



District of Columbia Court of Appeals  
Committee on Unauthorized Practice of Law  
500 Indiana Avenue, N.W.  
Washington, D. C. 20001  
202/879-2777

**OPINION 15-05**

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

**Issued March 14, 2005**

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 March 11, 2005:

**HOLDING OUT BY FOREIGN LAWYERS  
WITH PRINCIPAL OFFICES IN THE DISTRICT OF COLUMBIA**

A number of law firms in the District of Columbia employ for substantial periods individuals who are admitted to practice in a foreign country but who are not members of the D.C. Bar or licensed Special Legal Consultants and who do not qualify for any exception to Rule 49. The Committee has received a number of inquiries about whether these foreign lawyers may call themselves by any title other than “law clerk.” Suggested alternative titles include “foreign consultant,” “foreign advisor,” and “foreign associate,” or “international” consultant, advisor, or associate. Foreign lawyers and local law firms making these inquiries have stated that the title “law clerk” does not completely describe the qualifications of these individuals, and that they should be able to identify themselves truthfully and accurately as foreign lawyers.

In Opinion 8-00, the Committee addressed permissible practice by foreign lawyers in the District of Columbia. Foreign lawyers may obtain licenses to practice law as Special Legal Consultants pursuant to Rule 46(c)(4). Under that Rule, an individual who has been admitted to practice in a foreign country, intends to maintain an office for the practice of law in the District of Columbia, and meets other specified requirements may be licensed as a Special Legal Consultant. Special Legal Consultants practice law subject to several limitations, including a prohibition against rendering professional legal advice concerning U.S. law except on the basis of advice from a counsel authorized to practice law in the District. Rule 46(c)(4)(D)(6) and (7) regulate the terms on which a Special Legal Consultant may hold himself or herself out to the public: among other things, a Special Legal Consultant may use the title “Special Legal Consultant” but “only in conjunction with the name of the person’s country of admission.”

Some foreign lawyers may be authorized to practice from a principal office in the District under one or more exceptions to Rule 49. For example, a foreign lawyer whose practice is limited to certain federal agencies may qualify for the exception in Rule 49(c)(2), provided the lawyer makes the required disclosures. In addition, some foreign lawyers may be eligible to apply for admission to the D.C. Bar and may therefore qualify for the exception in Rule 49(c)(8), which authorizes persons who are admitted to practice in another state to practice in the District of Columbia for a limited period, provided that they submit a timely application for admission and meet other specified requirements, including supervision by a D.C. Bar member and disclosure of certain information.

However, a foreign lawyer may not engage in the practice law in the District if the lawyer (a) maintains his or her principal office in the District of Columbia, (b) is not an active member of

the D.C. Bar or a licensed Special Legal Consultant, and (c) does not qualify for any exception to Rule 49.<sup>1</sup> As the Committee advised in Opinion 8-00, such a lawyer may work in the District as a law clerk under the supervision of a member of the D.C. Bar, and the supervising attorney should make sure that clients understand that the foreign lawyer is not practicing law, and is not authorized to practice law, in the District of Columbia.

Such a foreign lawyer must comply not only with the prohibition against engaging in the practice of law in the District, but also with the prohibition against “holding out as authorized or competent to practice law in the District of Columbia.” *See* Rule 49(a). It is plainly consistent with the “holding out” provision for such a foreign lawyer to use the title “law clerk.” The question remains whether such foreign lawyers can use any title other than “law clerk” without violating the holding out prohibition.

The Committee concludes that a foreign attorney does not violate the prohibition against holding out if he or she identifies himself or herself as a “foreign” or “international attorney,” “foreign” or “international associate,” “foreign” or “international advisor,” or “foreign” or “international counsel” – subject to two strict conditions. First, the foreign lawyer must identify in all business documents those jurisdictions where the lawyer is authorized to practice law. For example, business documents, including letterhead, business cards, and websites, must identify a foreign lawyer authorized to practice law in Germany as “admitted only in Germany.” If the lawyer

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<sup>1</sup> This Opinion addresses activities of foreign lawyers who use the District of Columbia as their base of operations long enough to make their presence here more than incidental or occasional within the meaning of Rule 49(b)(3). Conversely, this Opinion does not address foreign lawyers who do not establish a principal office in the District and who instead practice law here on an incidental or occasional basis. *See* Opinion 14-04.

is also admitted in a U.S. jurisdiction, business documents may reflect this fact – for example, “admitted only in Germany and New York.”

The second, and independent, condition is that the foreign lawyer must include in all business documents an explicit and unqualified statement that the foreign lawyer is not engaged in the practice of law in the District of Columbia. Engaging in the practice of law from a principal office in the District of Columbia requires a person to be either a member of the D.C. Bar, a licensed Special Legal Consultant, or eligible to practice under a specific exception in Rule 49(c). Unless such a foreign lawyer meets one of these requirements, he or she may not engage in the practice of law in the District of Columbia.<sup>2</sup> That is true even if such a foreign lawyer advises clients only about the law in the foreign country where the lawyer is authorized to practice. The status of Special Legal Consultant was created for foreign lawyers who wish to maintain an office in the District and to advise clients about foreign law. Any foreign lawyer who wants to advise clients about foreign law from a principal office in the District of Columbia should obtain a license as a Special Legal Consultant.<sup>3</sup>

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<sup>2</sup> A foreign lawyer based in Washington may not evade the restrictions in Rule 49 by providing legal advice on business trips outside Washington. Rule 49 “is intended to require admission where an attorney is using the District of Columbia as a base from which to practice,” Commentary to Rule 49(b)(3), and a foreign lawyer who uses his or her D.C. office as the base from which to practice is engaged in the practice of law “in” the District of Columbia even if some aspects of a matter may be handled outside the District. That does not mean, however, that a foreign lawyer based in Washington may never provide legal advice in the country where the lawyer is authorized to practice law.

<sup>3</sup> A lawyer authorized to practice in another U.S. jurisdiction may also work from a principal office in the District of Columbia as a law clerk under appropriate supervision by a member of the D.C. Bar. Like a foreign lawyer, such a domestic lawyer may inform people that he is admitted to practice in another U.S. jurisdiction, so long as the lawyer states explicitly that he or she is not engaged in the practice of law in the District of Columbia.

The Committee further concludes that a foreign lawyer not admitted to the D.C. Bar or licensed as Special Legal Consultant may *not* identify himself or herself as a “foreign consultant” or “international consultant” because that term may be misunderstood as a shorthand for Special Legal Consultant and may therefore be misleading.

There may be other titles not specified above that are not misleading and that comply with the provision against holding out by a person who is not a D.C. Bar member, provided that the foreign lawyer identifies those jurisdictions in which he or she is authorized to practice law and states expressly that he or she is not engaged in the practice of law in the District of Columbia. This Opinion does not provide an exhaustive catalog of all titles that a foreign lawyer may use in these circumstances.

In reaching these conclusions, the Committee is cognizant of the interest of foreign lawyers working as law clerks in the District of Columbia to inform clients and others of their training. Clients have a significant interest in understanding the qualifications not only of lawyers, but also of people in law firms and other legal organizations who assist lawyers, and authorization to practice law in a foreign country may be relevant to the tasks performed by the foreign lawyer as a law clerk. Foreign lawyers and their employers should be able to inform clients about a foreign lawyer’s qualifications to perform the work, provided they also inform clients that the foreign lawyer is not engaged in the practice of law in the District of Columbia. Moreover, most foreign lawyers employed as law clerks are employed by large law firms and work on matters for corporate clients that tend to be knowledgeable consumers of legal services.

Another factor in the Committee’s conclusion is its understanding that a significant number of foreign lawyers have been employed in the D.C. office of law firms and have been

identified by a number of different titles, including the titles approved above, and the Committee has not received complaints that clients of these firms mistakenly understood that these foreign lawyers held themselves out as authorized to practice in the District of Columbia. The lack of reported problems caused by use of these titles supports that the Committee's conclusion that clients do not necessarily believe that foreign attorneys who use these titles are holding themselves out as qualified to practice law in the District of Columbia.

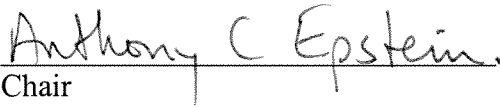
The lack of problems may also reflect the fact that the D.C. Bar members who supervise foreign lawyers acting as law clerks are fully accountable for the foreign lawyers' conduct. Rule 5.3(b) of the D.C. Rules of Professional Conduct requires a lawyer having direct supervisory authority over a non-lawyer to make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer, and those obligations include the obligation under Rule 5.5(b) not to assist a person who is not a member of the Bar in the performance of activity that constitutes the unauthorized practice of law. If a D.C. Bar member fails properly to supervise a foreign lawyer and thereby permits the foreign lawyer to engage in the practice of law, or to hold out as authorized to practice law, the supervisory lawyer would breach his or her ethical obligations.

Finally, the Committee observes that the law firms and other organizations that employ foreign lawyers in the District of Columbia have an obligation to comply with Rule 49. Although the D.C. Rules of Professional Conduct apply only to lawyers, Rule 49 applies to law firms and other organizations as well as individuals. Rule 49 imposes on employers of foreign lawyers a responsibility to ensure that any employee (including any foreign lawyer) is not held out as authorized to practice law when in fact that individual is not. In the Committee's

experience, employees generally rely on their employers to ensure that letterheads, websites, and other materials comply with applicable rules. The Committee therefore takes action against law firms and other organizations that violate Rule 49 by holding out as authorized or competent to practice law individuals who may not engage in the practice of law consistent with Rule 49. That includes organizations that employ foreign lawyers as law clerks and identify these individuals in ways inconsistent with this Opinion or otherwise with Rule 49.

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 14th day of March, 2005.

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