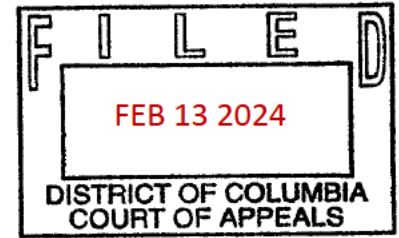


**District of Columbia
Court of Appeals**



No. M283-24

BEFORE: Blackburne-Rigsby, Chief Judge, and Beckwith, Easterly, McLeese, Deahl, Howard, and Shanker, Associate Judges.

NOTICE

(FILED – February 13, 2024)

This court is considering amending its rules on two unrelated topics. First, the Committee on Unauthorized Practice of Law has proposed a number of amendments to D.C. App. R. 49. The proposal is attached.

Second, in 2021, this court implemented a pilot project to make certain documents filed in this court electronically available to the public. See Order No. M-274-21 (D.C. June 17, 2021) (attached). The court has since expanded that pilot project. A key part of the pilot project has been developing requirements intended to protect confidential and other sensitive information and to comply with laws limiting or prohibiting the electronic dissemination of such information. See Order No. M-274-21 (requiring redaction from briefs of personally identifying information, such as social-security numbers, driver’s license numbers, and birthdates, as well as information that, for example, would reveal the identity of persons receiving mental-health or substance-abuse services; the identity or location of persons protected by civil protection orders; and the identity of persons who have been the victim of a sexual offense).

The court is now considering revising its rules and internal operating procedures to address these issues, which arise not only as to documents filed with the court but also as to orders and opinions filed by the court. At present, the court’s rules and internal operating procedures address these issues only in certain specific areas. See D.C. App. R. 12(c) (governing sealing of record); Internal Operating Procedures VIII.F.8 (providing that court’s opinions will use initials to refer to victims of sexual assault and to refer to parties in appeals from adjudications of delinquency, neglect, termination of parental rights, and contested adoption). The court intends to consider in a more global and systematic way the question of when

the court's opinions and orders should use initials, or other approaches, to protect privacy and confidentiality. Before drafting revised rules and internal operating procedures, the court would like the benefit of general comments and/or specific suggestions from the public and potentially interested parties.

This notice is published to afford interested parties an opportunity to submit written comments concerning the amendments under consideration. Comments must be submitted by Monday April 15, 2024. Comments may be submitted electronically to rules@dcappeals.gov, or in writing, addressed to the Clerk, D.C. Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001. All comments submitted pursuant to this notice will be available to the public.

PER CURIAM

PAGE LEFT BLANK INTENTIONALLY



District of Columbia Court of Appeals
Committee on Unauthorized Practice of Law
430 F Street, N.W. — Room 123
Washington, D. C. 20001
202 / 879-2777

January 12, 2024

Via Email

The Honorable Anna Blackburne-Rigsby
Chief Judge
District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Washington, D.C. 20001h

Re: **Proposed Revisions to Rule 49(c)**

Dear Chief Judge Blackburne-Rigsby:

On behalf of the D.C. Court of Appeals Committee on Unauthorized Practice of Law (“UPL Committee”), I am pleased to forward to you our recommendations to revise certain subsections of Rule 49(c) of the Court’s rules as well as relevant portions of the official commentary. Specifically, we are recommending changes to Rule 49(c)(6) governing in-house counsel; Rule 49(c)(8) governing applicants to the Committee on Admissions who are members of the bar of other jurisdictions; and Rule 49(c)(9) governing the provision of pro bono services. The UPL Committee unanimously approved these proposed recommendations at its most recent meeting in January 2024.

The Committee proposes the following modifications:

I. Rule 49(c)(6)

In its Order adopting the most recent amendments to Rule 49, *see* Order, No. M-277-21 (June 22, 2022), the Court declined at that time to revise Rule 49(c)(6) as originally proposed by the UPL Committee, recognizing that the Committee “plans to look further into whether such a revision is warranted.” Since then, the UPL Committee has examined the scope of Rule 49(c)(6); met with representatives from the Association of Corporate Counsel, a bar association representing the interests of in-house counsel; and considered and rejected various alternative

proposals to modify the exception the Rule implements. The UPL Committee believes that the modifications proposed below – in particular, clarifying that in-house counsel may provide not only legal “advice” but also legal “services” to their employers – are reasonable and consistent with the overall purpose of the exception. The UPL Committee proposes the following modifications to Rule 49(c)(6) and to the corresponding Commentary:

(6) *In-House Counsel*. A person who is not a D.C. Bar Member may provide legal ~~advice~~ **services** to the person’s employer or its organizational affiliates, and may hold out as authorized to provide ~~that advice~~ **those services**, if the employer understands that the person is not a D.C. Bar Member. This Rule 49(c)(6) does not authorize a person to appear in any court, or in any department, agency, or office of the United States or the District of Columbia. **A person practicing under Rule 49(c)(6) is subject to the power and jurisdiction of the courts of the District of Columbia and must abide by the District of Columbia Rules of Professional Conduct.**

* * *

Commentary to Rule 49(c)(6):

Rule 49(c)(6) addresses in-house attorneys and others who are employed to provide legal **services** ~~advice, and only advice~~, to their employer or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. The provision of legal **services** ~~advice~~ by in-house counsel or advisors generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the employee’s qualifications and the quality of the employee’s work. **A person practicing under this exception may hold out as authorized to provide these services by, for example, using titles such as “General Counsel” or “Corporate Counsel” on business cards and website profiles in a manner that makes clear that the person is affiliated with the organization and providing legal services solely to that organization.**

There may be other instances of persons employed to provide legal services to their employer who would fall within Rule 49(c)(6). For example, an internal personnel manager advising her employer on the requirements of equal employment opportunity law, or a purchasing manager who drafts contracts, fall within Rule 49(c)(6), as they do not give the employer a reasonable expectation that it is being served by a D.C. Bar Member. Similarly, an employee on the staff of a trade association who **drafts** ~~gives only advice concerning~~ leases **or other** ~~personnel, and~~ **documents** ~~contractual matters~~ would be covered by Rule 49(c)(6) if, in fact, the employee does not give the employer reason to believe that the employee is a D.C. Bar Member.

Rule 49(c)(6) provides a limited exception arising from the position of the employee, the confinement of the employees’s professional services to activities internal to the employer, and the absence of conduct creating a reasonable expectation that the

employer is receiving the services of a D.C. Bar Member. **However, anyone practicing law under this exception is subject to the jurisdiction of the courts of the District of Columbia and must abide by the D.C. Rules of Professional Conduct.**

Rule 49(c)(6) does not authorize employees to **provide legal services to or otherwise** represent other individual employees of their employer or its affiliates.

II. **Rule 49(c)(8)**

The UPL Committee recommends a minor revision to Rule 49(c)(8)(B) that would provide additional discretion to the Director of the Committee on Admissions to extend the period of time during which a person may be authorized to practice under this exception. There is no need to modify the official Commentary with regard to this proposal.

(8) While Bar Application Is Pending.

(A) *In General.* A person who is not a D.C. Bar Member may provide legal services in the District of Columbia, and may hold out as authorized to provide those services, for a period not to exceed 365 days from the start of the practice if:

....

(B) *Extension of Time.* On request and for good cause, the Director of the Committee on Admissions may extend beyond 365 days the period during which a person is authorized to practice by Rule 49(c)(8). **Absent good cause,** ~~a~~ request for an extension must be submitted in writing to the Director at least 14 days before the 365-day period expires. An applicant who has submitted a timely written request for an extension may continue to practice under Rule 49(c)(8) while the request is pending. If the request is granted, the Director must inform the person in writing of the length of the extension.

III. **Rule 49(c)(9)**

The pro bono exception to the unauthorized practice of law rule has been substantially revised and expanded over the past few years. These revisions have proven successful, but the UPL Committee has identified two separate issues that warrant further clarification. The first – in Rule 49(c)(9)(A) – proposes to clarify the existing rule, which has been a source of some confusion by employees of legal services organizations. The second – in Rule 49(c)(9)(B) – proposes to allow law school graduates to provide pro bono services for up to one year while they await admission to the D.C. Bar under the supervision of D.C. Bar Members affiliated with the Public Defender Service or a non-profit legal services organization.

A. Rule 49(c)(9)(A)

The purpose of this proposal would be to make clearer that this exception does not apply to full-time employees of the Public Defender Service or non-profit organizations:

(9) *Pro Bono*.

(A) *Attorneys Working Pro Bono*. A person who is not a D.C. Bar Member may provide *pro bono* legal services, and may hold out as authorized to provide those services, if the person **is not employed by the Public Defender Service or a non-profit organization that provides pro bono legal services and:**

(i) is or was admitted in another United States jurisdiction, or previously was a D.C. Bar Member;

(ii) was not disbarred or suspended for disciplinary reasons, and has not resigned with charges pending, in any United States jurisdiction or court;

(iii) is supervised by a D.C. Bar Member on each *pro bono* matter;

(iv) gives prominent notice in all business documents specifically concerning each *pro bono* matter that the person's work on the matter is supervised by a D.C. Bar Member and that the person is not a D.C. Bar Member;

(v) if the matter involves appearance in the District of Columbia Court of Appeals or the Superior Court of the District of Columbia, the person, in the first pleading or other paper filed with the court, identifies the supervising D.C. Bar Member by name, address, e-mail address, telephone number, and D.C. Bar number; **and**

~~(vi) is not employed by the Public Defender Service or a non-profit organization that provides pro bono legal services; and~~

~~(vii)~~ provides services on each *pro bono* matter in affiliation with either:

(a) a non-profit organization in the District of Columbia that routinely provides *pro bono* legal services; or

(b) the legal *pro bono* program of the person's employer, if the employer is not a law firm.

B. Rule 49(c)(9)(B)

The purpose of this proposal would be to make clear that recent law school graduates (many of whom had clients while working in law school clinics) may continue representing those clients (and others) while their bar applications are pending.

(9) *Pro Bono.*

....

(B) *Law School Graduates Seeking Admission to a Bar.* A person who is not a D.C. Bar Member may provide pro bono legal services and may hold out as authorized to provide pro bono legal services if:

(i) the person graduated from an American Bar Association-approved law school **within the past 365 days;**

(ii) the person **intends to take or has taken the bar examination** ~~'s first application to be admitted~~ in a United States jurisdiction ~~is pending;~~

(iii) the person is trained and supervised by a D.C. Bar Member who is affiliated with the Public Defender Service or a non-profit organization that provides pro bono legal services on each pro bono matter; and

(iv) the person gives prominent notice in all business documents specifically concerning each pro bono matter that the person's work on the matter is supervised by a D.C. Bar Member and that the person is not admitted to practice law in any United States jurisdiction.

* * *

Commentary to Rule 49(c)(9):

Rule 49(c)(9) is intended to increase access to justice in the District of Columbia for those unable to afford an attorney by providing an exception to the requirement of admission to the District of Columbia Bar for attorneys formerly admitted in the District of Columbia or currently or formerly admitted in other United States jurisdictions (or, **for a period of not more than 365 days from their graduation,** law school graduates who **intend to take or** are awaiting their **results from the bar examination** ~~application results~~) so that they may provide pro bono representation where the requirements of the exception are met. **However, this exception does not apply to persons who are employees of the Public Defender Service or a non-profit organization that provides pro bono legal services.**

The Honorable Anna Blackburne-Rigsby

January 12, 2024

Page 6

Regarding the notice requirement in Rule 49(c)(9)(C), persons could satisfy it with prominent written statements that, for example, the person is “not admitted to the D.C. Bar; practice supervised by D.C. Bar Members” or “Admitted only in Maryland; practice supervised by D.C. Bar Members.” See D.C. UPL Comm. Op. 5-98.

* * * * *

The UPL Committee believes that these proposed revisions to Rule 49(c) will help clarify certain existing requirements and meaningfully improve others. Please let me know if you have any questions or would like to discuss these recommendations further.

Sincerely,



Geoffrey M. Klineberg
Chair, UPL Committee

cc: The Honorable Roy W. McLeese III

PAGE LEFT BLANK INTENTIONALLY

**District of Columbia
Court of Appeals**



No. M-274-21

BEFORE: Blackburne-Rigsby, Chief Judge, Beckwith, Easterly, McLeese, Deahl,
Howard, AliKhan, and Shanker, Associate Judges.

A M E N D E D O R D E R

(FILED—May 02, 2023)

PUBLIC ACCESS TO CERTAIN BRIEFS AND ORDERS

In 2022, the court started a pilot project making certain documents filed in the court electronically available to the public. As a first step, the court focused on briefs filed and orders issued in appeals designated by the court as CV appeals. The court has been accepting and posting these documents online since August 2022. As a next phase, the court will expand the pilot project to additional case types in criminal appeals: CF (Criminal Felony), CM (Criminal Misdemeanor), CT (Criminal Traffic), and CO (Criminal Other) subtypes. Although briefs in all such cases must be redacted, the court at least initially will not make briefs available for viewing online in cases with offenses involving domestic violence, sexual abuse, misdemeanor sexual abuse, or child victims. The expanded pilot project will still focus only on briefs filed and orders issued in appeals with the designations noted above. It is therefore

ORDERED that, effective June 1, 2023, each unsealed brief filed in a CF, CM, CT, or CO case appeal shall comply with the following requirements.

1. The party filing the brief must redact all personal identifiers listed in Super. Ct. Crim. R. 49.1 (attached).
2. The party filing the brief must also ensure that the brief (a) does not contain any information revealing the identity of an individual receiving mental-health services; (b) does not contain any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services; (c) does not contain information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266 (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact,

communication, or proximity) (both provisions attached); (d) uses initials when referring to victims of sexual offenses; and (e) does not contain any other information required by law to be kept confidential or protected from public disclosure.

3. The following procedural provisions in Super. Ct. Crim. R. 49.1 are also applicable: R. 49.1(b) (exemptions from the redaction requirement), 49.1(c) (filings made under seal), 49.1(d) (protective orders), 49.1(e) (option for additional unredacted filing under seal), 49.1(f) (option for filing a reference list), and 49.1(g) (waiver of protection of identifiers).

4. Where redaction is necessary to comply with the foregoing requirements, the party filing the redacted brief may also file an unredacted brief under seal. Where necessary for the court's understanding of the brief, an unredacted and sealed brief must be filed. The party need not seek leave of the court to file an unredacted brief under seal.

5. All appendixes, including presentence reports, must be filed separately from the brief and need not be redacted. Any brief filed with an attached appendix will be rejected for electronic filing with an instruction to refile the brief and the appendix separately. Appendixes will not be made electronically available during this pilot project.

6. **The filing party must complete and file the Redaction Certificate Disclosure Form (see attached form) indicating that the person has reviewed Super. Ct. Crim. R. 49.1 and this order and that the brief and any accompanying appendix comply with the applicable requirements of those provisions.** The form must be attached to the brief.

7. **Incarcerated individuals ONLY:** incarcerated individuals who are unrepresented by an attorney (meaning they are proceeding "pro se") are strongly encouraged to follow the redaction requirements set forth in this order and the redaction form. However, where it is not reasonably possible to redact, those individuals may initial the redaction form at "G," certifying they are unable to file a redacted brief, and attach the form to the filing. Those briefs will be unavailable for public viewing through online public access but will be available in person in the public office.

8. This order does not apply to sealed cases or to briefs filed entirely under seal.

PER CURIAM

Rule 49.1. Privacy Protection for Filings Made with the Court

(a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number or driver's license or non-driver's license identification card number, the name of an individual known to be a minor child as that term is defined in D.C. Code § 16-2301 (3), a person's birth date, a debit card, credit card or other a financial-account number, or the home address of an individual, a party or nonparty making the filing may include only:

(1) the acronym "SS#", "TID#", "DL#", or "NDL#" instead of the social-security number, taxpayer-identification number, driver's license number and non-driver's license identification card number, respectively ;

(2) the minor child's initials;

(3) the acronym "DOB" instead of the individual's birth date;

(4) the last four digits of a debit card, credit card, or other financial-account number; and

(5) the city and state of the home address.

(b) Exemptions from the Redaction Requirement. The redaction requirement does not apply to the following:

(1) a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding;

(3) the official record of a state-court proceeding;

(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;

(5) a filing covered by Rule 49.1(c)(d);

(6) a pro se filing in an action brought under D.C. Code §§ 22-4135 or 23-110

(7) a court filing that is related to a criminal matter or investigation and that is prepared before the filing of a criminal charge or is not filed as part of any docketed criminal case;

(8) an arrest or search warrant; and

(9) a charging document and an affidavit filed in support of any charging document.

(c) Filings Made Under Seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(d) Protective Orders. For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(e) Option for Additional Unredacted Filing Under Seal. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(f) Option for Filing a Reference List. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) Waiver of Protection of Identifiers. A person waives the protection of Rule 49.1(a) as to the person's own information by filing it without redaction and not under seal.

COMMENT TO THE 2009 AMENDMENT

This Rule is identical to the Federal Rule with the following exceptions.

Paragraph (a) of this Rule requires redaction of several categories of information not covered by the Federal Rule: driver's license and non-driver's license identification card numbers, and credit and debit card numbers. See D.C. Code § 28-3851 (3)(A) (defining "Personal information" for purposes of the Consumer Personal Information Security Breach Notification Act of 2006, D.C. Code § 28-3851 *et seq.*) Paragraph (a) also substitutes the term "child" for the term "minor" and refers to a locally applicable definition of that term.

Subparagraph (a)(3) differs from the Federal Rule, which requires redaction of the month and date of birth, but not the year of birth. This Rule requires redaction of the entire date of birth and use of the acronym "DOB" in its place.

Subparagraph (b)(6) refers to post-conviction proceedings under local, rather than federal, law.

Paragraph (c) of the Federal Rule ("Immigration Cases") is omitted from this Rule as locally inapplicable.

18 U.S.C. § 2265. Full faith and credit given to protection orders

(d) Notification and Registration.—

(3) Limits on internet publication of registration information.—A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

18 U.S.C. § 2266. Definitions

In this chapter:

(5) Protection Order.—The term “protection order” includes—

(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.