

Opinion 4-98

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

Issues September 14, 1998

Pursuant to District of Columbia Court of Appeals Rule 49 (the "Rule"), section 49(d)(3)(G), the 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 September 11, 1998:

Practice of Law By Organizations; Section 49(b)(2)(F)

By letter dated May 20, 1998, a member of the Bar has requested an opinion whether the Rule is construed to prohibit activity of law firms and similar legal services organizations which may be described as "[f]urnishing an attorney or attorneys, or other persons, to render the services" described as the presumed practice of law in sections 49(b)(2)(A) through (E). The requesting member notes that the prohibition set forth in section 49(a) of the Rule applies to any "person," and that "person" is defined in section 49(b)(1) to include "any ... group of individuals, firm, unincorporated association, partnership, corporation, mutual stock company, joint stock company, trust, trustee, receiver, legal or business entity." Upon these provisions the requesting member observes that "cause" organizations, such as the NAACP Legal Defense and Education Fund and the American Civil Liberties Union, could be found to violate Rule 49 when they provide attorneys from their staffs or refer other attorneys to potential clients. The requesting member also observes that organizations established as law firms may also engage in technical violations of the Rule when, as a group, they assign their attorneys to serve a client.

In response to the member's request, the Committee expresses the following opinion:

Under the prior version of Rule 49 and under its revision, the intent of requiring that only members of the Bar "[f]urnish[*] an attorney or attorneys, or other persons, to render the" services enumerated in sections 49(b)(2)(A) through (E) has been to assure that only qualified attorneys subject to the regulatory and disciplinary system of the District of Columbia Courts, and derivatively the District of Columbia Bar, will be making professional judgments on the appropriate attorneys to which specific clients should be referred for representation in specific matters. More specifically, as implied in the Commentary to section 49(b)(2)(F), that section is intended to assure that only responsible and authorized referral services will be making such judgments:

The conduct described in section (b)(2)(F) concerning the furnishing of attorneys is not intended to include legitimate or official referral services, such as those offered by the District of Columbia Bar, bar associations, labor organizations, non-fee *pro bono* organizations, and other court-authorized organizations.

The "cause" organizations and law firms to which the requesting member refers are not the kind of referral organizations contemplated by the Commentary; nor are they typical of the kind of organizations against which sections 49(a) and (b)(2)(F) of Rule are intended to provide protection. It is one or more people, as well as formal organizations, that are engaged in the referral of persons seeking legal services, where there is no member of the District of Columbia Bar responsible for the referral judgment, that pose a threat of unprofessional advice not subject to the regulation and discipline of the Bar. It is that activity that those sections are intended to prohibit.

The requesting member further observes that the activity set forth in section 49(b)(2)(F) is only reputedly presumed to constitute the practice of law, and suggests that the presumption of practicing law could be rebutted in the case of challenge to the attorney-selection activities of a cause organization or law firm by showing that the organization does not have a relationship of trust or reliance and there is not representation that it is authorized or competent to practice law. Such an approach would be unduly strained, as "cause" organizations, exemplified by the NAACP "Inc.

Fund," and certainly law firms, are unquestionably considered to have, and to hold themselves out to have, client relationships of trust and reliance, and they do represent as a group that they are authorized and competent to practice law.

The Committee concludes that the proper approach to the question raised by the requesting member is directly to recognize the intent of the instant provisions and to state simply as follows:

That an organization that engages in referring persons seeking legal services to attorneys within itself or to attorneys volunteering through the organization does not act in violation of Rule 49 where there is a member of the District of Columbia Bar within the organization who is responsible for the referral judgment.

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 11th day of September, 1998