

**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 court of business;

(B) preparing or expressing legal opinions;

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

(D) 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) providing advice or counsel as to how any of the activities 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 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 practitioner 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 practitioner 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, where 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 five (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 five cases pending in the 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 the 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 of \$100.00. The fee may be paid in cash, by credit card, or by cashier's 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 Affiliated with a Non-Profit Organization.* A person may provide legal services *pro bono publico* in affiliation with, but not as an employee of, a non-profit organization located in the District of Columbia that provides legal services to individuals with limited means at no charge or for a nominal processing fee, if the person:

(i) is an enrolled inactive or enrolled retired member of the D.C. Bar or the bar of another state or territory or is authorized to practice law and in good standing in another state or territory;

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

(iii) is supervised by an enrolled, active member of the D.C. Bar in good standing.

(B) A person who is employed by the Public Defender Service or a non-profit organization located in the District of Columbia that provides legal services to individuals with limited means at no charge or for a nominal processing fee may provide legal services *pro bono publico* until the person's application to the D.C. Bar is either granted or denied, if the person:

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

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

(iii) is supervised by an enrolled, active member of the D.C. Bar in good standing; and

(iv) has submitted an application for admission to the D.C. Bar no later than 90 days after commencing the practice of law in the District of Columbia.

(C) *Person Who Is Not Barred Anywhere But Who Has a Pending Bar Application.* A person who has applied to a bar and taken the bar examination, but whose application has not yet been granted or denied, may provide legal services *pro bono publico* as an employee of or in affiliation with the Public Defender Service or a non-profit organization located in the District of Columbia that provides legal services to individuals with limited means at no charge or for a nominal processing fee, until the person's application is either granted or denied, if the person:

(i) has graduated from an ABA-approved law school;

(ii) has been certified by the dean of the law school from which the person graduated as being of good character and competent legal ability;

(iii) is trained and supervised by an enrolled, active member of the D.C. Bar in good standing who is affiliated with the Public Defender Service or the non-profit organization; and

(iv) in addition to complying with Rule 49 (c)(9)(E), gives notice to the public and on all pleadings that the person is not authorized to practice law in any jurisdiction but is practicing under the supervision of a member of the D.C. Bar pursuant to Rule 49 (c)(9)(C).

**(D) *Applicability of Rules of Professional Conduct.*** A person practicing under Rule 49 (c)(9)(A)-(C) is subject to the District of Columbia Rules of Professional Conduct and the enforcement procedures applicable to those rules, to the same extent as if the person was an enrolled, active member of the D.C. Bar.

**(E) *Notice.***

(i) *In Business Documents.* A person practicing under Rule 49 (c)(9)(A)-(C) must give prominent notice of the person's bar status in all business documents specifically pertaining to the person's practice.

(ii) *When Appearing in Any Court.* If the matter requires a person practicing under Rule 49 (c)(9)(A)-(C) to appear in any court, the person must file a completed Form 9 with the person's praecipe of appearance and must submit electronically a copy of the completed Form 9 to the Committee on Admissions. A person practicing under Rule 49 (c)(9)(B) is only required to submit to the Committee on Admissions one Form 9 that covers the period from the beginning of employment until the person's application to the D.C. Bar is either granted or denied, but the person must submit a new Form 9 if any information changes.

**(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 4 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.**

(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 proceeding 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.*** Violation of Rule 49, or 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.