



District of Columbia Court of Appeals
Committee on Unauthorized Practice of Law
430 F Street, N.W. — Room 123
Washington, D. C. 20001
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OPINION 24-20: Teleworking from Home and the COVID-19 Pandemic

In light of the widespread use of telework occasioned by the need to practice social distancing to slow the spread of the novel coronavirus COVID-19, the D.C. Court of Appeals Committee on Unauthorized Practice of Law has issued the following opinion identifying circumstances in which persons who are not District of Columbia bar members may practice law from personal residences or other locations within the boundaries of the District of Columbia under Rule 49(c)(13) (“Incidental and Temporary Practice”).

Background Legal Principles

Rule 49(a) of the Rules of the District of Columbia Court of Appeals provides: “Except as otherwise permitted by these rules, no person may engage in the practice of law in the District of Columbia or in any manner hold out as authorized or competent to practice law in the District of Columbia unless enrolled as an active member of the D.C. Bar.” “In the District of Columbia’ means conduct in, or conduct from an office or location within, the District of Columbia.” D.C. Ct. App. R. 49(b)(3). Rule 49’s official commentary explains:

The rule is intended to regulate all practice of law within the boundaries of the District of Columbia. . . . A lawyer is engaged in the practice of law in the District of Columbia when the lawyer provides legal advice from an office or location within the District. That is true if the lawyer practices in a residence or in a commercial building, if all of the lawyer’s clients are located in other jurisdictions, if the lawyer provides legal advice only by telephone, letter, email, or other means, if the lawyer provides legal advice only concerning the laws of jurisdictions other than the District of Columbia, or if the lawyer informs the client that the lawyer is not authorized to practice law in the District of

Columbia and does not provide advice about District of Columbia law.

Comment, D.C. Ct. App. R. 49(b)(3).

Rule 49(c) lists “activities . . . permitted as exceptions” to Rule 49(a)’s general prohibition on the practice of law in the District of Columbia by persons who are not District of Columbia bar members. Rule 49(c)(13) provides an exception for “incidental and temporary practice”:

A person may provide legal services in the District of Columbia on an incidental and temporary basis if the person is authorized to practice law and in good standing in another state or territory or authorized to practice law in a foreign country, is not disbarred or suspended for disciplinary reasons, and has not resigned with charges pending in any jurisdiction or court.

D.C. Ct. App. R. 49(c)(13). Rule 49’s official commentary explains:

The exception in subsection (c)(13) recognizes that Rule 49 is not intended to require admission to the D.C. Bar where an attorney with a principal office outside the District of Columbia is incidentally and temporarily required to come into the District of Columbia to provide legal services to a client.

The exception requires that the lawyer’s presence in the District of Columbia be both incidental and temporary. Whether the lawyer’s presence in the District is “incidental” to the District of Columbia and to the lawyer’s authorized practice in another jurisdiction depends on a variety of factors. . . .

Subsection (c)(13) also requires that the lawyer’s presence in the District be “temporary.” There is no absolute limit on the number or length of a lawyer’s visits to the District that makes the lawyer’s presence “temporary.” For example, a lawyer who spends several weeks or even months in the District in connection with a case that does not involve the District and that is pending

in a court outside the District may be only temporarily, and incidentally, in the District for purposes of subsection (c)(13). If a lawyer's principal place of business is in the District, the lawyer is not practicing law in the District on a temporary basis and must be a member of the D.C. Bar unless another exception in section (c) applies.

The Committee's View

In view of the foregoing principles, the Committee's opinion is that an attorney who is not a member of the District of Columbia bar may practice law from the attorney's residence in the District of Columbia under the "incidental and temporary practice" exception of Rule 49(c)(13) if the attorney (1) is practicing from home due to the COVID-19 pandemic; (2) maintains a law office in a jurisdiction where the attorney is admitted to practice; (3) avoids using a District of Columbia address in any business document or otherwise holding out as authorized to practice law in the District of Columbia, and (4) does not regularly conduct in-person meetings with clients or third parties in the District of Columbia.

Rule 49(c) sets forth a number of other exceptions—in addition to the Rule 49(c)(13)—to the general prohibition on the practice of law in the District of Columbia by persons other than members of the District of Columbia bar. This opinion should not be construed to limit the ability of persons to practice law in the District of Columbia pursuant to any of those exceptions.

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This opinion was adopted by the Committee on Unauthorized Practice of Law by electronic vote pursuant to Rule 49(d)(9)(F) on March 23, 2020. The staff of the Committee shall cause the opinion to be submitted for publication in the same manner as the opinions rendered under the Rules of Professional Conduct.

March 23, 2020



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Unauthorized Practice of Law*