District of Columbia Court of Appeals
Committee on Unauthorized Practice of Law
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OPINION 14-04

OF THE DISTRICT OF COLUMBIA COURT OF APPEALS COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW

Issued October 15, 2004

Pursuant to District of Columbia Court of Appeals Rule 49 (the "Rule" or "Rule 49"), and specifically its section 49(d)(3)(G), the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law (the "Committee"), by a majority vote of a quorum of its members then present, approved the following opinion at its meeting on October 8, 2004:

PRACTICE BY FOREIGN LAWYERS ON AN INCIDENTAL BASIS

Rule 49(a) generally prohibits any person who is not an active member of the D.C. Bar from engaging in the practice of law "in" the District of Columbia unless an exception in Rule 49(c) applies. Rule 49(b)(3) defines "in the District of Columbia" to mean "conduct in, or conduct from an office or location within, the District of Columbia, *where the person's presence in the District of Columbia is not of incidental or occasional duration*." (Emphasis added.) The Committee has been asked whether lawyers authorized to practice in foreign countries may engage in the practice law in the District of Columbia when their presence in the District of Columbia is only of incidental or occasional duration.

The commentary to Rule 49(b)(3) confirms that this provision concerning incidental practice is intended to apply to an "attorney" who principally practices elsewhere and is incidentally required to come into the city. Foreign lawyers (that is, lawyers authorized to practice in a foreign country) are "attorneys" in the ordinary meaning of the term. Nothing in the commentary suggests that authorization for out-of-town attorneys to practice in the District on an incidental basis applies only to attorneys admitted in another U.S. jurisdiction, and not also to attorneys admitted in a foreign jurisdiction.

The Court of Appeals has determined that lawyers authorized to practice law in a foreign country may engage in the practice of law in the District of Columbia in related circumstances. Rule 46(c)(4) permits certain foreign lawyers regularly to practice law from an office in the District of Columbia as special legal consultants. Rule 46(c)(4)(A)(1) makes eligible for licensure any individual who, among other things, "[h]as been admitted to practice (or has obtained the equivalent of admission) in a foreign country, and (a) is engaged in the practice of law in that country, and (b) is in good standing as an attorney or counselor at law (or the equivalent or either) in that country." It is consistent with these requirements in Rule 46 for regular practice that a foreign lawyer may engage in incidental practice in the District under Rule 49 if that lawyer has been admitted to practice (or has obtained the equivalent of admission) in a foreign country and is engaged in the practice of law in that country as an attorney or counselor at law in good standing (or as the equivalent or either).

Moreover, it is the Committee's understanding that a significant number of foreign lawyers who maintain their office in foreign countries do practice law in the District of Columbia on

an incidental basis consistent with this interpretation of Rule 49(b)(3), and the Committee is not aware of particular problems caused by such incidental practice.

For these reasons, it is appropriate to interpret Rule 49's provision concerning incidental practice to apply to lawyers admitted in foreign countries as well as to lawyers admitted in other U.S. jurisdictions.

This opinion addresses only incidental practice by foreign lawyers in the District of Columbia. If a foreign lawyer wants to engage in the practice of law from an office in the District of Columbia, different requirements apply, just as different requirements apply to lawyers admitted only in other U.S. jurisdictions who want to practice in the District on a regular and not only incidental basis. A foreign lawyer who wants to use the District as a base from which to practice must either become a member of the D.C. Bar or obtain a license as a special legal consultant. *See* Rule 46(c)(4)(A)(3) (applicant for special legal consultant license must intend to maintain an office for such practice in the District of Columbia).

This opinion does not address the applicability of any exception in Rule 49(c) that may permit practice by foreign lawyers in the District of Columbia. For example, a foreign lawyer may be authorized to practice on a non-incidental basis before federal agencies pursuant to Rule 49(c)(2), or to provide legal advice to the lawyer's regular employer pursuant to Rule 49(c)(6).

Nor does anything in this opinion suggest that Rule 49 allows any individual who is not duly authorized and competent to practice law in any domestic or foreign jurisdiction to engage in the practice of law in the District of Columbia on an incidental basis, unless an exception enumerated in Rule 49(c) applies.

The staff of the Committee shall cause this opinion to be submitted for publication in the same manner as the opinions rendered under the Rules of Professional Conduct.

Done this 15th day of October, 2004.

Anthony C Epstein.

Chair
District of Columbia Court of Appeals
Committee on Unauthorized Practice of Law