly disagree with the court's opinion that being 'employed in the state' means having a physical office even when the court concedes, given remote work, I have no obligation to ever set foot in the same."

"It's yet another regulatory barrier to entry that states continue to prop up to keep cost competitive companies from competing without unnecessary overhead," Polk said. "However, as I said in my brief, to the extent an office was required, I would open one."

Polk founded Presidential Title in 2011, according to his LinkedIn profile. He previously founded and served as general counsel for a private investment firm and a business that showcased vacation rental properties for those attending college football games, the profile says.

Polk earned a law degree from Northwestern University Pritzker School of Law, and he worked for [Kirkland & Ellis LLP](#) for three years earlier in his career, according to the profile.

Chief Justice Collins J. Seitz Jr. and Justices Karen L. Valihura and Gary F. Traynor sat on the panel for the Delaware Supreme Court.

Polk is representing himself.

The court appointed Richard A. Forsten and Devan A. McCarrie of [Saul Ewing LLP](#) to serve as amicus curiae in the matter. Their answering brief asserted that the denial was proper and should be upheld. Forsten and McCarrie didn't immediately respond Wednesday to a request for comment.

The case is In re Denial of Application of Geoffrey Polk, Esquire, for a Certificate of Limited Practice, case number 79, 2024, in the Supreme Court of the State of Delaware.

--Editing by Robert Rudinger.

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