UNAUTHORIZED PRACTICE OF LAW OPINION 195
VIRGINIA ATTORNEY IN PARTNERSHIP WITH AN ATTORNEY LICENSED OUTSIDE THE U.S.

I am writing in response to your correspondence of August 27, 1999, requesting an Unauthorized Practice of Law (UPL) advisory opinion dealing with the propriety of an attorney licensed to practice law in Virginia forming and operating a partnership or other professional association with an attorney not licensed in the United States. Your inquiry raises not only unauthorized practice issues, which the committee will address below, but also ethical issues which are beyond its purview. Therefore, those matters which involve legal ethics have been referred to the Standing Committee on Legal Ethics for its consideration.

You have asked the UPL Committee to opine whether a non-United States attorney, i.e., an attorney licensed and admitted to practice in another country, and who is licensed in a state other than Virginia as a "Foreign Legal Consultant (FLC),"[1] would be considered a "nonlawyer" for purposes of Virginia's Unauthorized Practice of Law Rules. Va. S. Ct. R., Part Six, Section I. Second, assuming that the answer to the first question is "yes", i.e., that the FLC would be regarded as a "nonlawyer" under Virginia's UPL rules and definitions, you have asked whether it would be permissible for a Virginia attorney to form a partnership with the FLC to practice law in the Commonwealth of Virginia.

Your third inquiry is whether the Virginia lawyer could still form a partnership with the FLC even if the FLC was *not* licensed as such in any state in the United States.

The Committee considered your inquiries at its December 9, 1999 meeting and has directed me to transmit its conclusions to you. The Committee will address your first inquiry since it involves application of UPL rules and definitions. The second and third inquiries, being ethical in nature, are being referred to the Standing Committee on Legal Ethics.

The appropriate and controlling Virginia Unauthorized Practice Rule is Va. S. Ct. R., Part Six, Section I (C):

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LAWYER ADVERTISING OPINION A-0113
STATEMENTS BY THIRD PARTIES

Question Presented:

Can a lawyer circumvent the prohibition against comparative statements with the use of client testimonials?

Opinion:

A hypothetical will serve to illustrate this question. A lawyer's television advertisement shows a former client making statements about the client's satisfaction and about the quality of the lawyer's services. Such statements include comments that the lawyer is "the best" and will get you "quick results."

Rule 7.1 prohibits advertising that contains statements that are "false, fraudulent, misleading, or deceptive." The rule contains a list of specific items that are deemed to violate that prohibition. For example, Rule 7.1(a)(3) prohibits statements comparing attorneys' services, unless the comparison can be factually substantiated. Several prior opinions of this committee have added to the list of clear violations for this prohibition. For example, A-0109 prohibits, as misleading, the advertising of specific case results. Thus, an attorney has clear guidance as to the impropriety of making certain statements in his advertising.

Do those same content restrictions apply where the statement is not made by the attorney but by a former or current client in the form of a testimonial? Rule 8.4(a) states that an attorney shall not violate a discipline rule through the actions of another. Moreover, the language of the restriction in Rule 7.1 makes no qualification as to the maker of the regulated statements. To the contrary, the rule's requirements are directed at any statements contained in the communication. Thus, there is no support in Virginia's professional conduct rules for affording greater leeway to advertising statements made by clients than to those made by attorneys. The standard, that dictated in Rule 7.1, is the same in both instances. Applying that standard to this hypothetical, the client's statements make a comparison ("the best") that cannot be factually substantiated and offer a guarantee of results ("quick"). As those improper statements are *contained* in the lawyer's advertisement, the lawyer would be in violation of Rule 7.1 were he to televise this advertisement.

In further clarification, even statements of opinion by clients that contain comparative statements are not appropriate. This committee adopts the mixed approach, used in Pennsylvania, while prohibiting testimonials regarding results and/or comparisons, it does allow "soft endorsements." *Philadelphia Ethics Opinion 91-17; Pennsylvania Bar Association Ethics Opinion 88-142*. Examples of "soft endorsements" include statements such as the lawyer always returned phone calls and the attorney always appeared concerned. *Id*.

In sum, the requirements for lawyer advertising are all intended for the protection of the public. The restrictions on advertising content are carefully chosen to avoid misleading the public as they make the important choice of whom to select for legal representation. This committee will not erode that protection where nonlawyers or their statements appear in the advertisements. Such a distinction would violate both the language of the pertinent discipline rule and the spirit behind it.

Committee Opinion
February 29, 2000

Definition of "Nonlawyer." The term "nonlawyer" means any person, firm, association or corporation not duly licensed or authorized to practice law in the Commonwealth of Virginia. However, the term "nonlawyer" shall not include foreign attorneys who provide legal advice or services in Virginia to clients under the following restrictions and qualifications:

1. Such foreign attorney must be admitted to practice and in good standing in any state in the United States; and
2. The services provided must be on an occasional basis only and incidental to representation of a client whom the attorney represents elsewhere; and
3. The client must be informed that the attorney is not admitted in Virginia.

A lawyer who provides services not authorized under this rule must associate with an attorney authorized to practice in Virginia.

Nothing herein shall be deemed to overrule or contradict the requirements of Rules of this Court regarding foreign attorneys admitted to practice in the courts of the Commonwealth of Virginia including the association of counsel admitted to practice before the courts of this Commonwealth.

A lawyer who provides services as authorized under this rule, or who is admitted pro hac vice under Rule 1A:4 shall, with regard to such services or admission, be bound by the disciplinary rules set forth in the Virginia Code of Professional Responsibility.

Failure of the foreign attorney to comply with the requirements of these provisions shall render the activity by the attorney in Virginia to be the unauthorized practice of law.

The Committee is of the opinion that the FLC in your hypothetical is a "non-lawyer." Moreover, the exception under Part Six, Section I (C) for foreign attorneys was a narrow one intended only to permit non-Virginia attorneys, *licensed in another state in the United States*, to provide *incidental* and *occasional* legal services to a client, *including matters involving the application of Virginia law*, where the foreign attorney represents that client in the state where he or she is admitted to practice. In short, the rule was amended in 1996 to allow transactional lawyering by a non-Virginia attorney that would otherwise constitute the unauthorized practice of law in Virginia. *See, e.g.*, UPL Op. 158 (1996). Part Six, Section I (C) cannot be construed as allowing a non-Virginia attorney to establish a regular practice in Virginia of advising clients on matters involving the application of Virginia law.

In UPL Opinion 158 the Committee opined that it would constitute the unauthorized practice of law for a foreign attorney to advise any client *in Virginia* on matters that involve law which is neither federal law *nor the law of the jurisdiction in which the foreign attorney is authorized to practice law*. Therefore, it would appear, conversely, that a foreign attorney may advise a client *in Virginia* on matters involving the law of the jurisdiction in which the foreign attorney is admitted to practice. This interpretation seems appropriate in that UPL Opinion 158 expressly overruled prior UPL Opinions 100 and 107.[2]

Thus, for example, a multi-jurisdictional law firm with an office in Virginia, staffed with Virginia admitted lawyers, could employ a foreign attorney or FLC. However, the foreign attorney or FLC must restrict his practice to advising clients on matters involving the law of the jurisdiction where he is authorized to practice. If the foreign attorney provides legal services to a client on matters involving the application of Virginia law, this would constitute the unauthorized practice of law unless the work is performed under the direct supervision of, and is reviewed by, a Virginia licensed attorney before given to the client.

Committee Opinion
April 13, 2000

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1 One commentator notes that at least nineteen states in the United States have adopted rules allowing lawyers admitted in foreign countries to act as "foreign legal consultants." Andrew Pardieck, *Foreign Legal Consultants: the Changing Role of the Lawyer in a Global Economy*, 3 INDIANA JOURNAL OF GLOBAL STUDIES, Vol.2, at 1 (Spring 1996). In 1974, New York became the first state to adopt a rule permitting FLCs. *See* N.Y.Ct.R. App. pt. 521. The scope of practice is limited to rendering advice on the law of the foreign country where the FLC is admitted to practice. Other restrictions, including reciprocity for U.S. lawyers, apply.

2 UPL Op. 100 prohibited a D.C. attorney, who desired to move his practice to Virginia, from conducting a practice involving federal legislative, governmental and advisory matters, none of which involved the application of Virginia law. UPL Op. 107 declared that it is the unauthorized practice of law for a non-Virginia attorney to render legal advice in Virginia *even on the law of his home jurisdiction*.