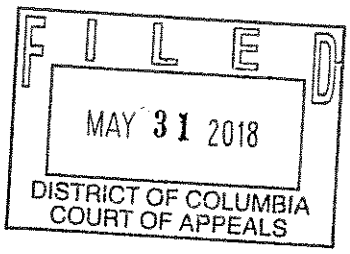
District of Columbia
Court of Appeals



No. M-256-16

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, Fisher, Thompson, Beckwith, Easterly, and McLeese, Associate Judges.

O R D E R

(FILED – May 31, 2018)

On consideration of the proposed amendments to Rule 49 of this court's rules, published for notice and comment on June 24, 2016, and the comments received concerning those proposed amendments, it is

ORDERED that, with minor revisions, the proposed amendments are hereby adopted, effective August 1, 2018. Clean and track-changes versions of the text of the Rule as amended are attached to this order.

PER CURIAM

Rule 49. Unauthorized Practice of Law.

(a) IN GENERAL. 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.

(b) DEFINITIONS. The following definitions apply to this rule:

(1) "Person" means any individual, group of individuals, firm, unincorporated association, partnership, corporation, mutual company, joint stock company, trust, trustee, receiver, or other legal or business entity.

(2) "Practice of law" means providing 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:

(A) preparing any legal document, including:

- a deed;
- a mortgage;
- an assignment;
- a discharge;
- a lease;
- a trust instrument;
- an instrument intended to affect interests in real or personal property;
- a will;
- a codicil;
- an instrument intended to affect the disposition of property of decedents' estates;
- an instrument intended to affect or secure legal rights; and
- a contract except a routine agreement incidental to a regular course of business;

(B) preparing or expressing a legal opinion;

(C) appearing or acting as an attorney in any tribunal;

(D) preparing any claim, demand, or pleading of any kind, or any written document containing legal argument or interpretation of law, for filing in any court, administrative agency, or other tribunal;

(E) providing advice or counsel as to how an activity described in Rule 49 (b)(2)(A)-(D) might be done, or whether it was done, in accordance with applicable law; or

(F) furnishing an attorney or attorneys, or other persons, to render the services described in Rule 49 (b)(2)(A)-(E).

(3) "In the District of Columbia" means conduct in, or conduct from an office or location within, the District of Columbia.

(4) "Hold out as authorized or competent to practice law in the District of Columbia" means to indicate in any manner to any other person that one is competent, authorized, or available to practice law from an office or location in the District of Columbia. Among the terms which may give that indication are "esquire," "lawyer," "attorney," "attorney at law," "counsel," "counselor," "counselor at law," "contract lawyer," "trial advocate," "legal representative," "legal advocate," "notario," and "judge."

(5) "Committee" means the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law, as constituted under this rule.

(c) EXCEPTIONS. The following activities are permitted as exceptions to Rule 49 (a) if the person is not otherwise engaged in the practice of law or holding out as authorized or competent to practice law in the District of Columbia.

(1) *United States Government Employee.* A person may provide legal services to the United States as an employee thereof.

(2) *Representation Before United States Government Special Court, Department, or Agency.* A person may provide legal services to members of the public solely before a special court, department, or agency of the United States, when:

(A) the legal services are confined to representation before such fora and other conduct reasonably ancillary to that representation;

(B) the conduct is authorized by statute, or the special court, department, or agency has adopted a rule expressly permitting and regulating that practice; and

(C) if the person has an office in the District of Columbia, the person expressly gives prominent notice in all business documents of the person's bar status and that his or her practice is limited consistent with Rule 49 (c).

(3) *Practice Before United States Court.* A person may provide legal services in or reasonably related to a pending or potential proceeding in any court of the United States if the person has been or reasonably expects to be admitted to practice in that court, but if the person has an office in the District of Columbia, the person must expressly give prominent notice in all business

documents of the person's bar status and that his or her practice is limited consistent with Rule 49 (c).

(4) *District of Columbia Employee*. A person may provide legal services to the government of the District of Columbia during the first 360 days of employment as a lawyer for the government of the District of Columbia, when the person:

(A) is authorized to practice law and in good standing in another state or territory;

(B) is not disbarred or suspended for disciplinary reasons;

(C) has not resigned with charges pending in any jurisdiction or court; and

(D) has been authorized by her or his government agency to provide such services.

(5) *Representation Before District of Columbia Department or Agency*. A person may provide legal services to members of the public solely before a department or agency of the District of Columbia government, when:

(A) the representation is confined to appearances in proceedings before tribunals of that department or agency and other conduct reasonably ancillary to those proceedings;

(B) the representation is authorized by statute, or the department or agency has authorized it by rule and undertaken to regulate it;

(C) if the person has an office in the District of Columbia, the person expressly gives prominent notice in all business documents of the person's bar status and that his or her practice is limited consistent with Rule 49 (c); and

(D) if the person does not have an office in the District of Columbia, the person expressly gives written notice to clients and other parties, with respect to any proceeding before tribunals of that department or agency and any conduct reasonably ancillary to those proceedings, of the person's bar status and that his or her practice is limited consistent with Rule 49 (c).

(6) *Internal Counsel*. A person may provide legal advice only to one's regular employer, when the employer does not reasonably expect that it is receiving advice from a person authorized to practice law in the District of Columbia.

(7) *Pro Hac Vice in the Courts of the District of Columbia*. A person may provide legal services in or reasonably related to a pending or potential proceeding in a court of the District of Columbia, if the person has been or reasonably expects to be admitted *pro hac vice*, in accordance with the following provisions.

(A) *Limitation to 5 Applications Per Year*. No person may apply for admission *pro hac vice* in more than 5 cases pending in the courts of the District of Columbia per calendar year, except for exceptional cause shown to the court.

(B) *Applicant Declaration.* Each application for admission *pro hac vice* must be accompanied by a declaration under penalty of perjury:

(i) certifying that the applicant has not applied for admission *pro hac vice* in more than 5 cases in courts of the District of Columbia in this calendar year;

(ii) identifying all jurisdictions and courts where the applicant is authorized to practice law and whether the applicant is in good standing in each such jurisdiction or court;

(iii) certifying that there are no disciplinary complaints pending against the applicant for violation of the rules of any jurisdiction or court, or describing all pending complaints;

(iv) certifying that the applicant has not been suspended or disbarred for disciplinary reasons or resigned with charges pending in any jurisdiction or court, or describing the circumstances of all suspensions, disbarments, or resignations;

(v) certifying that the applicant has not had an application for admission to the D.C. Bar denied, or describing the circumstances of any denials;

(vi) agreeing promptly to notify the court if, during the course of the proceeding, the applicant is suspended or disbarred for disciplinary reasons or resigns with charges pending in any jurisdiction or court;

(vii) identifying the name, address, and D.C. Bar number of the D.C. Bar member with whom the applicant is associated under Superior Court Rule of Civil Procedure 101;

(viii) certifying that the applicant does not practice law or hold out as authorized or competent to practice law in the District of Columbia or that the applicant qualifies under an identified exception in Rule 49 (c);

(ix) certifying that the applicant has read the rules of the District of Columbia Court of Appeals and the relevant division of the Superior Court, and has complied with District of Columbia Court of Appeals Rule 49 and, as applicable, Superior Court Rule of Civil Procedure 101;

(x) explaining the reasons for the application;

(xi) acknowledging the power and jurisdiction of the courts of the District of Columbia over the applicant's professional conduct in or related to the proceeding; and

(xii) agreeing to be bound by the District of Columbia Rules of Professional Conduct in the matter if the applicant is admitted *pro hac vice*.

(C) *Office in the District of Columbia Prohibited.* A person who maintains or operates from an office or location within the District of Columbia that is for the practice of law may not be admitted to practice before a court of the District of Columbia *pro hac vice*, unless that person qualifies under another exception provided in Rule 49 (c).

(D) *Supervision.* Any person admitted *pro hac vice* must comply with Superior Court Rule of Civil Procedure 101 and other applicable rules of the District of Columbia courts.

(E) *Filing Process.* The applicant must submit a copy of the application to the Committee, pay an application fee, and receive a receipt for payment of the fee. The applicant must then file the application with the receipt in the appropriate office of the Clerk of Court. An application will not be accepted for filing without the required receipt.

(F) *Application Fee.* The application fee for admission *pro hac vice* is $100. The fee may be paid in cash, by credit card, or by cashier's check, certified check, or money order made payable to "Clerk, District of Columbia Court of Appeals." The fee is waived for a person whose conduct is covered by Rule 49 (c)(9) or whose client's application to proceed *in forma pauperis* has been granted.

(G) *Power of the Court.* The court to which the relevant matter is assigned may grant or deny applications for admission *pro hac vice*, and may withdraw those admissions in its discretion.

(8) *Limited Duration Supervision by D.C. Bar Member.* A person may practice law from a principal office located in the District of Columbia for a period not to exceed 360 days from the commencement of such practice, during pendency of the person's first application for admission to the D.C. Bar, if:

(A) the person is authorized to practice law and in good standing in another state or territory;

(B) the person is not disbarred or suspended for disciplinary reasons;

(C) the person has not resigned with charges pending in any jurisdiction or court;

(D) the person is under the direct supervision of an enrolled, active member or members of the D.C. Bar;

(E) the person has submitted the application for admission within 90 days of commencing practice in the District of Columbia;

(F) the D.C. Bar member takes responsibility for the quality of the work and complaints concerning the services;

(G) the person or the D.C. Bar member gives notice to the public of the member's supervision and the person's bar status; and

(H) the person is admitted *pro hac vice* to the extent he or she provides legal services in the courts of the District of Columbia.

(9) *Pro Bono Legal Services.* A person may provide legal services *pro bono publico* when:

(A) the person is an enrolled, inactive member of the D.C. Bar who is employed by or affiliated with a legal services or referral program in any matter that is handled without fee and who is not disbarred or suspended for disciplinary reasons and has not resigned with charges

pending in any jurisdiction or court, but, if the matter requires the attorney to appear in court, the attorney must file with the court having jurisdiction over the matter, and with the Committee, a certificate that the attorney is providing representation in the case without compensation;

(B) the person is authorized to practice law and in good standing in another state or territory, is not disbarred or suspended for disciplinary reasons, has not resigned with charges pending in any jurisdiction or court, and is employed by or affiliated with the Public Defender Service or a non-profit organization located in the District of Columbia that provides legal services for indigent clients without fee or for a nominal processing fee, if:

(i) the person has submitted an application for admission to the D.C. Bar within 90 days after commencing the practice of law in the District of Columbia;

(ii) the attorney is supervised by an enrolled, active member of the D.C. Bar who is employed by or affiliated with the Public Defender Service or the non–profit organization; and

(iii) the attorney practices under Rule 49 (c)(9)(B) for no longer than 360 days from the date of employment by or affiliation with the Public Defender Service or the non-profit organization, or until admitted to the D.C. Bar, whichever occurs first;

(C) the person is an officer or employee of the United States, is authorized to practice law and in good standing in another state or territory, is not disbarred or suspended for disciplinary reasons, has not resigned with charges pending in any jurisdiction or court, is assigned or referred by an organization that provides legal services to the public without fee, and is supervised by an enrolled, active member of the D.C. Bar; or

(D) the person is an internal counsel, is authorized to practice law and in good standing in another state or territory, is not disbarred or suspended for disciplinary reasons, has not resigned with charges pending in any jurisdiction or court, is assigned or referred by an organization that provides legal services to the public without fee, and is supervised by an enrolled, active member of the D.C. Bar.

An attorney practicing under Rule 49 (c)(9) must give notice of his or her bar status, and is subject to the District of Columbia Rules of Professional Conduct and the enforcement procedures applicable thereto to the same extent as if he or she were an enrolled, active member of the D.C. Bar.

(10) *Specifically Authorized Court Programs.* A person may provide legal services to members of the public as part of a special program for representation or assistance that has been expressly authorized by the District of Columbia Court of Appeals or the Superior Court of the District of Columbia if the person gives notice of his or her bar status, is not disbarred or suspended for disciplinary reasons, and has not resigned with charges pending in any jurisdiction or court.

(11) *Limited Practice for Corporations or Partnerships.* An authorized officer, director, or employee of a corporation or partnership may appear in defense of the corporation or partnership in a small claims action, or in settlement of a landlord-tenant matter, if:

(A) the organization does not file a crossclaim or counterclaim, or the matter is not certified to the Civil Actions Branch; and

(B) the person so appearing files at the time of appearance an affidavit vesting in the person the requisite authority to bind the organization.

(12) *Practice in ADR Proceedings*. A person may provide legal services in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution ("ADR") proceeding if the person:

(A) is authorized to practice law and in good standing in another state or territory or authorized to practice law in a foreign country;

(B) is not disbarred or suspended for disciplinary reasons;

(C) has not resigned with charges pending in any jurisdiction or court;

(D) provides these services in no more than 5 ADR proceedings in the District of Columbia per calendar year; and

(E) does not maintain or operate from an office or location within the District of Columbia that is for the practice of law or otherwise practice or hold out as authorized or competent to practice law in the District of Columbia, unless that person qualifies under another express exception provided in Rule 49 (c).

(13) *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) THE COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW. The court must appoint a standing committee known as the Committee on Unauthorized Practice of Law.

(1) *Membership*. The court will appoint at least 6, but not more than 12, members of the D.C. Bar and one resident of the District of Columbia who is not a member of the D.C. Bar. The court must designate the Chair and Vice Chair.

(2) *Member's Term of Service*.

(A) *In General*. The court will appoint members for terms of 3 years.

(B) *Vacancy Before Term Expires*. In case of vacancy caused by death, resignation or otherwise, the court must appoint a successor to serve the unexpired term of the predecessor member.

(C) *Holdover*. After a member's term has expired, the member may continue to serve until the court appoints a successor or reappoints the member. If a member holds over after expiration

of a term and is reappointed, the holdover period is part of that member's new term. A successor will serve a full 3-year term from the date of appointment without reference to any holdover.

(D) *Term Limit.* A member cannot serve for more than 2 consecutive, full 3-year terms unless the court makes a special exception.

(3) *Power to Adopt Rules and Regulations.* Subject to the approval of the court, the Committee may adopt rules and regulations that it deems necessary to carry out the provisions of Rule 49.

(4) *Subpoena Power and Process.* When conducting investigations and hearings, the Committee may authorize any member to subpoena, subject to Superior Court Rule of Civil Procedure 45, the respondent, witnesses, and documents.

(5) *Capacity to Appear.* The Committee may appear in its own name in legal proceedings addressing issues relating to the performance of its functions and compliance with Rule 49.

(6) *Compensation and Expenses.* The court may approve compensation and necessary expenses for the Committee members.

(7) *Additional Staff.* The court will designate a deputy clerk to serve as Executive Secretary to the Committee and will provide necessary staff and secretarial services.

(8) *Duties.*

(A) *In General.* The Committee will investigate matters of alleged unauthorized practice of law and alleged violations of court rules governing the unauthorized practice of law, and if warranted, the Committee may take any action that is provided in these rules.

(B) *Law Student Practice.* In addition to the duties described in Rule 49, the Committee must oversee the participation of law students permitted to practice under Rule 48.

(9) *Meetings.* The Chair must call at least 8 meetings each year. The Committee must hold a special meeting if a majority of its members request such a meeting by notifying the Executive Secretary.

(A) *Chair or Vice Chair Presides.* The Chair will preside at all meetings of the Committee. In the Chair's absence, the Vice Chair will preside.

(B) *Confidentiality.* Any matter under investigation by the Committee must remain confidential until initiation of formal proceedings under Rule 49 (d)(11), or until resolution of the matter under Rule 49 (d)(12)(B) or (C). To ensure this confidentiality, the Committee must meet in executive session.

(C) *Notice of Absence.* Members who are unable to attend a meeting must notify the Chair or the Executive Secretary at least 2 days in advance of the meeting.

(D) *Order of Business.* The Chair will determine the order of business.

(E) *Quorum*. A quorum consists of 4 members, and all decisions must be made by a majority of those members present and voting.

(F) *Telephone or Electronic Vote*. In appropriate circumstances, as may be determined by the Chair, a telephone or electronic vote of a majority of members polled, numbering no less than 4 Committee members concurring in a decision, constitutes a Committee decision. Any such decision must be recorded in the minutes of the next Committee meeting.

(G) *Minutes*. The Executive Secretary will direct preparation of minutes for all Committee meetings and will furnish copies of the minutes to all members of the Committee and to the Chief Judge of this court or a judge designated by the Chief Judge.

(10) *Investigation*.

(A) *Assignment*. When a complaint is filed with the Committee or the Committee decides to investigate on its own volition, the Chair will assign the matter, on a random basis or as the Chair otherwise determines may be appropriate, to a Committee member for preliminary investigation.

(B) *Conduct and Content of Investigation*. This investigation must consist of an analysis of the complaint, a survey of the applicable law, and discussions with witnesses and the respondent. It will not be deemed a breach of the confidentiality required of an assigned matter for the Committee or one of its members to reveal facts and identities during the investigation of the matter.

(C) *Report*. At the next regular meeting of the Committee, the investigating member must provide a report for the purpose of determining what action, if any, should be taken by the Committee. Complaints must be investigated and reported on within 6 weeks. The Executive Secretary must notify the Chair about any delays in the investigation of and reporting on complaints.

(D) *Decision to Hold Formal Proceedings*. If the Committee concludes that formal proceedings will assist its determination, formal proceedings may be held as specified in Rule 49 (d)(11).

(11) *Formal Proceedings*. To assist the Committee in performing its functions, it may take sworn testimony of witnesses and the respondent.

(A) *Written Notice to Respondent*. Formal proceedings before the Committee are commenced by written notice to the respondent informing the respondent of the nature of the conduct which the Committee believes may constitute the unauthorized practice of law. The notice must be accompanied by a copy of Rule 49. The notice may be served by:

(i) delivering it in person;

(ii) mailing it by first-class mail, postage prepaid, to the respondent's last known business or residence address;

(iii) delivering it to a commercial carrier for delivery to the respondent's last known business or residence address; or

(iv) other means such as email or facsimile, reasonably calculated to reach the respondent, including any method described in Superior Court Rule of Civil Procedure 4.

(B) *Certificate of Service*. The Committee or its designee must prepare a certificate of service stating how the respondent was served.

(C) *Time to Respond.* The respondent must be given 30 days to provide a written response to the notice.

(D) *Appointing Attorneys*. The Chair (or the Vice Chair if the Chair is to be appointed) may appoint one or more attorney members of the Committee or outside counsel to present, at a hearing, evidence of conduct which may constitute the unauthorized practice of law. If a Committee member is appointed, the member may not participate further in the Committee's consideration of actions to dispose of the matter under Rule 49 (d)(12), but may participate in any proceedings under Rule 49 (e).

(E) *Conduct of Hearing*. The respondent may be accompanied by counsel at the hearing. Formal rules of evidence do not apply. The respondent may present documentary evidence, testify, present testimonial evidence from witnesses, and cross-examine witnesses, all subject to any rules and regulations adopted by the Committee and such reasonable limitations as are imposed by the Committee.

(F) *Findings of Fact and Conclusions of Law*. Following a formal hearing, the Committee may prepare written findings of fact and conclusions of law in support of its final disposition of the matter under Rule 49 (d)(12). In preparing its findings, the Committee must apply a preponderance of the evidence standard.

(12) *Actions by the Committee*. During any stage of the investigation or formal proceedings the Committee may dispose of any matter pending before it by any of the following methods:

(A) If no evidence of unauthorized practice is found, the matter must be closed and the complainant notified.

(B) If the respondent agrees to cease and desist from actions which appear to constitute the unauthorized practice of law, the matter may be closed by formal agreement, with notification of such action given to the complainant. A formal agreement may require restitution to the clients of fees obtained by the respondent. The Committee may file a formal agreement with the court with a proposed consent order memorializing the agreement's terms. A proposed consent order is effective when signed by a judge of the District of Columbia designated by the Chief Judge of this court.

(C) If, following a formal proceeding under Rule 49 (d)(11), the Committee finds by a preponderance of the evidence a violation of this rule, or of an injunction or consent order issued pursuant to proceedings under this rule, the Committee may initiate proceedings under Rule 49(e).

(D) The Committee may also refer cases to the Office of the United States Attorney or the Attorney General of the District of Columbia for investigation and possible prosecution or to other appropriate authorities.

(13) *Closed Files.* When the Committee closes a file, the file must be retained in the records of this court.

(14) *Opinions.* On the request of a person or organization or when the Committee believes that an opinion will aid the public's understanding of Rule 49, the Committee may by approval of a majority of its members present in quorum provide opinions as to what constitutes the unauthorized practice of law.

(A) *Publication.* The Committee's opinions must be published in the same manner as opinions rendered under the District of Columbia Rules of Professional Conduct.

(B) *Reliance on Opinion.* Conduct of a person, which was undertaken in good faith, in conformity with, and in reliance on the Committee's written interpretation or opinion requested by that person, constitutes a prima facie showing of compliance with Rule 49 in any investigation or proceeding before the Committee or this court.

(e) *Proceedings Before the Court.*

(1) *Contempt.* Violations of Rule 49, or of any injunction or consent order issued pursuant to proceedings under Rule 49, are punishable by this court as contempt.

(2) *Injunction and Equitable Relief.* The court may issue a permanent injunction to restrain violations of Rule 49, together with such ancillary equitable remedies so as to afford complete relief, including but not limited to equitable monetary relief in the form of disgorgement, restitution, or reimbursement of those harmed by the conduct.

(3) *Original Proceeding.* The Committee may initiate an original proceeding before this court for violation of Rule 49, or for violation of an injunction or consent order issued pursuant to proceedings under Rule 49.

(A) *By Petition.* The proceeding must be initiated by a petition served on the respondent or his designated counsel.

(B) *Special Counsel.* The court may, on motion of the Committee or on its own initiative, appoint a special counsel to represent the Committee and to present the Committee's proof and argument in the proceeding.

(C) *Conduct of Proceedings.* An original proceeding must be conducted before a judge of the District of Columbia designated by the Chief Judge of this court under the D.C. Code, and is governed by the Superior Court Rules of Civil Procedure.

(D) *Notice of Appeal.* Decisions of the designated judge are final and effective determinations which are subject to review in the normal course, by the filing of a notice of

appeal by any party with the Clerk of the Court of Appeals within 30 days from the entry of the judgment by the designated judge.

COMMENTARY

The following Commentary provides guidance for interpreting and complying with Rule 49 , but in proceedings before the court or the Committee on Unauthorized Practice of Law, the text of Rule 49 will govern.

Commentary to § 49 (a):

Section (a) states the rule's general prohibition, which was formerly set forth in Rule 49 (b)(1). It is intended to retain the essential meaning of the original text adopted by the Court of Appeals. It adds for clarification that the rule applies unless an exception is provided.

The rule is applied first by determining whether the conduct in question falls within the definitions of practicing law or holding out to practice law in the District of Columbia. If the conduct falls within those definitions, such conduct by a person not admitted to the D.C. Bar is a violation of the rule, unless there is an express exception covering the conduct.

While one has a right to represent oneself, there is no right to represent or advise another as a lawyer. Authority to provide legal advice and services to others is a privilege granted only to those who have the education, competence, and fitness to practice law. When one is formally recognized to possess those qualifications by admission to the D.C. Bar, he or she is authorized to practice law.

The rule prohibits both the implicit representation of authority or competence by engaging in the practice of law, and the express holding out of oneself as authorized or qualified to practice law in the District of Columbia.

This rule against unauthorized practice of law has 4 general purposes:

(1) To protect members of the public from persons who are not qualified by competence or fitness to provide professional legal advice or services;

(2) To ensure that any person who purports or holds out to perform the services of a lawyer is subject to the disciplinary system of the D.C. Bar;

(3) To maintain the efficacy and integrity of the administration of justice and the system of regulation of practicing lawyers; and

(4) To ensure that that system and other activities of the D.C. Bar are appropriately supported financially by those exercising the privilege of membership in the D.C. Bar.

See the commentary to subsection (b)(2), below, concerning the activities of persons relating to legal matters where a license to practice law is not required.

Competence and fitness to practice law are safeguarded by the examination and character screening requirements of the admissions process, and by the disciplinary system. The D.C. Bar further protects the interests of members of the public by maintaining a clients' security fund through membership dues.

Commentary to § 49 (b)(2):

As originally stated in subsections (b)(2) and (3) of the prior rule, the "practice of law" was broadly defined, embracing every activity in which a person provides services to another relating to legal rights. This approach has been refined, in recognition that there are some legitimate activities of non-Bar members that may fall within an unqualifiedly broad definition of "practice of law."

The definition of the "practice of law" set forth in subsection (b)(2) is designed to focus first on the 2 essential elements of the practice of law: (1) the provision of legal advice or services; and (2) a client relationship of trust or reliance. Where one provides such advice or services within such a relationship, there is an implicit representation that the provider is authorized or competent to provide them--just as one who provides any services requiring special skill gives an implied warranty that they are provided in a good and workmanlike manner. *See, e.g., Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1200 (D.C.1984); *Carey v. Crane Serv. Co.*, 457 A.2d 1102, 1107 (D.C.1983).

Recognizing that the definition of "practice of law" may not anticipate every relevant circumstance, the rule includes 3 other tools to assist in defining the phrase: (1) an enumerated list of the most common activities which are rebuttably presumed to be the practice of law; (2) this commentary; and (3) where further questions of interpretation may arise, opinions of the Committee on Unauthorized Practice of Law, as provided in subsection (d)(14).

The definition of "practice of law," the list of activities, this commentary, and opinions of the Committee on Unauthorized Practice of Law are to be considered and applied in light of the purposes of the rule, as set forth in the commentary to sections (a) and (b).

The presumption that one's engagement in one of the enumerated activities is the "practice of law" may be rebutted by showing that there is no client relationship of trust or reliance, or that there is no explicit or implicit representation of authority or competence to practice law, or that both are absent.

While the rule is meant to embrace every client relationship where legal advice or services are rendered, or one holds oneself out as authorized or competent to provide such services, the rule is not intended to cover conduct which lacks the essential features of an attorney-client relationship.

For example, a law professor instructing a class in the application of law to a particular, real situation is not engaged in the practice of law because she is not undertaking to provide advice or services for one or more clients as to their legal interests. An experienced industrial relations supervisor is not engaged in the practice of law when he advises his employer what he thinks the firm must do to comply with state or federal labor laws, because the employer does not reasonably expect it is receiving a professional legal opinion. See also the exception for Internal

Counsel set forth in subsection (c)(6). Law clerks, paralegals, and summer associates are not practicing law where they do not engage in providing advice to clients or otherwise hold themselves out to the public as having authority or competence to practice law. Tax accountants, real estate agents, title company attorneys, securities advisors, pension consultants, and the like, who do not indicate they are providing legal advice or services based on competence and standing in the law are not engaged in the practice of law, because their relationship with the customer is not based on the reasonable expectation that learned and authorized professional legal advice is being given. Nor is it the practice of law under the rule for a person to draft an agreement or resolve a controversy in a business context, where there is no reasonable expectation that she is acting as a qualified or authorized attorney.

The rule is not intended to cover the provision of mediation or alternative dispute resolution ("ADR") services. This intent is expressed in the first sentence of the definition of the "practice of law" which requires the presence of 2 essential factors: The provision of legal advice or services and a client relationship of trust or reliance. ADR services are not given in circumstances where there is a client relationship of trust or reliance; and it is common practice for providers of ADR services explicitly to advise participants that they are not providing the services of legal counsel.

While payment of a fee is often a strong indication of an attorney-client relationship, it is not essential.

Ordinarily, one who provides or offers to provide legal advice or services to clients in the District of Columbia implies to the consumer that he or she is authorized and competent to practice law in the District of Columbia. It is not sufficient for a person who is not an enrolled, active member of the D.C. Bar merely to give notice that he is not a lawyer while engaging in conduct that is likely to mislead consumers into believing he is a licensed attorney at law. Where consumers continue to seek services after such notice, the provider must take special care to assure that they understand that the person they are consulting does not have the authority and competence to render professional legal services in the District of Columbia. *See In re Banks*, 561 A.2d 158 (D.C. 1987).

The rule also confines the practice of law to provision of legal services under engagement for another. One who represents himself or herself is not required to be admitted to the D.C. Bar.

The conduct described in subsection (b)(2)(F) concerning the furnishing of attorneys is not intended to include legitimate or official referral services, such as those offered by the D.C. Bar, bar associations, labor organizations, non-fee pro bono organizations, and other court-authorized organizations.

Commentary to § 49 (b)(3):

Subsection (b)(3) clarifies by explicit definition the geographic extent of the rule.

The rule is intended to regulate all practice of law within the boundaries of the District of Columbia. The fact that an attorney is associated with a law firm that maintains an office in the District of Columbia does not, of itself, establish that that attorney is maintaining an office in the District of Columbia.

The practice of law subject to this rule is not confined to the matters subject to the law of the District of Columbia. The rule applies to the practice of all substantive areas of the law and requires admission to the D.C. Bar where the practice is carried on in the District of Columbia and does not fall within one of the exceptions enumerated in section (c).

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. A lawyer in the District of Columbia who advises clients or otherwise provides legal services in another jurisdiction may be subject to the rules of that jurisdiction concerning unauthorized practice of law.

The prohibition on unauthorized practice applies only if a lawyer is physically present in the District of Columbia at least once during the course of a matter. Even if a matter involves a client, and a dispute or transaction, in the District, the prohibition on unauthorized practice does not apply if a lawyer located outside the District advises a client in-person only when the client visits the lawyer in the lawyer's office, or if the lawyer advises the client only by telephone, regular mail, or electronic mail. However, if a lawyer is physically present in the District even once during the course of a matter, the lawyer may be engaged in the District of Columbia in the practice of law with respect to the entire matter, even if the lawyer otherwise operates only from a location outside the District. See also below commentary to subsection (b)(4).

The definition of "in the District of Columbia" is intended to cover the practice of law within the District under the supervision of, or in association with, a member of the D.C. Bar. Persons who provide legal services as lawyers with law firms and other legal organizations in the District of Columbia, with or without bar memberships elsewhere, are practicing law in the District and are in violation of the rule, unless they fall within one of the express exceptions set forth in section (c).

Commentary to § 49 (b)(4):

As a regulation with a purpose to protect the public, the rule requires that representation of non-Bar members must avoid giving the impression to persons not learned in the law that a person is a qualified legal professional subject to the high ethical standards and discipline of the D.C. Bar.

The listing of terms, which normally indicate one is holding oneself out as authorized or qualified to practice law, is not intended to be exhaustive. Experience has shown that the listed terms are often used to misleadingly represent that an individual is authorized to provide legal services. The definition of "hold out" is intended to cover any conduct which gives the impression that one is qualified or authorized to practice. *See In re Banks*, 561 A.2d 158 (D.C. 1987).

A person or a law firm may hold out that person as authorized or competent to practice law in the District of Columbia by describing that person as a "contract lawyer." *See* Opinion 16-05 of the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law. In general, Rule 49 applies to contract lawyers to the same extent that it applies to other lawyers.

Where a member of the public correctly understands that a person is not admitted to the D.C. Bar but is nonetheless offering to perform services functionally equivalent to those performed by a lawyer, that person is subject to sanction under the consumer protection statutes of the District of Columbia. *See Banks v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 634 A.2d 433 (D.C. 1993).

Although the rule's prohibition on unauthorized practice is limited to conduct within the District of Columbia, a person located outside of the District of Columbia may still violate Rule 49 by holding out as authorized to practice law in the District of Columbia.

Commentary to § 49 (c)(1):

Subsection (c)(1) is designed to state expressly what has been implicit in prior interpretations and application of the rule; and it removes the implication that representatives of the federal government must become members of the D.C. Bar or appear *pro hac vice*. Attorneys employed by departments, agencies, and courts of the federal government are entitled to advise and represent their employers as part of their official duties. Such advice and representation includes both internal consultation and external representation in contact with the public and the courts. Permission for employees of the government of the District of Columbia to practice in the District is more limited. *See* Rule 49 (c)(4).

Commentary to § 49 (c)(2):

Subsection (c)(2) provides a limited exception to the requirement for admission to the D.C. Bar for persons who practice before federal fora in circumstances where all 3 of the listed conditions are met.

The United States Supreme Court has held that states may not limit practice before a federal agency, or conduct incidental to that practice, where the agency maintains a registry of practitioners and regulates standards of practice with sanctions of suspension or disbarment. *Sperry v. Florida*, 373 U.S. 379 (1963). By contrast, a person advertising patent advice and search services who is not on the Patent Office registries of attorneys and agents is subject to the jurisdiction of the District of Columbia Court of Appeals through its Committee on the Unauthorized Practice of Law. *In re Amalgamated Dev. Co.*, 375 A.2d 494 (D.C. 1977). *See also Kennedy v. Bar Ass'n of Montgomery County*, 561 A.2d 200 (Md. 1989); *In re Peterson*, 163 B.R. 665 (Bankr. D. Conn. 1994); *Spanos v. Skouras Theatres Corp.*, 364 F.2d 161, 171 (2d Cir. 1966).

As the seat of the national government, the District of Columbia is naturally the place where people locate to provide representation of persons or entities petitioning federal departments or agencies for relief. Inasmuch as such activity would often constitute the practice of law, the Supremacy Clause of the United States Constitution, case law, and comity between the District

and federal governments counsel a deference to federal departments and agencies that determine to allow persons not admitted to the Bar to practice before them. At the same time, experience under this rule has shown that some persons have abused the deference set forth in the original rule by engaging in misleading holding out or practicing law in proceedings other than those of the authorizing federal fora.

With respect to persons who hold out and purport to provide legal representation before federal fora from locations outside the District of Columbia, the rule does not apply because the activity, even if the practice law, is not carried on within the District of Columbia. *See* Rule 49 (b)(3) and the commentary thereto.

Subsection (c)(2) is designed to permit persons to practice before a federal department or agency without becoming members of the Bar where the agency has a system in place to regulate practitioners not admitted to the Bar, and where the public is adequately informed of the limited nature of the person's authority to practice.

Where there is doubt whether a federal agency undertakes to regulate the quality or integrity of practitioners before it, there is necessarily doubt under subsection (c)(2)(B) whether this exception would apply to allow persons practicing before the agency who are not admitted to the D.C. Bar to engage in any practice of law in the District of Columbia. In order to resolve such doubt, the Committee will refer to an agency any complaints it should receive concerning practitioners before the agency who are not admitted to the D.C. Bar. If the agency does not take any action, or advises that it will not take any action, on the referred complaint in 90 days following the referral, the Committee will inform the agency that it presumes the agency does not undertake to regulate the conduct of practitioners before it; and the Committee will then proceed to consider the complaint under the provisions of Rule 49.

Under the third condition, (C), a person seeking to practice under the (c)(2) exception must include the indicated notice on all letterhead, business cards, formal papers of all kinds, promotions, advertisements, social media, and any other document submitted or expression made to any third party, the public, or any official entity.

Experience under the rule has indicated that, in many instances, persons seeking representation involving jurisdiction of federal departments and agencies also have rights to plead their claims before the courts. Advising persons whether they have rights to pursue their claims beyond federal agencies into the courts, or representing entities in challenges to or review of federal agency action in federal courts, would, without more, not require that the advisor be a member of the D.C. Bar, as such advice is reasonably ancillary to representation before the agency and is subject to the jurisdiction of the federal courts. *See* Rule 49 (c)(3). The exception set forth in (c)(2) does not, however, otherwise authorize active advice to or representation of persons in the courts.

Commentary to § 49 (c)(3):

Practice before the courts of the United States is a matter committed to the jurisdiction and discretion of those entities. If a practitioner has an office in the District of Columbia and is admitted to practice before a federal court in the District of Columbia but is not an active

member of the D.C. Bar, the practitioner may use the D.C. office to engage in the practice of law before that federal court, but only if the practitioner provides clear notice in all business documents, including advertisements and social media, that the practitioner is not a member of the D.C. Bar and that the practice is limited to matters before that federal court (or to other matters within the scope of other exceptions in section (c)). This exception applies only if a person's entire practice falls within section (c); if any part of the person's practice is not covered by an exception, Rule 49 requires a practitioner with an office in the District of Columbia to be an active member of the D.C. Bar. The rules of federal courts in the District of Columbia may or may not authorize admission, on a regular or *pro hac vice* basis, of an attorney with an office in the District of Columbia if the attorney is not a member of the D.C. Bar.

Commentary to § 49 (c)(4):

Subsection (c)(4) addresses the persistent question whether a person employed by the District of Columbia and admitted in another jurisdiction may perform the services of a lawyer for the District government without being admitted to the D.C. Bar. The requirement that the person be "authorized to practice law and in good standing in another state or territory" includes attorneys licensed to practice law generally in another state or territory in accordance with that state or territory's rules. It is not intended to include persons authorized to practice in another state or territory only in limited circumstances under the jurisdiction's rules, such as law students or those permitted to provide legal services under other forms of limited practice. The subsection gives the person 360 days to be admitted, which is ample time if application is made promptly. Like the exception for lawyers employed by the United States, the subsection also requires that the person be authorized by her or his agency to perform such services.

Commentary to § 49 (c)(5):

Subsection (c)(5) provides an exception for private practice before District of Columbia fora similar to the exception for practice before departments and agencies of the United States. This provision was added in recognition that the same considerations may exist for allowing persons not authorized as lawyers to represent members of the public before some District of Columbia fora, as exist before some federal agencies. Like the federal-agency provision, this exception requires satisfaction of all of its enumerated conditions. Subsection (c)(5)(C) requires that a person seeking to practice under this exception from an office in the District of Columbia must include the indicated notice on all letterhead, business cards, formal papers of all kinds, promotions, advertisements, social media, and any other document submitted or expression made to any third party, the public, or any official entity. If the person does not have an office in the District of Columbia, notice must be given in accordance with subsection (c)(5)(D).

Commentary to § 49 (c)(6):

The provision of advice, and only advice, to one's regular employer, where the employer does not reasonably expect that it is receiving advice from an authorized member of the D.C. Bar, and no third party is involved as client or otherwise, is considered to be the employer's provision of advice to itself; and, accordingly, it is not considered practicing law.

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 this exception, as they do not give the employer a reasonable expectation that it is being served by an authorized member of the D.C. Bar. Similarly, a lawyer on the staff of a trade association who gives only advice concerning leases, personnel, and contractual matters, would be covered by the exception if, in fact, the lawyer does not give the employer reason to believe she is an authorized member of the D.C. Bar.

This exception is a limited one arising from the position of the lawyer, the confinement of the lawyer'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 an authorized member of the D.C. Bar.

Commentary to § 49 (c)(7):

The District of Columbia courts are open to attorneys from other jurisdictions who have an incidental need to appear in proceedings before them.

As the Court of Appeals has observed, however:

> ... [A]ppearance *pro hac vice* is meant to be an exception to the general prohibition against practicing law in the District without benefit of membership in the District of Columbia Bar. As an exception, it is equally clear, that it is designed as a privilege for an out-of-state attorney who may, from time to time, be involved in a particular case that requires appearance before a court in the District.

Brookens v. Comm. on Unauthorized Practice of Law, 538 A.2d 1120, 1124 (D.C. 1988).

Superior Court Rule of Civil Procedure 101 requires that persons seeking admission *pro hac vice* in the Superior Court must associate with an enrolled, active member of the D.C. Bar who has continuing responsibilities as associated counsel.

The fact that an attorney is associated with a law firm that maintains an office in the District of Columbia does not, of itself, establish that that attorney is maintaining an office in the District of Columbia.

Experience under the rule has indicated that the *pro hac vice* exception has occasionally been abused to allow persons who regularly operate from a location within the District of Columbia or its surrounding jurisdictions to engage regularly in litigation practice before the District of Columbia courts. The purpose of the provision, however is to permit attorneys to appear in the District of Columbia courts only incidentally or during their initial application for admission after moving into the District of Columbia. Accordingly, a person generally may not apply for admission *pro hac vice* in more than 5 cases pending in District of Columbia courts per calendar year. In addition, each application must be accompanied by a sworn declaration certifying the applicant's compliance with the rule.

Additionally, the *pro hac vice* exception has at times been erroneously interpreted by some practitioners to permit regular practice of law in the District of Columbia by an attorney admitted only in another jurisdiction upon the assertion that the person is a practicing litigator who appears no more than 5 times per calendar year in the courts. Subsection (c)(7)(C) makes clear that any such interpretation is incorrect.

The fee for admission is intended to approximate the value of the privilege to practice before the District of Columbia courts. The power of the courts to deny or withdraw admission is expressly set forth.

Commentary to § 49 (c)(8):

Subsection (c)(8) is designed to provide a one-time grace period within which attorneys admitted in other jurisdictions who come to practice law in the District of Columbia as their principal office may continue to practice law under the active supervision of a member of the D.C. Bar, while they promptly pursue admission to the D.C. Bar. This subsection is intended, conversely, to make it clear that a person admitted to the bar of another jurisdiction may not come to the District of Columbia and practice law under the supervision of a member of the D.C. Bar indefinitely while waiting for the period for admission on waiver to be satisfied.

This subsection does not affect the limitation of *pro hac vice* applications to 5 per calendar year, as provided in subsection (c)(7) above. A person practicing under this provision may not apply to appear *pro hac vice* in District of Columbia courts more than 5 times in any calendar year.

Neither this provision nor other provisions of the rule are intended to prohibit lawyers admitted to and in good standing in the bars of other jurisdictions from providing professional services to their clients in the District of Columbia, where the principal offices of those lawyers are located elsewhere and their presence in the District is occasional and incidental to a practice located elsewhere.

With respect to District of Columbia Rules of Professional Conduct 5.1 through 5.3, the provisions of this rule are controlling over the conduct of a person performing the services of a lawyer where the elements of the practice of law are present, i.e., where there is a client relationship of trust or reliance, or an indication of authority or competence to practice law in the District of Columbia. This means that, where either of those elements is present, a person may not participate indefinitely in the delivery of legal services as a lawyer under the supervision of a member of the D.C. Bar; he or she must become a member of the D.C. Bar within the period specified in this subsection.

Commentary to § 49 (c)(9):

Subsection (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 D.C. Bar for lawyers licensed in other jurisdictions to provide pro bono representation, where the requirements of the exception are met. It includes a provision, at the request of the United States Department of Justice, allowing government lawyers to participate in providing legal services pro bono publico.

When persons practice under this exception, they should give formal notice to the court and the parties of doing so. A form of certificate for such notice is appended to the rules, addressing the 4 alternatives under (c)(9) and adding a certificate for pro bono representation under the limited duration supervision exception of (c)(8).

Commentary to § 49 (c)(9)(D):

Recognizing the increased need for attorneys to serve as pro bono counsel and given the importance of access to justice, the purpose of this rule is to permit individuals who are authorized to practice law and in good standing in another state or territory and who are appropriately supervised by a licensed D.C. Bar member to perform pro bono work in the District of Columbia, provided the work is assigned or referred by an organization that provides pro bono legal services to the public without fee.

Commentary to § 49 (c)(10):

Subsection (c)(10) is intended to give express authorization to the number of individual- and group-assistance programs, services, and projects that are operated under the direct approval of the courts of the District of Columbia.

Commentary to § 49 (c)(12):

Subsection (c)(12) allows lawyers to represent clients in up to 5 new ADR proceedings annually. This provision furthers the strong public policy favoring the efficient and expeditious resolution of disputes outside the judicial process, to the extent consistent with the broader public interest. This provision gives clients who agree to resolve their disputes through ADR proceedings an option to retain attorneys not admitted in the District of Columbia that is generally equivalent to the option provided through the *pro hac vice* exception in subsection (c)(7) to clients who resolve their disputes in judicial proceedings.

The exception contains 3 important provisos, each of which is based on provisos for the *pro hac vice* exception in subsection (c)(7). First, the lawyer must be authorized to practice law and in good standing in another state or territory or in a foreign country, and must not be disbarred or suspended for disciplinary reasons, or have resigned with charges pending, in any jurisdiction or court. Second, the lawyer may begin to provide such services in no more than 5 ADR proceedings in the District of Columbia in each calendar year. An ADR proceeding would not count as a new ADR proceeding for purposes of this limit if it is ancillary to a judicial proceeding in which a lawyer is admitted *pro hac vice* (for example, when the court orders or encourages the parties to try to resolve the matter through ADR). Similarly, this limit of 5 new ADR proceedings annually would not apply so long as the lawyer's participation in an ADR proceeding in the District of Columbia is temporary and incidental to his or her practice in another jurisdiction. Third, the lawyer may not maintain a base of operations in the District of Columbia or otherwise practice here, unless the lawyer qualifies under another exception in Rule 49 (c).

This provision allows lawyers to represent clients in ADR proceedings that require more than incidental or temporary presence in the District. Separate from the authority granted by this

exception, a lawyer may represent parties in ADR proceedings (or other matters) under subsection (c)(13) if the lawyer's presence in the District is incidental and temporary.

This exception relates only to lawyers' representation of clients in ADR proceedings. As explained in the Commentary to Rule 49 (b)(2), lawyers who serve as arbitrators, mediators, or other kinds of neutrals in ADR proceedings are not engaged in the practice of law.

Commentary to § 49 (c)(13):

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. For example, there is no intent to prohibit a lawyer based outside the District from taking a deposition in an action pending in another forum, or closing a transaction relating to another jurisdiction, at a location in the District of Columbia, where the person performing the legal services is authorized to practice law and in good standing in another state or territory or in a foreign country and the person does not suggest to any client or other persons involved in the matter that the lawyer is licensed in the District.

Where, however, an attorney provides legal services concerning a transaction related to the District from a location within the District of Columbia, the attorney may be engaged in the practice of law in the District of Columbia because the attorney's presence is not incidental. Whether a transaction is related to the District of Columbia depends on the location of the parties, the location of the property and interests at issue, and the law to be applied. Another relevant factor is whether the lawyer not admitted to the D.C. Bar is the only lawyer for a party, or whether the lawyer is co-counsel or the lawyer's role is limited to one aspect of a transaction with respect to which a D.C. Bar member is lead counsel. For example, where a transaction concerns real estate located in the District of Columbia, a lawyer based outside the District who comes to the city to provide legal services to a client located inside or outside the District relating only to the federal tax aspects of the transaction may qualify for this exception. However, a lawyer based outside the District who comes to the city to be primary counsel to a District-based client with respect to all aspects of the real estate transaction may not qualify for this exception. Whether the lawyer who is not admitted to the D.C. Bar and whose principal office is outside the District is associated with or supervised by a member of the D.C. Bar is a relevant, but not controlling, factor in determining whether the lawyer's practice in the District is "incidental."

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.

This exception permits a person authorized to practice law in another country to practice law in the District on an incidental and temporary basis, subject to the specified conditions. Those conditions, including the requirements that a foreign lawyer be authorized to practice law in a foreign country and not be disbarred or suspended in any jurisdiction, are consistent with the requirements in Rule 46 (f) concerning special legal consultants that the foreign lawyer be in good standing as an attorney or counselor at law (or the equivalent of either) in the country where he or she is authorized to practice law.

The exception in subsection (c)(13) is separate from other exceptions in Rule 49 (c), and the specific exception controls the general exception. For example, whether or not regular appearances before federal agencies located in the District of Columbia by attorneys with their principal offices in other jurisdictions fit within this exception for temporary practice, they may qualify under the federal practice exception in subsection (c)(2). A lawyer with a principal office outside the District who comes to the District in connection with a pending or potential case in the District of Columbia courts must qualify for the *pro hac vice* exception in subsection (c)(7) regardless of whether the lawyer's practice in the District is otherwise temporary and incidental.

A lawyer whose principal office is outside the District of Columbia and who provides pro bono services in the District of Columbia on an incidental and temporary basis under Rule 49 (c)(13) is not required to comply with the application, supervision, and notice requirements of the exception in Rule 49 (c)(9)(B) for provision of pro bono services. The (c)(9)(B) exception facilitates the provision of pro bono services by lawyers whose principal office is in the District of Columbia and who qualify for another exception to Rule 49, such as the exception in Rule 49 (c)(2) for certain U.S. government practitioners. Consistent with its purpose to encourage the provision of pro bono services, the exception in Rule 49 (c)(9) does not impose additional obligations on lawyers who are permitted under another exception to provide pro bono services in the District of Columbia. In particular, unlike lawyers who are authorized to provide pro bono services only under the (c)(9) exception, lawyers who provide pro bono services under the (c)(13) exception are not required to apply for admission to the D.C. Bar, to be supervised by a D.C. Bar member, or to provide notice of their bar status. Clients who obtain services on a pro bono basis from lawyers practicing under the (c)(13) exception are protected to the same extent as clients who pay lawyers a fee to provide services under the (c)(13) exception.

The 2018 technical revisions amended subsection (c)(13) to employ consistent language referring to lawyers licensed in other jurisdictions.

Commentary to § 49 (d):

Section (d) sets forth the mandate, powers, and procedures of the Committee on Unauthorized Practice of Law. The United States Court of Appeals for the District of Columbia Circuit has observed:

> The Committee members' work is functionally comparable to the work of judges. . . . They serve as an arm of the court and perform a function which traditionally belongs to the judiciary. . . . [T]he Committee acts as a surrogate for those who sit on the bench. Indeed, were it not for the Committee, judges themselves might be forced to engage in the sort of inquiries [authorized by Rule 49].

Simons v. Bellinger, 643 F.2d 774, 780-81 (D.C. Cir. 1980).

The provisions of section (d) retain virtually all of the language of the original rule concerning establishment of the Committee and its rules of procedure. Subsection (d)(14) provides specific authority for the Committee to issue opinions to facilitate understanding and enforcement of the rule.

It is expected that most matters considered by the Committee will be resolved within its informal and formal proceedings.

Commentary to § 49 (e):

Section (e) sets forth the procedures and effect of proceedings commenced by the Committee, the relief available in the Court of Appeals in formal proceedings initiated by the Committee, and the method for appealing a decision of the designated hearing judge.

The powers and procedures provided in sections (d) and (e) are not the exclusive means for enforcing the provisions of this rule. Disciplinary Counsel may initiate an original proceeding before the Court of Appeals for contempt where it alleges that the respondent has violated Rule 49 by practicing law while disbarred. *In re Burton*, 614 A.2d 46 (D.C. 1992). Disciplinary Counsel may also rely on unauthorized law practice in opposing reinstatement of an attorney suspended from the D.C. Bar. *In re Stanton*, 532 A.2d 95 (D.C. 1987). The District of Columbia courts have subject matter jurisdiction to consider original complaints of unauthorized practice of law initiated by private parties and to issue relief if such practice is found. *J.H. Marshall & Assocs., Inc. v. Burleson*, 313 A.2d 587 (D.C. 1973).

Rule 49. Unauthorized Practice of Law.

(a) IN GENERAL~~eneral Rule~~. Except as otherwise permitted by these rules, ~~N~~no person may ~~shall~~ 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 ~~District of Columbia~~ D.C. Bar~~, except as otherwise permitted by these Rules~~.

(b) DEFINITIONS~~efinitions~~. The following definitions apply to ~~the interpretation and application of~~ this rule:

(1) "Person" means any individual, group of individuals, firm, unincorporated association, partnership, corporation, mutual company, joint stock company, trust, trustee, receiver, or other legal or business entity.

(2) "Practice of ~~Law~~law" means ~~the provision of~~ providing 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:

(A) ~~P~~preparing any legal document, including:

- ~~any~~ deeds~~;~~,
- a mortgages~~;~~,
- an assignments~~;~~,
- a discharges~~;~~,
- a leases~~;~~,
- a trust instruments~~;~~,
- ~~or any other~~ an instruments intended to affect interests in real or personal property~~;~~,
- a wills~~;~~,
- a codicils~~;~~,
- an instruments intended to affect the disposition of property of decedents' estates~~;~~, ~~other~~
- an instruments intended to affect or secure legal rights~~;~~, and
- a contracts except a routine agreements incidental to a regular course of business;

(B) ~~P~~preparing or expressing a legal opinions;

(C) ~~A~~appearing or acting as an attorney in any tribunal;

___(D) ~~P~~preparing any claims, demands~~,~~ or pleadings~~ of any kind, or any written documents~~ containing legal argument or interpretation of law, for filing in any court, administrative agency, or other tribunal;

___(E) ~~P~~providing advice or counsel as to how an~~y of the~~ activity~~ies~~ described in ~~subparagraph~~ Rule 49 (b)(2)(A)~~-(D) through (D)~~ might be done, or whether ~~they were~~it was done, in accordance with applicable law; or

___(F) ~~F~~furnishing an attorney or attorneys, or other persons, to render the services described in Rule 49 (b)(2)(A)-(E). ~~subparagraphs (a) through (e) above.~~

_(3) "In the District of Columbia" means conduct in, or conduct from an office or location within, the District of Columbia.

_(4) "Hold out as authorized or competent to practice law in the District of Columbia" means to indicate in any manner to any other person that one is competent, authorized, or available to practice law from an office or location in the District of Columbia. Among the ~~characterizations which~~ terms which may give ~~such an~~that indication are "~~E~~esquire~~.~~," "lawyer," "attorney," "attorney at law," "counsel," "counselor," "counselor at law,~~"~~," "contract lawyer," "trial ~~or legal~~ advocate," "legal representative," "legal advocate," "notario," and "judge."

_(5) "Committee" means the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law, as constituted under this rule.

(c) EXCEPTIONS~~xceptions~~. The following activities~~y in the District of Columbia is excepted~~are permitted as exceptions to~~from the prohibitions of section~~ Rule 49 (a) ~~of this Rule, provided~~if the person is not otherwise engaged in the practice of law or holding out as authorized or competent to practice law in the District of Columbia.~~:~~

_(1) *United States Government Employee.*~~:~~ ~~P~~A person may provide~~ing authorized~~ legal services to the United States as an employee thereof~~;~~.

_(2) *Representation Before United States Government ~~Practitioner~~Special Court, Department, or Agency.*~~:~~ ~~P~~A person may provide~~ing~~ legal services to members of the public solely before a special court, department, or agency of the United States, when~~re~~:

___(A) ~~Such~~the legal services are confined to representation before such fora and other conduct reasonably ancillary to ~~such~~that representation;

___(B) ~~Such~~the conduct is authorized by statute, or the special court, department, or agency has adopted a rule expressly permitting and regulating ~~such~~that practice; and

___(C) ~~I~~if the ~~practitioner~~person has an office in the District of Columbia, the ~~practitioner~~person expressly gives prominent notice in all business documents of the ~~practitioner~~person's bar status and that his or her practice is limited consistent with ~~this section~~Rule 49 (c).

_(3) *Practice Before United States ~~a Court of the United States~~.*~~:~~ ~~P~~A person may provide~~ing~~ legal services in or reasonably related to a pending or potential proceeding in any court of the

United States if the person has been or reasonably expects to be admitted to practice in that court, ~~provided that~~but if the ~~practitioner~~person has an office in the District of Columbia, the ~~practitioner~~person must expressly gives prominent notice in all business documents of the ~~practitioner~~person's bar status and that his or her practice is limited consistent with ~~this section~~ Rule 49 (c).

(4) *District of Columbia Employee.* ~~P~~A person may provide~~ing~~ legal services to the government of the District of Columbia~~for his or her employer~~ during the first 360 days of employment as a lawyer ~~by~~for the government of the District of Columbia, when~~re~~ the person:

(A) is ~~an enrolled Bar member~~ authorized to practice law and in good standing in ~~of~~ another state or territory~~,~~;

(B) is not disbarred or suspended for disciplinary reasons; ~~and~~

(C) has not resigned with charges pending in any jurisdiction or court~~,~~; and

(D) has been authorized by her or his government agency to provide such services~~;~~.

(5) *Representation Before District of Columbia ~~Practitioner~~Department or Agency.* ~~P~~A person may provide~~ing~~ legal services to members of the public solely before a department or agency of the District of Columbia government, when~~re~~:

(A) ~~Such~~the representation is confined to appearances in proceedings before tribunals of that department or agency and other conduct reasonably ancillary to ~~such~~those proceedings;

(B) ~~Such~~the representation is authorized by statute, or the department or agency has authorized it by rule and undertaken to regulate it;

(C) ~~I~~if the ~~practitioner~~person has an office in the District of Columbia, the ~~practitioner~~person expressly gives prominent notice in all business documents of the ~~practitioner~~person's bar status and that his or her practice is limited consistent with ~~this section~~Rule 49 (c); and

(D) ~~I~~if the ~~practitioner~~person does not have an office in the District of Columbia, the ~~practitioner~~person expressly gives written notice to clients and other parties, with respect to any proceeding before tribunals of that department or agency and any conduct reasonably ancillary to ~~such~~those proceedings, of the ~~practitioner~~person's bar status and that his or her practice is limited consistent with ~~this section~~Rule 49 (c) ~~of this Rule~~.

(6) *Internal Counsel.* ~~P~~A person may provide~~ing~~ legal advice only to one's regular employer, when~~re~~ the employer does not reasonably expect that it is receiving advice from a person authorized to practice law in the District of Columbia.~~;~~

(7) *Pro Hac Vice ~~I~~in the Courts of the District of Columbia.* ~~P~~A person may provide~~ing~~ legal services in or reasonably related to a pending or potential proceeding in a court of the District of Columbia, if the person has been or reasonably expects to be admitted *pro hac vice*, ~~provided~~in accordance with the following provisions.~~:~~

___(~~i~~A) *Limitation to 5 Applications Per Year.* No person may apply for admission *pro hac vice* in more than ~~five (5)~~ cases pending in the courts of the District of Columbia per calendar year, except for exceptional cause shown to the court.

___(~~ii~~B) *Applicant Declaration.* Each application for admission *pro hac vice* ~~shall~~ must be accompanied by a declaration under penalty of perjury:

_____(~~1~~i) certifying that the applicant has not applied for admission *pro hac vice* in more than ~~five~~5 cases in courts of the District of Columbia in this calendar year~~,~~;

_____(~~2~~ii) identifying all jurisdictions and courts where the applicant is ~~a member of the bar~~ authorized to practice law and whether the applicant is in good standing in each such jurisdiction or court~~in good standing,~~;

_____(~~3~~iii) certifying that there are no disciplinary complaints pending against the applicant for violation of the rules of any jurisdiction or court, or describing all pending complaints~~,~~;

_____(4iv) certifying that the applicant has not been suspended or disbarred for disciplinary reasons or resigned with charges pending in any jurisdiction or court, or describing the circumstances of all suspensions, disbarments, or resignations~~,~~;

_____(~~5~~v) certifying that the ~~person~~ applicant has not had an application for admission to the D.C. Bar denied, or describing the circumstances of ~~all such~~any denials;

_____(~~6~~vi) agreeing promptly to notify the ~~C~~court if, during the course of the proceeding, the ~~person~~ applicant is suspended or disbarred for disciplinary reasons or resigns with charges pending in any jurisdiction or court;

_____(~~7~~vii) identifying ~~by~~ the name, address, and D.C. Bar number of the D.C. Bar member with whom the applicant is associated under Superior Court Rule of Civil Procedure 101~~Super. Ct. Civ. R. 101~~;

_____(~~8~~viii) certifying that the applicant does not practice law or hold out as authorized or competent to practice law in the District of Columbia or that the applicant qualifies under an identified exception in Rule 49 (c)~~,~~

_____(~~9~~ix) certifying that the applicant has read the rules of the District of Columbia Court of Appeals and the relevant division of the Superior Court ~~of the District of Columbia and the District of Columbia Court of Appeals~~, and has complied ~~fully~~ with District of Columbia Court of Appeals Rule 49 and, as applicable, Superior Court Rule of Civil Procedure~~Super. Ct. Civ. R.~~ 101~~,~~

_____(~~10~~x) explaining the reasons for the application~~,~~;

_____(~~11~~xi) acknowledging the power and jurisdiction of the courts of the District of Columbia over the applicant's professional conduct in or related to the proceeding~~,~~; and

_____(~~12~~xii) agreeing to be bound by the District of Columbia ~~Court of Appeals~~ Rules of Professional Conduct in the matter~~,~~ if the applicant is admitted *pro hac vice*.

___(~~iii~~C) *Office ~~Outside of~~in the District of ~~Columbia Prohibited~~*. ~~No~~A person who maintains or operates from an office or location ~~for the practice of law~~ within the District of Columbia that is for the practice of law may not be admitted to practice before a court of the District of Columbia *pro hac vice*, unless that person qualifies under another ~~express~~ exception provided in ~~section~~ Rule 49 (c) ~~hereof~~.

___(~~iv~~D) *Supervision*. Any person admitted *pro hac vice* must comply with Superior Court Rule of Civil Procedure~~Super. Ct. Civ. R.~~ 101 and other applicable rules of the District of Columbia courts.

~~(v) *Application Fee*. Application to participate *pro hac vice* shall be accompanied by a fee of $100.00 to be paid to the Clerk of Court. Proof of payment of the fee shall accompany the application for admission *pro hac vice*. The application fee shall be waived for a person whose conduct is covered by section (c)(9) hereof, or whose client's application to proceed *in forma pauperis* has been granted.~~

___(~~vi~~E) *Filing Process*. The applicant ~~first shall~~ must submit a copy of the application to the ~~office of the~~ Committee, pay ~~the~~an application fee, and ~~there~~ receive a receipt for payment of the fee.~~;~~ ~~whereupon t~~The applicant ~~shall~~ must then file the application with the receipt in the appropriate office of the Clerk of Court. ~~Only certified checks, cashiers checks, or money orders will be accepted in payment of the fee, made payable to "Clerk, D.C. Court of Appeals." The~~ An application will not be accepted for filing without the required receipt.

___(F) *Application Fee*. The application fee for admission *pro hac vice* is $100. The fee may be paid in cash, by credit card, or by cashier's check, certified check, or money order made payable to "Clerk, District of Columbia Court of Appeals." The fee is waived for a person whose conduct is covered by Rule 49 (c)(9) or whose client's application to proceed *in forma pauperis* has been granted.

___(~~vii~~G) *Power of the Court*. The court to which the relevant ~~litigation~~ matter is assigned may grant or deny applications for admission *pro hac vice*, and may withdraw those admissions ~~to participate *pro hac vice*~~ in its discretion.

__(8) *Limited Duration Supervision ~~B~~by D.C. Bar Member*.~~:~~ ~~P~~A person may practice~~ing~~ law from a principal office located in the District of Columbia for a period not to exceed 360 days from the commencement of such practice, during pendency of the person's first application for admission to the D.C. Bar, ~~while~~ if:

___(A) the person is ~~an active member~~ authorized to practice law and in good standing ~~of the highest court of~~in another ~~a~~ state or territory~~;~~ ~~and while~~

___(B) the person is not disbarred or suspended for disciplinary reasons~~;~~ ~~and~~

___(C) the person has not resigned ~~or after resignation~~ with charges pending in any jurisdiction or court~~;~~

(D) the person is under the direct supervision of an enrolled, active member or members of the ~~District of Columbia~~ D.C. Bar~~;~~, ~~for one period not to exceed 360 days from the commencement of such practice, during pendency of a person's first application for admission to the District of Columbia Bar; provided that the practitioner~~

(E) the person has submitted the application for admission within ~~ninety (90)~~ days of commencing practice in the District of Columbia~~;~~,

(F) ~~that~~ the ~~District of Columbia~~ D.C. Bar member takes responsibility for the quality of the work and complaints concerning the services~~;~~, ~~that the practitioner~~

(G) the person or the ~~District of Columbia~~ D.C. Bar member gives notice to the public of the member's supervision and the ~~practitioner~~person's bar status~~;~~, and ~~that~~

(H) the ~~practitioner~~person is admitted *pro hac vice* to the extent he or she provides legal services in the courts of the District of Columbia.

(9) *Pro Bono Legal Services*.~~:~~ ~~P~~A person may provide~~ing~~ legal services *pro bono publico* ~~in the following circumstances~~when:

(A) ~~Where~~ the person is an enrolled, inactive member of the ~~District of Columbia~~D.C. Bar who is employed by or affiliated with a legal services or referral program in any matter that is handled without fee and who is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court~~,~~; ~~provided that~~but, if the matter requires the attorney to appear in court, the attorney ~~shall~~ must file with the court having jurisdiction over the matter, and with the Committee, a certificate that the attorney is providing representation in ~~that particular~~ the case without compensation~~;~~.

(B) ~~Where~~ the person is ~~a member~~authorized to practice law and in good standing ~~of the highest court of any~~ in another state or territory, is not disbarred or suspended for disciplinary reasons~~,~~ ~~and~~ has not resigned with charges pending in any jurisdiction or court, and is employed by or affiliated with the Public Defender Service~~,~~ or ~~is employed by or affiliated with~~ a non-profit organization located in the District of Columbia that provides legal services for indigent clients without fee or for a nominal processing fee~~,~~; ~~provided that~~ if:

(i) the person has submitted an application for admission to the ~~District of Columbia~~ D.C. Bar within ~~ninety (90)~~ days after commencing the practice of law in the District of Columbia;

(ii) ~~, and that such~~the attorney is supervised by an enrolled, active member of the D.C. Bar who is employed by or affiliated with the Public Defender Service or the non–profit organization~~;~~. and

(iii) ~~An~~the attorney ~~may~~ practices under ~~Part section~~ Rule 49 (c)(9)(B) ~~of this Rule of this section (c)(9)~~ for no longer than 360 days from the date of employment by or affiliation with the Public Defender Service or the non-profit organization, or until admitted to the D.C. Bar, whichever ~~first shall~~ occurs first~~;~~.

___(C) ~~Where~~ the person is an officer or employee of the United States, is authorized to practice law and ~~a member~~ in good standing ~~of the highest court of a~~ in another state or territory, is not disbarred or suspended for disciplinary reasons, ~~and~~ has not resigned with charges pending in any jurisdiction or court, ~~and~~ is assigned or referred by an organization that provides legal services to the public without fee, ~~; provided that the person~~and is supervised by an enrolled, active member of the ~~District of Columbia~~ D.C. Bar; ~~.~~ or

___(D) ~~Where~~ the person is an internal counsel, is ~~a member~~ authorized to practice law and in good standing ~~of the highest court of a~~ in another state or territory, is not disbarred or suspended for disciplinary reasons, ~~and~~ has not resigned with charges pending in any jurisdiction or court, ~~and~~ is assigned or referred by an organization that provides legal services to the public without fee, ~~; provided that the individual~~ and is supervised by an enrolled, active member of the ~~District of Columbia~~ D.C. Bar.

__An attorney practicing under ~~this section~~Rule 49 (c)(9) ~~shall~~ must give notice of his or her bar status, and ~~shall be~~is subject to the District of Columbia Rules of Professional Conduct and the enforcement procedures applicable thereto to the same extent as if he or she were an enrolled, active member of the ~~District of Columbia~~ D.C. Bar.

~~An attorney may practice under Part (B) of this section (c)(9) for no longer than 360 days from the date of employment by or affiliation with the Public Defender Service or the non-profit organization, or until admitted to the Bar, whichever first shall occur.~~

__(10) *Specifically Authorized Court Programs.* ~~:~~ ~~P~~A person may provide~~ing~~ legal services to members of the public as part of a special program for representation or assistance that has been expressly authorized by the District of Columbia Court of Appeals or the Superior Court of the District of Columbia, ~~provided that~~ if the person gives notice of his or her bar status ~~and~~, is not disbarred or suspended for disciplinary reasons, and has not resigned with charges pending in any jurisdiction or court.

__(11) *Limited Practice for Corporations or Partnerships.* ~~:~~ An authorized officer, director, or employee of a corporation or partnership may ~~A~~appear~~ing~~ in defense of ~~a~~the corporation or partnership in a small claims action, or in settlement of a landlord-tenant matter, ~~through an authorized officer, director, or employee of the organization; provided~~ if:

___(A) the organization ~~must be represented by an attorney if it files~~ does not file a crossclaim or counterclaim, or ~~if~~ the matter is not certified to the Civil Actions Branch; and

___(B) the person so appearing ~~shall~~ files at the time of appearance an affidavit vesting in the person the requisite authority to bind the organization.

__(12) *Practice in ADR Proceedings.* ~~:~~ A person may ~~P~~provide~~ing~~ legal services in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution ("ADR") proceeding, ~~provided~~if the person:

___(~~i~~A) ~~The person~~ is authorized to practice law and in good standing ~~by the highest court of a~~in another state or territory or authorized to practice law in ~~by~~ a foreign country, ~~;~~ ; ~~and~~

(B) is not disbarred or suspended for disciplinary reasons; ~~and~~

(C) has not resigned with charges pending in any jurisdiction or court;~~.~~

(~~ii~~D) ~~The person may begin to~~ provides ~~such~~these services in no more than ~~five~~ ~~(5)~~ ADR proceedings in the District of Columbia per calendar year;~~.~~ and

(~~iii~~E) ~~The person~~ does not maintain or operate from an office or location within the District of Columbia that is for the practice of law ~~within the District of Columbia~~ or otherwise practice or hold out as authorized or competent to practice law in the District of Columbia, unless that person qualifies under another express exception provided in ~~section~~ Rule 49 (c) ~~hereof~~.

(13) *Incidental and Temporary Practice.*~~:~~ A person may ~~P~~provide~~ing~~ legal services in the District of Columbia on an incidental and temporary basis~~, provided that~~ if the person is authorized to practice law and in good standing ~~by the highest court of a~~in another state or territory or ~~by~~ authorized to practice law in a foreign country, ~~and~~ is not disbarred or suspended for disciplinary reasons, and has not resigned with charges pending in any jurisdiction or court.

(d) ~~The Committee on Unauthorized Practice of Law~~THE COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW.~~(1)~~ The court ~~shall~~must appoint a standing committee known as the Committee on Unauthorized Practice of Law.

(1) *Membership.* The court will appoint~~consisting of~~ at least ~~six~~6, ~~and~~but not more than ~~twelve~~12, members of the D.C. Bar ~~of this court~~ and ~~of~~ one resident of the District of Columbia who is not a member of the D.C. Bar. The court must designate the Chair and Vice Chair ~~shall be designated by the court~~.

(2) *Member's Term of Service.*

(A) *In General.* The court will appoint~~Each~~ members ~~shall serve~~ for terms of ~~three~~3 years ~~and until their successors have been appointed~~.

(B) *Vacancy Before Term Expires.* In case of vacancy caused by death, resignation or otherwise, ~~a~~the court must appoint a successor ~~appointed shall~~to serve the unexpired term of the predecessor member.

(C) *Holdover.* After a member's term has expired, the member may continue to serve until the court appoints a successor or reappoints the member. ~~When~~If a member holds over after ~~the~~ expiration of ~~the~~a term and is reappointed ~~for which appointed~~, the holdover period ~~term the member serves after the expiration of the term for which the member was appointed shall be~~is part of ~~a~~that member's new term. A successor will serve a full 3-year term from the date of appointment without reference to any holdover.

(D) *Term Limit.* ~~No~~A member ~~shall be~~cannot ~~appointed to~~ serve ~~longer~~for more than ~~two~~2 consecutive, ~~regular~~ full ~~three~~3-year terms~~,~~ unless the court makes a special exception ~~is made by the court~~.

(3) *Power to Adopt Rules and Regulations.* Subject to the approval of the court, the Committee ~~shall~~ may adopt ~~such~~ rules and regulations that~~as~~ it deems necessary to carry out the provisions of ~~this rule~~Rule 49.

(4) *Subpoena Power and Process.* When conducting investigations and hearings, ~~The~~ the Committee may authorize any member to subpoena, subject to Superior Court Rule of Civil Procedure 45, the respondent, witnesses, and documents ~~upon application to the court by the Chair or the Chair's designee~~.

(5) *Capacity to Appear.* The Committee may appear in its own name in legal proceedings addressing issues relating to the performance of its functions and compliance with ~~this~~ Rule 49.

(6) *Compensation and Expenses.* The court may approve compensation and necessary expenses for ~~T~~the Committee members ~~of the Committee shall receive such compensation and necessary expenses as the court may approve~~.

(7) *Additional Staff.* The court will designate a deputy clerk to serve as Executive Secretary to the Committee and will provide necessary staff and secretarial services.

~~(3) Rules of Procedure.~~

(~~A~~8) ~~Officers, members, and d~~*Duties.*

~~(i) The Chair shall preside at all meetings of the Committee; and in the Chair's absence, the Vice Chair shall preside.~~

(A~~ii~~) *In General.* The ~~Chair, Vice Chair, and members~~Committee ~~shall~~ will investigate matters of alleged unauthorized practice of law and alleged violations of court rules governing ~~same~~the unauthorized practice of law, and if warranted, the Committee ~~shall~~ may take ~~such~~any actions ~~as are~~that is provided in these rules.

(B~~iii~~) *Law Student Practice.* In addition to the duties described ~~herein~~in Rule 49, the Committee ~~shall determine whether to approve the~~ must oversee the participation of law students permitted to practice under ~~legal programs identified in~~ Rule 48.

~~(iv) A deputy Clerk of this court shall be designated by the court to serve as Executive Secretary to the Committee and shall provide such staff and secretarial services as may be needed.~~

(~~B~~9) *Meetings.* The Chair must call at least 8 meetings each year. The Committee must hold a special meeting if a majority of its members request such a meeting by notifying the Executive Secretary.

(A) *Chair or Vice Chair Presides.* The Chair will preside at all meetings of the Committee. In the Chair's absence, the Vice Chair will preside.

(B~~i~~) *Confidentiality.* Any matter under investigation by the Committee must ~~shall~~ remain confidential until initiation of formal proceedings under ~~section~~Rule 49 (d)(~~3~~)(~~D~~11) ~~hereof~~, or until resolution of the matter under Rule 49 (d)(12)(B) or (C). ~~So as t~~To ensure this

confidentiality, the Committee must ~~shall~~ meet in executive session. ~~At least eight meetings shall be called each year.~~

~~(ii) The Committee shall meet at the call of the Chair. A special meeting of the Committee shall be held if a majority of its members request such a meeting by notifying the Executive Secretary.~~

(C~~ii~~) *Notice of Absence.* Members who are unable to attend a meeting ~~shall so~~ must notify the Chair or the Executive Secretary at least ~~two~~2 days in advance of the meeting.

(D~~iv~~) *Order of Business.* The Chair ~~sha~~will determine the order of business.

(E~~v~~) *Quorum.* A quorum ~~shall~~ consists of ~~four~~4 members, and all decisions ~~shall~~must be made by a majority of those members present and voting.

(F~~vi~~) *Telephone or Electronic Vote.* In appropriate circumstances, as may be determined by the Chair, a telephone or electronic vote of a majority of members polled, numbering no less than ~~four~~4 Committee members concurring in a decision, ~~shall constitute~~constitutes a Committee decision. Any such decision ~~shall~~ must be recorded in the minutes of the next Committee meeting.

(G~~vii~~) *Minutes.* ~~Minutes of all Committee meetings will shall be prepared under the direction of t~~The Executive Secretary will direct preparation of minutes for all Committee meetings~~, with~~and will furnish copies of ~~same~~the minutes ~~furnished~~ to all members of the Committee and to the ~~e~~Chief ~~j~~Judge of this court or a judge designated by the ~~e~~Chief ~~j~~Judge.

(10~~C~~) *Investigation.*

(A~~i~~) *Assignment.* When~~ever~~ a complaint is filed with the Committee or ~~up~~the Committee decides to investigate on its own volition, the ~~matter~~Chair will ~~shall be~~ assigned ~~by~~ the ~~Chair~~matter, on a random basis or as the Chair otherwise determines may be appropriate, to a Committee member for preliminary investigation.

(B) *Conduct and Content of Investigation.* This investigation ~~shall~~ must consist of an analysis of the complaint, a survey of the applicable law, and discussions with witnesses and~~/or~~ the respondent. It ~~shall~~ will not be deemed a breach of the confidentiality required of an assigned matter for the Committee or one of its members to reveal facts and identities ~~in pursuit of~~during the investigation of the matter.

(C~~ii~~) *Report.* At the next regular meeting of the Committee, ~~the Committee shall hear a report of~~ the investigating member must provide a report for the purpose of determining what action, if any, ~~shall~~ should be taken by the Committee. Complaints ~~shall~~ must be investigated and reported ~~up~~on within ~~six~~6 weeks. The Executive Secretary must notify the Chair about any ~~D~~delays in the investigation of and reporting on complaints ~~shall be brought to the Chair's attention by the Executive Secretary~~.

(D~~iii~~) *Decision to Hold Formal Proceedings.* If the Committee concludes that formal proceedings ~~are necessary~~ will ~~to~~ assist its determination, ~~such~~formal proceedings may be held as specified in ~~section~~Rule 49 (d)(~~3~~11)~~(D) below~~.

(11D) *Formal Proceedings.* (i) To assist the Committee in performing its functions, it may take sworn testimony of witnesses and/or the respondent.

(Aii) *Written Notice to Respondent.* Formal proceedings before the Committee shall beare commenced by written notice to the respondent informing the respondent of the nature of the respondent's conduct which the Committee believes may constitute the unauthorized practice of law. The notice must be accompanied by a copy of Rule 49. The notice may be served by:

(i) delivering it in person;

(ii) mailing it by first-class mail, postage prepaid, to the respondent's last known business or residence address;

(iii) delivering it to a commercial carrier for delivery to the respondent's last known business or residence address; or

(iv) other means such as email or facsimile, reasonably calculated to reach the respondent, including any method described in Superior Court Rule of Civil Procedure 4.

(B) *Certificate of Service.* The Committee or its designee must prepare a certificate of service stating how the respondent was served.

(C) *Time to Respond.* The respondent must shall be given 15 30 days to respondprovide a written response to the notice. Upon receipt of this response (or if no response is submitted), the matter shall be scheduled for a hearing. A copy of Rule 49 shall also be transmitted to the respondent with the written notice.

(D) *Appointing Attorneys.* The Chair (or the Vice Chair if the Chair is to be appointed) may appoint one or more attorney members of the Committee or outside counsel to present, at a hearing, evidence of conduct which may constitute the unauthorized practice of law. If a Committee member is appointed, the member may not participate further in the Committee's consideration of actions to dispose of the matter under Rule 49 (d)(12), but may participate in any proceedings under Rule 49 (e).

(E) *Conduct of Hearing.* The respondent may be accompanied by counsel at the hearing. Formal rules of evidence shalldo not apply. The respondent may present documentary evidence, testify, present testimonial evidence from witnesses, and cross-examine witnesses, all subject to any rules and regulations adopted by the Committee and such reasonable limitations as are imposed by the Committee. The respondent may request permission to present evidence and witnesses in addition to the respondent's own testimony, but such proffers shall be allowed only in the discretion of the Committee. The respondent may be accompanied by counsel. To avoid harassment, the Committee may in its discretion limit the participation of the respondent and counsel in presentation of evidence by persons complaining of violations of this Rule 49. Formal rules of evidence shall not apply. The Chair may apply to the court for issuance of a subpoena to any witness or to the respondent.

(F) *Findings of Fact and Conclusions of Law.* Following a formal hearing, the Committee may prepare written findings of fact and conclusions of law in support of its final disposition of

the matter under Rule 49 (d)(12). In preparing its findings, the Committee must apply a preponderance of the evidence standard. ~~When appropriate, a post-hearing conference may be held between respondent and the investigation Committee member (or another Committee member designated by the Chair) for the purpose of informing the respondent of the findings of the Committee and action it proposes.~~

(12~~E~~) *Actions by the Committee.* ~~(i)~~ During any stage of the investigation or formal proceedings the Committee may dispose of any matter pending before it by any of the following methods:

(A~~ii~~) If no evidence of unauthorized practice is found, the matter must ~~shall~~ be closed and the complainant notified.

(B~~iii~~) If the respondent agrees to cease and desist from actions which appear to constitute the unauthorized practice of law, the matter may be closed by formal agreement, ~~consent order, or both,~~ with notification of such action given to the complainant. ~~Such~~A formal agreement ~~or consent order~~ may require restitution to the clients of fees obtained by the respondent. The Committee may file a formal agreement with the court with a proposed consent order memorializing the agreement's terms. A proposed consent order is effective when signed by a judge of the District of Columbia designated by the Chief Judge of this court.

(C) If, following a formal proceeding under Rule 49 (d)(11), the Committee finds by a preponderance of the evidence a violation of this rule, or of an injunction or consent order issued pursuant to proceedings under this rule, the Committee may initiate proceedings under Rule 49 (e). ~~(iv) If warranted, the Committee may initiate proceedings to enforce this Rule under section (e), provided, however, that action pursuant to this subsection is preceded by the formal proceedings specified in section (d)(3)(D) above.~~

(D~~v~~) The Committee may also refer cases to the Office of the United States Attorney or the Attorney General of the District of Columbia for investigation and possible prosecution or to other appropriate authorities.

(13~~F~~) *Closed Files.* ~~Upon the closing of a file by~~When the Committee closes a file, the file ~~shall~~ must be retained in the records of this court.

(14~~G~~) *Opinions.* ~~(i)~~ On the request of a person or organization or when the Committee believes that an opinion will aid the public's understanding of Rule 49, ~~T~~the Committee may by approval of a majority of its members present in quorum provide opinions~~, upon the request of a person or organization,~~ as to what constitutes the unauthorized practice of law.

(A) *Publication.* ~~Such o~~The Committee's opinions ~~shall~~ must be published in the same manner as opinions rendered under the District of Columbia Rules of Professional Conduct.

(B~~ii~~) *Reliance on Opinion.* Conduct of a person, which was undertaken in good faith, in conformity with, and in reliance ~~upon a~~the Committee's written interpretation or opinion ~~of the Committee~~ requested by that person, ~~shall~~ constitutes a prima facie showing of compliance with Rule 49 in any investigation or proceeding before the Committee or this court~~e Court of Appeals~~.

(e) *Proceedings Before ~~T~~the Court ~~of Appeals~~.*

(1) *Contempt.* Violations of Rule 49, or of any injunction or consent order issued pursuant to proceedings under Rule 49, are punishable by this court as contempt.

(2) *Injunction and Equitable Relief.* The court may issue a permanent injunction to restrain violations of Rule 49, together with such ancillary equitable remedies so as to afford complete relief, including but not limited to equitable monetary relief in the form of disgorgement, restitution, or reimbursement of those harmed by the conduct.

~~(2)(A)~~(3) *Original Proceeding.* The Committee may initiate an original proceeding before thi~~s~~e ~~Court of Appeals~~court for violation of ~~this~~ Rule 49, or for violation of an injunction or consent order issued pursuant to proceedings under Rule 49.

(A) *By Petition.* The proceeding ~~shall be~~must be initiated by a petition served on the respondent or his designated counsel.

(B) *Special Counsel.* The ~~C~~court may, on motion of the Committee or ~~*sua sponte*~~on its own initiative, appoint a special counsel to represent the Committee and to present the Committee's proof and argument in ~~such~~the proceeding.

~~(2) Violations of the provisions of this Rule 49 shall be punishable by the Court of Appeals as contempt and/or subject to injunctive relief. The Court of Appeals holds the power to include within its remedy compensation to persons harmed by violation of this Rule or of an injunction entered under it.~~

(C~~3~~) *Conduct of Proceedings.* ~~Such~~An original proceedings ~~shall~~ must be conducted before a judge of the District of Columbia designated by the Chief Judge of this court~~ Court of Appeals~~ under the D.C. Code, and ~~shall be~~is governed by the ~~Rules of the~~ Superior Court ~~of the District of Columbia~~Rules of Civil Procedure.

(D4) *Notice of Appeal.* Decisions of the designated judge are final and effective determinations which are subject to review in the normal course, by the filing of a notice of appeal by any party with the Clerk of the Court of Appeals within 30 days from the entry of the judgment by the designated judge.

COMMENTARY

The following Commentary provides guidance for interpreting and complying with ~~the~~ Rule 49 ~~and acting in compliance with it~~, but in proceedings before the court or the Committee on Unauthorized Practice of Law, the text of ~~the~~ Rule 49 ~~shall~~ will govern.

Commentary to § 49 (a):

Section (a) states the rule's general prohibition ~~of the rule~~, which was formerly set forth in Rule 49 (b)(1). It is intended to retain the essential meaning of the original text ~~as~~ adopted by the Court of Appeals. It adds for clarification that the ~~R~~rule applies unless an exception is provided.

The ~~R~~rule is applied first by determining whether the conduct in question falls within the definitions of practicing law or holding out to practice law in the District of Columbia. If the conduct falls within those definitions, such conduct by a person not admitted to the D.C. Bar is a violation of the ~~R~~rule, unless there is an express exception covering the conduct.

While one has a right to represent oneself, there is no right to represent or advise another as a lawyer. Authority to provide legal advice and services to others is a privilege granted only to those who have the education, competence, and fitness to practice law. When one is formally recognized to possess those qualifications by admission to the D.C. Bar, he or she is authorized to practice law.

The rule prohibits both the implicit representation of authority or competence by engaging in the practice of law, and the express holding out of oneself as authorized or qualified to practice law in the District of Columbia.

This rule against unauthorized practice of law has ~~four~~4 general purposes:

(1) To protect members of the public from persons who are not qualified by competence or fitness to provide professional legal advice or services;

(2) To ensure that any person who purports or holds out to perform the services of a lawyer is subject to the disciplinary system of the ~~District of Columbia~~D.C. Bar;

(3) To maintain the efficacy and integrity of the administration of justice and the system of regulation of practicing lawyers; and

(4) To ensure that that system and other activities of the D.C. Bar are appropriately supported financially by those exercising the privilege of membership in the ~~District of Columbia~~ D.C. Bar.

See ~~also~~ the commentary to subsection (b)(2), below, concerning the activities of persons relating to legal matters where a license to practice law is not required.

Competence and fitness to practice law are safeguarded by the examination and character screening requirements of the admissions process, and by the disciplinary system. The D.C. Bar further protects the interests of members of the public by maintaining a clients' security fund through membership dues.

~~Commentary to § 49 (b):~~

~~Although section (b) of the original rule included definitions, not all of the essential terms were defined. The new section (b) follows the conventional approach of rules and statutes in defining such terms.~~

Commentary to § 49 (b)(2):

As originally stated in subsections (b)(2) and (3) of the prior ~~R~~rule, the "practice of law" was broadly defined, embracing every activity in which a person provides services to another relating to legal rights. This approach has been refined, in recognition that there are some legitimate

activities of non-Bar members that may fall within an unqualifiedly broad definition of "practice of law."

The definition of the "practice of law" set forth in subsection (b)(2) is designed to focus first on the 2~~two~~ essential elements of the practice of law: (1) ~~T~~the provision of legal advice or services~~;~~; and (2) a client relationship of trust or reliance. Where one provides such advice or services within such a relationship, there is an implicit representation that the provider is authorized or competent to provide them~~;~~ just as one who provides any services requiring special skill gives an implied warranty that they are provided in a good and workmanlike manner. *See, e.g., Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1200 (D.C.1984); *Carey v. Crane Serv.~~ice Co.~~, ~~Inc.~~*, 457 A.2d 1102, 1107 (D.C.1983).

Recognizing that the definition of "practice of law" may not anticipate every relevant circumstance, the ~~R~~rule ~~adopts~~includes ~~four~~3 other ~~methods of~~tools to assist in defining~~tion~~ the phrase: ~~(1) the more refined definition focusing on the provision of legal advice or services and a client relationship of trust or reliance;~~ (21) an enumerated list of the most common activities which are rebuttably presumed to be the practice of law; (23) this commentary; and (34) where further questions of interpretation may arise, opinions of the Committee on Unauthorized Practice of Law ~~where further questions of interpretation may arise. See~~, as provided in subsection (d)(143)~~(G) below~~.

The definition of "practice of law," the list of activities, this commentary, and opinions of the Committee on Unauthorized Practice of Law are to be considered and applied in light of the purposes of the ~~R~~rule, as set forth in the commentary to sections (a) and (b).

The presumption that one's engagement in one of the enumerated activities is the "practice of law" may be rebutted by showing that there is no client relationship of trust or reliance, or that there is no explicit or implicit representation of authority or competence to practice law, or that both are absent.

While the ~~R~~rule is meant to embrace every client relationship where legal advice or services are rendered, or one holds oneself out as authorized or competent to provide such services, the ~~R~~rule is not intended to cover conduct which lacks the essential features of an attorney-client relationship.

For example, a law professor instructing a class in the application of law to a particular, real situation is not engaged in the practice of law because she is not undertaking to provide advice or services for one or more clients as to their legal interests. An experienced industrial relations supervisor is not engaged in the practice of law when he advises his employer what he thinks the firm must do to comply with state or federal labor laws, because the employer does not reasonably expect it is receiving a professional legal opinion. See also the exception for Internal Counsel set forth in subsection (c)(6). Law clerks, paralegals, and summer associates are not practicing law where they do not engage in providing advice to clients or otherwise hold themselves out to the public as having authority or competence to practice law. Tax accountants, real estate agents, title company attorneys, securities advisors, pension consultants, and the like, who do not indicate they are providing legal advice or services based on competence and standing in the law are not engaged in the practice of law, because their relationship with the

customer is not based on the reasonable expectation that learned and authorized professional legal advice is being given. Nor is it the practice of law under the ~~R~~rule for a person to draft an agreement or resolve a controversy in a business context, where there is no reasonable expectation that she is acting as a qualified or authorized attorney.

The ~~R~~rule is not intended to cover the provision of mediation or alternative dispute resolution ("ADR") services. This intent is expressed in the first sentence of the definition of the "practice of law" which requires the presence of 2~~two~~ essential factors: The provision of legal advice or services and a client relationship of trust or reliance. ADR services are not given in circumstances where there is a client relationship of trust or reliance; and it is common practice for providers of ADR services explicitly to advise participants that they are not providing the services of legal counsel.

While payment of a fee is often a strong indication of an attorney-client relationship, it is not essential.

Ordinarily, one who provides or offers to provide legal advice or services to clients in the District of Columbia implies to the consumer that he or she is authorized and competent to practice law in the District of Columbia. It is not sufficient for a person who is not an enrolled, active member of the ~~District of Columbia~~D.C. Bar merely to give notice that he is not a lawyer while engaging in conduct that is likely to mislead consumers into believing he is a licensed attorney at law. Where consumers continue to seek services after such notice, the provider must take special care to assure that they understand that the person they are consulting does not have the authority and competence to render professional legal services in the District of Columbia. *See In re~~:~~ Banks*, 561 A.2d 158 (D.C. 1987).

The ~~R~~rule also confines the practice of law to provision of legal services under engagement for another. One who represents himself or herself is not required to be admitted to the ~~District of Columbia~~ D.C. Bar.

The conduct described in subsection (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~~D.C. Bar, bar associations, labor organizations, non-fee pro bono organizations, and other court-authorized organizations.

Commentary to § 49 (b)(3):

Subsection (b)(3) clarifies by explicit definition the geographic extent of the ~~R~~rule.

The ~~R~~rule is intended to regulate all practice of law within the boundaries of the District of Columbia. The fact that an attorney is associated with a law firm that maintains an office in the District of Columbia does not, of itself, establish that that attorney is maintaining an office in the District of Columbia.

The practice of law subject to this ~~R~~rule is not confined to the matters subject to the law of the District of Columbia. The ~~R~~rule applies to the practice of all substantive areas of the law and requires admission to the ~~District of Columbia~~ D.C. Bar where the practice is carried on in the District of Columbia and does not fall within one of the exceptions enumerated in section (c).

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. A lawyer in the District of Columbia who advises clients or otherwise provides legal services in another jurisdiction may be subject to the rules of that jurisdiction concerning unauthorized practice of law.

~~Rule 49~~ The prohibition on unauthorized practice applies only if a lawyer is physically present in the District of Columbia at least once during the course of a matter. Even if a matter involves a client, and a dispute or transaction, in the District, the ~~Rule~~ prohibition on unauthorized practice does not apply if a lawyer located outside the District advises a client in-person only when the client visits the lawyer in the lawyer's office, or if the lawyer advises the client only by telephone, regular mail, or electronic mail. However, if a lawyer is physically present in the District even once during the course of a matter, the lawyer may be engaged in the District of Columbia in the practice of law with respect to the entire matter, even if the lawyer otherwise operates only from a location outside the District. See also below commentary to subsection (b)(4).

The definition of "in the District of Columbia" is intended to cover the practice of law within the District under the supervision of, or in association with, a member of the ~~District of Columbia~~D.C. Bar. Persons who provide legal services as lawyers with law firms and other legal organizations in the District of Columbia, with or without bar memberships elsewhere, are practicing law in the District and are in violation of the ~~R~~rule, unless they fall within one of the express exceptions set forth in section (c).

Commentary to § 49 (b)(4):

As a regulation with a purpose to protect the public, the rule requires that representation of non-Bar members must avoid giving the impression to persons not learned in the law that a person is a qualified legal professional subject to the high ethical standards and discipline of the ~~District of Columbia~~ D.C. Bar.

The listing of terms, which normally indicate one is holding oneself out as authorized or qualified to practice law, is not intended to be exhaustive. Experience has shown that the listed terms are often used to misleadingly represent that an individual is authorized to provide legal services. The definition of "hold out" is intended to cover any conduct which gives the impression that one is qualified or authorized to practice. *See In ~~R~~re: Banks*, 561 A.2d 158 (D.C. 1987).

A person or a law firm may hold out that person as authorized or competent to practice law in the District of Columbia by describing that person as a "contract lawyer." *See* Opinion 16-05 of the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law. In general, Rule 49 applies to contract lawyers to the same extent that it applies to other lawyers.

Where a member of the public correctly understands that a person is not admitted to the ~~District of Columbia~~ D.C. Bar but is nonetheless offering to perform services functionally equivalent to those performed by a lawyer, that person is subject to sanction under the consumer protection statutes of the District of Columbia. *See Banks v. District~~,~~ of Columbia~~,~~ Dep't~~,~~ of Consumer ~~and~~ & Regulatory Affairs*, 634 A.2d 433 (D.C. 1993).

Although the rule's prohibition on unauthorized practice is limited to conduct within the District of Columbia, a person located outside of the District of Columbia may still violate Rule 49 by holding out as authorized to practice law in the District of Columbia.

Commentary to § 49 (c)(1):

Subsection (c)(1) is ~~new. It is~~ designed to state expressly what has been implicit in prior interpretations and application of the ~~R~~rule; and it removes the implication ~~of former section (c)(2)~~ that representatives of the federal government must become members of the ~~District of Columbia~~D.C. Bar or appear *pro hac vice*. Attorneys employed by departments, agencies, and courts of the federal government are entitled to advise and represent their employers as part of their official duties. Such advice and representation includes both internal consultation and external representation in contact with the public and the courts. Permission for employees of the government of the District of Columbia to practice in the District is more limited. *See* ~~section~~Rule 49 (c)(4).

Commentary to § 49 (c)(2):

Subsection (c)(2) ~~substantially refines former section (c)(4). It is intended to~~ provides ~~only~~ a limited exception to the requirement for admission to the ~~District of Columbia~~D.C. Bar for persons who practice before federal fora in circumstances where all 3~~three~~ of the listed conditions are met.

The United States Supreme Court has held that states may not limit practice before a federal agency, or conduct incidental to that practice, where the agency maintains a registry of practitioners and regulates standards of practice with sanctions of suspension or disbarment. *Sperry v. ~~State of~~ Florida*, 373 U.S. 379 (1963). By contrast, a person advertising patent advice and search services who is not on the Patent Office registries of attorneys and agents is subject to the jurisdiction of the District of Columbia Court of Appeals through its Committee on the Unauthorized Practice of Law. *In re Amalgamated ~~Development~~ Dev. Co.~~, Inc.~~*, 375 A.2d 494 (D.C. 1977). *See also Kennedy v. Bar Ass'n~~oc.~~ of Montgomery County*, ~~316 Md. 646,~~ 561 A.2d 200 (Md. 1989); *In re ~~Jones~~Peterson*, 163 ~~Bankr~~.R. 665~~,~~ ~~1994 Bankr. LEXIS 150~~ (Bankr. D. Conn. 1994); ~~and~~ *Spanos v. Skouras Theatres Corp.*, 364 F.2d 161, 171 (2~~nd~~ Cir. 1966).

As the seat of the national government, the District of Columbia is naturally the place where people locate to provide representation of persons or entities petitioning federal departments or agencies for relief. Inasmuch as such activity would often constitute the practice of law, the Supremacy Clause of the United States Constitution, case law, and comity between the District and federal governments counsel a deference to federal departments and agencies that determine to allow persons not admitted to the Bar to practice before them. At the same time, experience under this ~~r~~Rule has shown that some persons have abused the deference set forth in the original

rule by engaging in misleading holding out or practicing law in proceedings other than those of the authorizing federal fora.

With respect to persons who hold out and purport to provide legal representation before federal fora from locations outside the District of Columbia, the ~~R~~rule does not apply because the activity, even if the practice law, is not carried on within the District of Columbia. *See* ~~section~~Rule 49 (b)(3) and the commentary thereto.

Subsection (c)(2) is designed to permit persons to practice before a federal department or agency without becoming members of the Bar~~,~~ where the agency has a system in place to regulate practitioners not admitted to the Bar, and where the public is adequately informed of the limited nature of the person's authority to practice.

Where there is doubt whether a federal agency undertakes to regulate the quality or integrity of practitioners before it, there is necessarily doubt under subsection (c)(2)(B) whether this exception would apply to allow persons practicing before the agency who are not admitted to the D.C. Bar to engage in any practice of law in the District of Columbia. In order to resolve such doubt, the Committee will refer to an agency any complaints it should receive concerning practitioners before the agency who are not admitted to the D.C. Bar. If the agency does not take any action, or advises that it will not take any action, on the referred complaint in 90 days following the referral, the Committee will inform the agency that it presumes the agency does not undertake to regulate the conduct of practitioners before it; and the Committee will then proceed to consider the complaint under the provisions of Rule 49.

Under the third condition, (C), a person seeking to practice under the (c)(2) exception must include the indicated notice on all letterhead, business cards, formal papers of all kinds, promotions, advertisements, social media, and any other document submitted or expression made to any third party, the public, or any official entity.

Experience under the r~~R~~ule has indicated that, in many instances, persons seeking representation involving jurisdiction of federal departments and agencies also have rights to plead their claims before the courts. Advising persons whether they have rights to pursue their claims beyond federal agencies into the courts, or representing entities in challenges to or review of federal agency action in federal courts, would, without more, not require that the advisor be a member of the ~~District of Columbia~~ D.C. Bar, as such advice is reasonably ancillary to representation before the agency and is subject to the jurisdiction of the federal courts. *See* ~~§ 49~~ Rule 49 (c)(3). The exception set forth in (c)(2) does not, however, otherwise authorize active advice to~~,~~ or representation of persons in the courts.

Commentary to § 49 (c)(3):

Practice before the courts of the United States is a matter committed to the jurisdiction and discretion of those entities. If a practitioner has an office in the District of Columbia and is admitted to practice before a federal court in the District of Columbia but is not an active member of the D.C. Bar, the practitioner may use the D.C. office to engage in the practice of law before that federal court, but only if the practitioner provides clear notice in all business documents, including advertisements and social media, that the practitioner is not a member of

the D.C. Bar and that the practice is limited to matters before that federal court (or to other matters within the scope of other exceptions in section (c)). This exception applies only if a person's entire practice falls within section (c); if any part of the person's practice is not covered by an exception, Rule 49 requires a practitioner with an office in the District of Columbia to be an active member of the D.C. Bar. The rules of federal courts in the District of Columbia may or may not authorize admission, on a regular or *pro hac vice* basis, of an attorney with an office in the District of Columbia if the attorney is not a member of the D.C. Bar.

Commentary to § 49 (c)(4):

Subsection (c)(4) ~~is new. It~~ addresses the persistent question whether a person employed by the District of Columbia and admitted in another jurisdiction may perform the services of a lawyer for the District government without being admitted to ~~the District of Columbia~~ the D.C. Bar. The requirement that the person be "authorized to practice law and in good standing in another state or territory" includes attorneys licensed to practice law generally in another state or territory in accordance with that state or territory's rules. It is not intended to include persons authorized to practice in another state or territory only in limited circumstances under the jurisdiction's rules, such as law students or those permitted to provide legal services under other forms of limited practice. The subsection gives the person 360 days to be admitted, which is ample time if application is made promptly. Like the exception for lawyers employed by the United States, the subsection also requires that the person be authorized by her or his agency to perform such services.

Commentary to § 49 (c)(5):

Subsection (c)(5) provides ~~is new. The former rule did not contain~~ an exception for private practice before District of Columbia fora similar to the exception ~~set forth~~ for practice before departments and agencies of the United States. ~~In~~ This provision was added in recognition~~, however,~~ that the same considerations may exist for allowing persons not authorized as lawyers to represent members of the public before some District of Columbia fora, as exist before some federal agencies~~, this provision has been added~~. Like the federal-agency provision, this exception requires satisfaction of all ~~three~~ of its enumerated conditions. Subsection (c)(5)(C) requires that a person seeking to practice under this exception from an office in the District of Columbia must include the indicated notice on all letterhead, business cards, formal papers of all kinds, promotions, advertisements, social media, and any other document submitted or expression made to any third party, the public, or any official entity. If the person does not have an office in the District of Columbia, notice must be given in accordance with subsection (c)(5)(D).

Commentary to § 49 (c)(6):

~~Section (c)(6) is new. It is intended to state explicitly and clearly an accepted interpretation of the original rule.~~

The provision of advice, and only advice, to one's regular employer, where the employer does not reasonably expect that it is receiving advice from an authorized member of the ~~District of Columbia~~ D.C. Bar, and no third party is involved as client or otherwise, is considered to be the employer's provision of advice to itself; and, accordingly, it is not considered practicing law.

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 this exception, as they do not give the employer a reasonable expectation that it is being served by an authorized member of the ~~District of Columbia~~D.C. Bar. Similarly, a lawyer on the staff of a trade association who gives only advice concerning leases, personnel, and contractual matters, would be covered by the exception if, in fact, the lawyer does not give the employer reason to believe she is an authorized member of the D.C. Bar.

This exception is a limited one arising from the position of the lawyer, the confinement of the lawyer'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 an authorized member of the D.C. Bar.

Commentary to § 49 (c)(7):

The District of Columbia courts are open to attorneys from other jurisdictions who have an incidental need to appear in proceedings before them.

As the Court of Appeals has observed, however:

> ... a[A]ppearance *pro hac vice* is meant to be an exception to the general prohibition against practicing law in the District without benefit of membership in the District of Columbia Bar. As an exception, it is equally clear, that it is designed as a privilege for an out-of-state attorney who may, from time to time, be involved in a particular case that requires appearance before a court in the District.

Brookens v. Comm.~~ittee~~ on Unauthorized Practice of Law, 538 A.2d 1120, 1124 (D.C. 1988).

Superior Court Rule of Civil Procedure 101 ~~Super. Ct. Civ. R. 101~~ requires that persons seeking admission *pro hac vice* in the Superior Court must associate with an enrolled, active member of the ~~District of Columbia~~D.C. Bar who has continuing responsibilities as associated counsel.

The fact that an attorney is associated with a law firm that maintains an office in the District of Columbia does not, of itself, establish that that attorney is maintaining an office in the District of Columbia.

Experience under the ~~R~~rule has indicated that the *pro hac vice* exception has occasionally been abused to allow persons who regularly operate from a location within the District of Columbia or its surrounding jurisdictions to engage regularly in litigation practice before the District of Columbia courts ~~of the District~~. The purpose of the provision, however is to permit attorneys to appear in the District of Columbia courts only incidentally or during their initial application for admission after moving into the District of Columbia. Accordingly, a person generally may not apply for admission *pro hac vice* in more than 5 cases pending in District of Columbia courts per calendar year. In addition, each application must be accompanied by a sworn declaration certifying the applicant's compliance with the rule.

Additionally, the ~~original provision~~ *pro hac vice* exception has at times been erroneously interpreted by some practitioners to permit regular practice of law in the District of Columbia by an attorney admitted only in another jurisdiction upon the assertion that the person is a practicing litigator who appears no more than 5~~five~~ times per calendar year in the courts. Subsection (c)(7)(C) makes clear that any such interpretation is incorrect.

~~The original provision has been modified in order to avoid abuse while continuing to serve the original purpose of the provision, *viz.*, to permit attorneys to appear in the District of Columbia courts incidentally or during their initial application for admission after moving into the District.~~

~~The original frequency limitation has been retained and applied to applications. A specific sworn declaration has been added for applicants for pro hac vice admission to assure full compliance with this Rule 49 and Super. Ct. Civ. R. 101 at the application stage.~~

The fee for admission ~~has been increased in order~~ is intended to ~~more closely to~~ approximate the value of the privilege to practice before the District of Columbia courts. The power of the courts to deny or withdraw admission is expressly set forth.

Commentary to § 49 (c)(8):

Subsection (c)(8) is ~~new. It is~~ designed to provide a one-time grace period within which attorneys admitted in other jurisdictions who come to practice law in the District of Columbia as their principal office may continue to practice law under the active supervision of a member of the ~~District of Columbia~~D.C. Bar, while they promptly pursue admission to the D.C. Bar. This subsection is intended, conversely, to make it clear that a person admitted to the bar of another jurisdiction may not come to the District of Columbia and practice law under the supervision of a member of the D.C. Bar indefinitely while waiting for the period for admission on waiver to be satisfied.

This subsection does not affect the limitation of *pro hac vice* applications to 5~~five~~ per calendar year, as provided in subsection (c)(7) above. A person practicing under this provision may not apply to appear *pro hac vice* in District of Columbia courts more than 5~~five~~ times in any calendar year.

Neither this ~~section~~provision~~,~~ nor other ~~sections~~provisions of the ~~R~~rule are intended to prohibit lawyers admitted to and in good standing in~~to~~ the bars of other jurisdictions from providing professional services to their clients in the District of Columbia, where the principal offices of those lawyers are located elsewhere and their presence in the District is occasional and incidental to a practice located elsewhere.

With respect to District of Columbia Rules of Professional Conduct 5.1 through 5.3~~ of the Rules of Professional Conduct~~, the provisions of this rule are controlling over the conduct of a person performing the services of a lawyer where the elements of the practice of law are present, i.e., where there is a client relationship of trust or reliance, or an indication of authority or competence to practice law in the District of Columbia. This means that, where either of those elements is present, a person may not participate indefinitely in the delivery of legal services as a lawyer under the supervision of a member of the ~~District of Columbia~~D.C. Bar; he or she must become a member of the D.C. Bar within the period specified in this subsection.

Commentary to § 49 (c)(9):

Subsection (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 D.C. Bar for lawyers licensed in other jurisdictions to provide pro bono representation, where the requirements of the exception are met. ~~consolidates the provisions of former sections (c)(5) and (c)(7) relating to practice by attorneys for legal services organizations and the Public Defender Service.~~ It ~~adds~~ includes a provision, ~~on~~ at the request of the United States Department of Justice, allowing government lawyers to participate in providing legal services pro bono publico.

When~~re~~ persons practice under this exception, they should give formal notice to the court and the parties of doing so. A form of certificate for such notice is appended to the ~~R~~rules, addressing the ~~three~~4 alternatives under (c)(9) and adding a certificate for pro bono representation under the limited duration supervision exception of (c)(8).

~~In all circumstances the conduct and practice privileges of counsel are subject to the full authority of the courts in which they practice.~~

Commentary to § 49 (c)(9)(D):

~~Section (c)(9)(D) is new.~~ Recognizing the increased need for attorneys to serve as pro bono counsel and given the importance of access to justice, the purpose of this rule is to permit individuals who are ~~members in good standing of the highest court of a~~authorized to practice law and in good standing in another state or territory and who are appropriately supervised by a licensed D.C. Bar member to perform pro bono work in the District of Columbia, provided the work is assigned or referred by an organization that provides pro bono legal services to the public without fee.

Commentary to § 49 (c)(10):

Subsection (c)(10) ~~is new. It~~ is intended to give express authorization to the number of individual- and group-assistance programs, services, and projects that are operated under the direct approval of the courts of the District of Columbia.

~~Commentary to § 49 (c)(11):~~

~~Section (c)(11) consolidates the provisions of former sections (c)(6) and (c)(8) relating to practice by attorneys for corporations.~~

Commentary to § 49 (c)(12):

Subsection (c)(12) ~~is new. This exception~~ allows lawyers to represent clients in up to ~~five~~5 new ADR proceedings annually. This provision furthers the strong public policy favoring the efficient and expeditious resolution of disputes outside the judicial process, to the extent consistent with the broader public interest. This provision gives clients who agree to resolve their disputes through ADR proceedings an option to retain attorneys not admitted in the District of Columbia that is generally equivalent to the option provided through the *pro hac vice* exception in subsection (c)(7) to clients who resolve their disputes in judicial proceedings.

~~This new~~ The exception ~~(c)(12)~~ contains 3~~three~~ important provisos, each of which is based on provisos for the *pro hac vice* exception in subsection (c)(7). First, the lawyer must be authorized to practice law and in good standing in another~~by the highest court of a~~ state or territory or ~~by~~ in a foreign country, and must not be disbarred or suspended for disciplinary reasons, or have resigned with charges pending, in any jurisdiction or court. Second, the lawyer may begin to provide such services in no more than ~~five~~5 ADR proceedings in the District of Columbia in each calendar year. An ADR proceeding would not count as a new ADR proceeding for purposes of this limit if it is ancillary to a judicial proceeding in which a lawyer is admitted *pro hac vice* (for example, when the court orders or encourages the parties to try to resolve the matter through ADR). Similarly, this limit of ~~five~~5 new ADR proceedings annually would not apply so long as the lawyer's participation in an ADR proceeding in the District of Columbia is temporary and incidental to his or her practice in another jurisdiction. Third, the lawyer may not maintain a base of operations in the District of Columbia or otherwise practice here, unless the lawyer qualifies under another exception in Rule 49 (c).

This provision allows lawyers to represent clients in ADR proceedings that require more than incidental or temporary presence in the District. Separate from the authority granted by this exception, a lawyer may represent parties in ADR proceedings (or other matters) under subsection (c)(13) if the lawyer's presence in the District is incidental and temporary.

This exception relates only to lawyers' ~~who~~ representation of clients in ADR proceedings. As explained in the Commentary to Rule 49 (b)(2), lawyers who serve as arbitrators, mediators, or other kinds of neutrals in ADR proceedings are not engaged in the practice of law.

Commentary to § 49 (c)(13):

The exception in ~~S~~subsection (c)(13) ~~is new.~~ recognizes that Rule 49 is not intended to require admission to the ~~District of Columbia~~ D.C. Bar where an attorney with a principal office outside the District of Columbia is incidentally and temporarily required to come into the ~~city~~ 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. For example, there is no intent to prohibit a lawyer based outside the District from taking a deposition in an action pending in another forum, or closing a transaction relating to another jurisdiction, at a location in the District of Columbia, where the person performing the legal services is authorized to practice law and in good standing in another state or territory or in a foreign country~~duly authorized to practice law in another jurisdiction~~ and the person does not suggest to any client or other persons involved in the matter that the lawyer is licensed in the District.

Where, however, an attorney provides legal services concerning a transaction related to the District from a location within the District of Columbia, the attorney may be engaged in the practice of law in the District of Columbia because the attorney's presence is not incidental. Whether a transaction is related to the District of Columbia depends on the location of the parties, the location of the property and interests at issue, and the law to be applied. Another

relevant factor is whether the lawyer not admitted to the D.C. Bar is the only lawyer for a party, or whether the lawyer is co-counsel or the lawyer's role is limited to one aspect of a transaction with respect to which a D.C. Bar member is lead counsel. For example, where a transaction concerns real estate located in the District of Columbia, a lawyer based outside the District who comes to the city to provide legal services to a client located inside or outside the District relating only to the federal tax aspects of the transaction may qualify for this exception. However, a lawyer based outside the District who comes to the city to be primary counsel to a District-based client with respect to all aspects of the real estate transaction may not qualify for this exception. Whether the lawyer who is not admitted to the D.C. Bar and whose principal office is outside the District is associated with or supervised by a member of the D.C. Bar is a relevant, but not controlling, factor in determining whether the lawyer's practice in the District is "incidental."

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.

This exception permits a person authorized to practice law in another country to practice law in the District on an incidental and temporary basis, subject to the specified conditions. Those conditions, including the requirements that a foreign lawyer be authorized to practice law in a foreign country and not be disbarred or suspended in any jurisdiction, are consistent with the requirements in Rule 46_(fe)~~(4)~~ concerning special legal consultants that the foreign lawyer be in good standing as an attorney or counselor at law (or the equivalent of either) in the country where he or she is authorized to practice law.

The exception in subsection (c)(13) is separate from other exceptions in Rule 49_(c), and the specific exception controls the general exception. For example, whether or not regular appearances before federal agencies located in the District of Columbia by attorneys with their principal offices in other jurisdictions fit within this exception for temporary practice, they may qualify under the federal practice exception in subsection (c)(2). A lawyer with a principal office outside the District who comes to the District in connection with a pending or potential case in the District of Columbia courts must qualify for the *pro hac vice* exception in subsection (c)(7) regardless of whether the lawyer's practice in the District is otherwise temporary and incidental.

A lawyer whose principal office is outside the District of Columbia and who provides pro bono services in the District of Columbia on an incidental and temporary basis under Rule 49_(c)(13) is not required to comply with the application, supervision, and notice requirements of the exception in Rule 49_(c)(9)(B) for provision of pro bono services. The (c)(9)(B) exception facilitates the provision of pro bono services by lawyers whose principal office is in the District of Columbia and who qualify for another exception to Rule 49, such as the exception in Rule 49 (c)(2) for certain U.S. government practitioners. Consistent with its purpose to encourage the provision of pro bono services, the exception in Rule 49_(c)(9) does not impose additional

obligations on lawyers who are permitted under another exception to provide pro bono services in the District of Columbia. In particular, unlike lawyers who are authorized to provide pro bono services only under the (c)(9) exception, lawyers who provide pro bono services under the (c)(13) exception are not required to apply for admission to the D.C. Bar, to be supervised by a D.C. Bar member, or to provide notice of their bar status. Clients who obtain services on a pro bono basis from lawyers practicing under the (c)(13) exception are protected to the same extent as clients who pay lawyers a fee to provide services under the (c)(13) exception.

The 2018 technical revisions amended subsection (c)(13) to employ consistent language referring to lawyers licensed in other jurisdictions.

Commentary to § 49 (d):

Section (d) sets forth the mandate, powers, and procedures of the Committee on Unauthorized Practice of Law. The United States Court of Appeals for the District of Columbia Circuit has observed:

> The Committee members' work is functionally comparable to the work of judges. . . . They serve as an arm of the court and perform a function which traditionally belongs to the judiciary. . . . [T]he Committee acts as a surrogate for those who sit on the bench. Indeed, were it not for the Committee, judges themselves might be forced to engage in the sort of inquiries [authorized by Rule 49].

Simons v. Bellinger, 643 F.2d 774, 780-81 (D.C. Cir. 1980).

The provisions of section (d) retain virtually all of the language of the original rule concerning establishment of the Committee and its rules of procedure. Subsection (d)(143)~~(G)~~ ~~adds~~ provides specific authority for the Committee to issue opinions to facilitate understanding and enforcement of the rule.

It is expected that most matters considered by the Committee will be resolved within its informal and formal proceedings.

Commentary to § 49 (e):

Section (e) ~~is new. It clarifies~~ sets forth the procedures and effect of proceedings commenced by the Committee, ~~and sets forth expressly~~ the relief available in the Court of Appeals in formal proceedings initiated by the Committee, and the method for appealing a decision of the designated hearing judge.

The powers and procedures provided in sections (d) and (e) are not the exclusive means for enforcing the provisions of this ~~R~~rule. Disciplinary Counsel may initiate an original proceeding before the Court of Appeals for contempt where it alleges that the respondent has violated Rule 49 by practicing law while disbarred,~~;~~ *In re Burton*, 614 A.2d 46 (D.C. 1992),~~;~~ ~~and it~~Disciplinary Counsel may also rely on unauthorized law practice in opposing reinstatement of an attorney suspended from the D.C. Bar,~~;~~ ~~*Matter of*~~*In re Stanton*, 532 A.2d 95 (D.C. 1987). The ~~courts of the~~ District of Columbia courts have subject matter jurisdiction to consider original complaints

of unauthorized practice of law initiated by private parties~~,~~ and to issue relief if such practice is found. *J.H. Marshall & Assocs., Inc. v. Burleson*, 313 A.2d 587 (D.C. 1973).