

**OPINION 13-04**

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

**Issued March 25, 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 the 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 March 12, 2004:

**COMPLIANCE WITH EXCEPTION 49(c)(4) FOR D.C. GOVERNMENT EMPLOYEES**

Rule 49(c)(4) allows persons who are admitted to practice in other jurisdictions to practice law as employees of the government of the District of Columbia for 360 days after they start their employment. The exception in section (c)(4) from the general prohibition against the practice of law in the District of Columbia by individuals not admitted to the D.C. Bar allows a person to provide

legal services for his or her employer during the first 360 days of employment as a lawyer by the government of the District of Columbia, where the person is an enrolled Bar member in good standing of a state or territory and has been authorized by her or his government agency to provide such services

A recurring issue for the Committee has been whether such D.C. government employees can practice law for longer than 360 days if they have a pending application for admission to the D.C. Bar. Rule 49(c)(4) contains no exception to the 360-day limit, and makes no provision for waiver or extension.

Just as the Committee described the related exception in Rule 49(c)(8) as a “limited dispensation,” *see* Opinion 1-99, so too is the exception in Rule 49(c)(4). The Rule offers a one-time accommodation to attorneys licensed elsewhere that allows them to practice law as D.C. government employees for a maximum of 360 days. The purpose of the 360-day period is to allow such lawyers a reasonable opportunity to practice law while they apply to become members of the D.C. Bar. The Commentary to Rule 49(c)(4) states that this exception “gives the

person 360 days to be admitted, which is ample time if application is made promptly.”<sup>1</sup>

The Rule strikes a balance: it recognizes the interests of the D.C. government and of lawyers admitted in other jurisdictions whom the D.C. government wishes to employ; and it protects the public by prohibiting lawyers whom the Court of Appeals has not found to possess the competence and character necessary for admission to the D.C. Bar from practicing here on a continuous basis for an extended period. D.C. Bar membership is especially appropriate for D.C. government lawyers because their practice exclusively involves matters related to the District of Columbia. Limiting the period during which lawyers who are not D.C. Bar members can practice law as D.C. government employees also serves the other purposes of Rule 49 by making these lawyers subject to the D.C. Bar disciplinary system, and by ensuring that these lawyers provide appropriate financial support to the Bar. *See* Commentary to Rule 49(a) (describing the four general purposes of Rule 49).

The reasonable expectation underlying the Rule is that applications for admission to the D.C. Bar will ordinarily be approved in less than 360 days, unless a substantive issue about the applicant’s qualifications arises. If the investigation by the Committee on Admission uncovers an issue that delays a decision on the application past the 360-day mark, Rule 49(c)(4) provides that the accommodation to lawyers employed by the D.C. government shall end. Allowing a D.C. government employee to continue practicing law for longer than 360 days until an issue concerning the employee’s application is resolved would create a risk that a person determined to be unqualified to be a member of the D.C. Bar has continuously practiced law in the District for an extended period. Enforcement of Rule 49(c)(4) as written eliminates the risk.

Rule 49(c)(4) establishes a simple, objective, and unambiguous test: a person may practice in the District under this exception until 360 days after the person started to work as a

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<sup>1</sup> Rule 49(c)(8) allows lawyers other than D.C. government employees to practice in the District “for one period not to exceed 360 days” while their D.C. Bar applications are pending and certain other conditions are met, and this exception requires such lawyers to submit their applications within 90 days after they start to practice law in the District. Although Rule 49(c)(4) does not require D.C. government lawyers to apply for membership in the D.C. Bar within a specified period, it clearly contemplates that such lawyers will act diligently.

lawyer employed by the D.C. government. Rule 49(c)(4) contains no exceptions. Nor does it authorize the Committee to grant waivers or extensions.

In extraordinary circumstances, the Committee may decide not to take enforcement action against a D.C. government lawyer who does not become a member of the D.C. Bar within 360 days after his or her employment begins. Such extraordinary circumstances would exist if (1) the lawyer has promptly and diligently pursued his or her application,<sup>2</sup> (2) no issue about the lawyer's qualifications or fitness has emerged during the admissions process, and (3) any delay past the 360-day deadline is due to factors outside the applicant's control. However, even if the Committee decides not to take enforcement action, its decision would not be binding on other entities. For example, a judge may disqualify such a lawyer from representing the D.C. government in a judicial proceeding.

The Court of Appeals has, through Rule 49(c)(4), made it possible for the D.C. government to hire attorneys licensed in other jurisdictions, and for such lawyers to work for the D.C. government, while their application for D.C. Bar membership is pending. But like Rule 49(c)(8), Rule 49(c)(4) does not give carte blanche to attorneys licensed in other jurisdictions to practice law as D.C. government employees for more than 360 days irrespective of the standards of the D.C. Bar. *See* Opinion 7-99.

The Committee recognizes that sections (c)(1) and (c)(6) allow the federal government and entities other than the D.C. government to employ indefinitely as in-house counsel persons licensed in other jurisdictions, and even to obtain legal advice from employees who are not licensed anywhere at all. However, Rule 49(c)(4) establishes a different standard for the D.C. government and its employees. *See* Commentary to Rule 49(c)(1) ("Permission for employees of the government of the District of Columbia to practice in the District is more limited" than permission for federal government employees). The Committee is charged with interpreting and applying Rule 49(c)(4) according to its unambiguous terms.

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<sup>2</sup> The Committee ordinarily expects that D.C. government lawyers will submit their applications within 90 days after their employment begins, consistent with the requirement that other lawyers submit their applications within 90 days to qualify for the (c)(8) exception. D.C. government lawyers who wait longer do so at their own peril.

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 25th day of March, 2004.

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