

## **Opinion 6-99**

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

Issued June 30, 1999

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 June 25, 1999:

### **Permissible Conduct of Commercial Firms That Place Attorneys on a Temporary Basis With Legal Service Organizations**

Law firms, corporate law departments, pro bono legal service organizations, and other organizations that hold out to provide legal services (collectively "legal service organizations") are increasingly seeking to retain attorneys on a temporary basis for particular projects. To serve this need, commercial businesses have developed that, upon request, locate and offer attorneys for such temporary projects. The Committee has received a significant number of inquiries seeking guidance whether such provision of attorneys for temporary projects complies with Rule 49.

The pertinent language of Rule 49 appears in the definition of the "practice of law" in section 49(b)(2)(F), as follows:

**"Practice of Law"** means the provision of professional legal advice or services where there is a client relationship of trust or reliance. One is presumed to be practicing law when engaging in any of the following conduct on behalf of another.

(F) Furnishing an attorney or attorneys, or other persons, to render the services described in subparagraphs (a) through (e) above.

Because Rule 49 applies only to the "practice of law," a person (a term used here to include individuals and organizations) whose conduct does not constitute the practice of law, as defined in the Rule, is not required to comply with its provisions.

The commentary to Rule 49(b)(2)(F) does not explicitly address the question whether the provision of temporary attorneys by commercial firms to legal service organizations constitutes the practice of law. The commentary states only as follows:

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.

Individual lawyers and non-lawyers refer or recommend attorneys in a wide variety of circumstances. As its ordinary meaning indicates, the term "furnishing," within the meaning of section (b)(2)(F) involves more than simply recommending a particular attorney. As the Commentary to Rule 49 implies, section (b)(2)(F) is generally addressed to the business of providing attorneys in response to a request from a non-lawyer member of the public for representation in a specific, pending legal matter. This activity is included in the definition of the "practice of law," because, properly made, such referrals generally involve the exercise of the trained judgment of a lawyer.

In September 1998, the Committee addressed the principle underlying Rule 49(b)(2)(F). In response to a request for opinion concerning the practice of such "cause" organizations as the NAACP "Inc. Fund," which provide attorneys on their staffs to represent members of the public, the Committee explained the fundamental purpose of including attorney referrals in the definition of the practice of law:

It is one or more people, as well as formal organizations, that are engaged in the *referral [to] 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 [Rule 49(a) and (b)(2)(F)] are intended to prohibit.

Opinion 4-98, at 2 (emphasis supplied). As the highlighted language indicates, the basic concern behind section 49(b)(2)(F) is that a non-lawyer member of the public seeking an attorney for a particular matter will rely inappropriately on the judgment of non-lawyers who refer a specific attorney for the matter and who are regularly engaged in referring lawyers for similar matters.

In addressing again the application of Rule 49(b)(2)(F), we are mindful that, like the activities of "cause" organizations giving rise to Opinion 4-98, the practice giving rise to this opinion - provision of attorneys to legal service organizations on a temporary basis - is only one of many circumstances in which person refer attorneys to others. For example, professional search firms locate prospective candidates for regular, non-temporary positions in legal service organizations. Because these and other activities distinct from the commercial service giving rise to this opinion may present different considerations, we do not express an opinion on whether Rule 49 applies to other activities than those of temporary attorney services addressed here.

To give guidance concerning the application of Rule 49(b)(2)(F) to commercial firms that place attorneys on a temporary basis, the Committee has adopted the following principles as an interpretation of the provision.

A commercial firm that provides attorneys to legal service organizations on a temporary basis does not engage in the practice of law, within the definition set forth in Rule 49(b)(2), to the extent that:

1. An attorney in the legal service organization that has an attorney-client relationship with the prospective client will select the temporary attorney.
2. The lawyer providing services on a temporary basis will be directed or supervised by a lawyer in the legal services organization that represents the client; and
3. The commercial firm does not otherwise engage in the practice of law within the meaning of Rule 49(b)(2)(A-E), or attempt to direct or to supervise the practice of law by the attorneys it places.

In these circumstances, temporary attorney services do not exercise, or purport to exercise, professional legal judgment, as they leave the selection of candidates to the judgment of the lawyers responsible for the matter or matters requiring temporary professional assistance. The Committee emphasizes that it considers essential to this opinion the predicate that professional legal judgments concerning retention of individual lawyers on a temporary basis are made by competent and authorized attorneys within a legal service organization that has an attorney-client relationship with the client whose legal needs give rise to the need for temporary attorneys.

As stated above, this opinion addresses only the application of the definition of the "practice of law" to temporary attorney services. It does not address: (a) the activities of professional search firms that provide different services; (b) compliance with Rule 49 by the attorneys who provide legal services on a temporary basis; (c) compliance with Rule 49 by lawyers who advise clients about which lawyers to retain on a temporary basis; or (d) the ethical rules that lawyers in legal service organizations must satisfy when employing attorneys on a temporary basis. As to compliance with Rule 49, the Committee notes that any attorney, whether regular or temporary, must comply individually with Rule 49 if the attorney engages in the practice of law in the District of Columbia. As to the application of the ethical rules, the Committee refers members of the District of Columbia Bar to the Rules of Professional Conduct.

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 30th day of June, 1999.