

Opinion 8-00

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

Issued July 28, 2000

An increasing number of lawyers from foreign countries wish to practice in the District of Columbia. The Committee has received several inquiries concerning the ability of foreign attorneys to engage in the practice of law in the District of Columbia. This Opinion addresses the questions that have been most frequently asked.

Rule 46(c)(4) provides that an individual who (a) has been admitted to practice (or has obtained the equivalent of admission) in a foreign country, (b) has engaged in the practice of law in that country for a period of not less than five years and (c) meets the other requirements therein set forth may be licensed as a Special Legal Consultant in the District of Columbia. Rule 46(c)(4)(D) states explicitly that a person licensed to practice as a Special Legal Consultant may render legal services in the District "notwithstanding the prohibitions of Rule 49(b)," subject to several limitations (for example, a Special Legal Consultant may not appear in court or before agencies "other than upon admission pro hac vice in accordance with Rule 49(b) or any applicable agency rule"). 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: a Special Legal Consultant shall not "in any way hold himself or herself out as a member of the Bar of this court;" and the individual generally must identify himself or herself as a "Special Legal Consultant" and do so "only in conjunction with the name of the person's country of admission."

Under the express language of Rule 46(c), Rule 49 does not prevent a foreign lawyer who has been licensed to practice as a Special Legal Consultant from practicing law in the District consistent with the requirements of Rule 46(c). Questions arise under Rule 49 only when foreign lawyers are not eligible for licensure as a Special Legal Consultant (for example, because they cannot satisfy the requirements concerning length of practice in a foreign country) or when they are eligible for such a license but have not yet obtained it.

No exception to Rule 49(c) permits a foreign lawyer who is not eligible for licensure as a Special Legal Consultant to practice law in the District. Such a lawyer is in the same position as a lawyer admitted to practice in another U.S. jurisdiction who is not eligible for admission to the District of Columbia Bar. Such a lawyer may, however, 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 admitted to practice law, in the District of Columbia.

Rule 49 also does not permit a foreign lawyer to engage in the practice of law in the District while an application for licensure as a Special Legal Consultant is pending. Rule 49(c)(8) provides for a 360-day exception for an active member of the bar of the highest court of a state or territory to practice law from a principal office located in the District who, within ninety days of commencing practice in the District, submits an application "for admission to the District of Columbia Bar." This exception is available only if a member of the D.C. Bar directly supervises the applicant and takes responsibility for the quality of the work and complaints concerning the services, and gives notice to the public of the member's supervision and the practitioner's bar status. However, the exception in Rule 49(c)(8) is not available to individuals who have applied to licensure as a Special Legal Consultant because an application to become a Special Legal Consultant is not an application for admission to the Bar. Special Legal Consultants occupy a special status and are not members of the District of Columbia Bar. Accordingly, a foreign lawyer with a pending application to become a Special Legal Consultant may work only as a law clerk unless and until the application is granted.

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 28th day of July, 2000.