District of Columbia
Court of Appeals

No. M-277-21

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

N O T I C E
(FILED – December 14, 2021)

By letter dated December 5, 2021, the Committee on Unauthorized Practice of Law has recommend that the court revise D.C. App. R. 49. The letter, which explains the reasons for the recommended revisions, is attached to this notice, as are clean and redline versions of the proposed revisions.

This notice is published to provide interested parties an opportunity to submit written comments concerning the revisions recommended by the Committee. Comments must be submitted by February 14, 2022. Comments may be submitted electronically, to rules@dcappeals.gov, or submitted in writing to the Clerk, D.C. Court of Appeals, 430 E St., N.W., Washington, D.C. 20001. All comments submitted pursuant to this notice will be available to the public.

PER CURIAM

* Although Judge Thompson's term as an Associate Judge of the court expired on September 4, 2021, she will continue to serve as an Associate Judge until her successor is confirmed. *See* D.C. Code § 11-1502 (2012 Repl.). She was qualified and appointed on October 4, 2021, to perform judicial duties as a Senior Judge and will begin her service as a Senior Judge on a date to be determined after her successor is appointed and qualifies.

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

December 5, 2021

The Honorable Anna Blackburne-Rigsby
Chief Judge, District of Columbia Court of Appeals
430 E Street, N.W.
Washington, D.C. 20001

Re: **Rule 49 ("Unauthorized Practice of Law")**

Dear Chief Judge Blackburne-Rigsby:

The Committee on Unauthorized Practice of Law (the "UPL Committee") has completed a years-long evaluation of the language and substance of Rule 49 of the Rules of the District of Columbia Court of Appeals. The result of the UPL Committee's evaluation is a proposal for a comprehensive revision to Rule 49. The UPL Committee's proposed revised version of Rule 49 is attached as Exhibit A. A redline comparing it to existing Rule 49 is attached as Exhibit B. The UPL Committee recommends that the Court publish and seek public comment on this proposed revision with an eye toward its possible adoption, in whole or in part.

Before summarizing the proposed Rule 49 revisions, I will provide some background on the UPL Committee and the process that has led to this proposal. The UPL Committee is a standing committee now consisting of eleven D.C. Bar members and one resident of the District of Columbia who is not a D.C. Bar member. Its members are Charles Davant IV (Chair), Tami L. Taylor (Vice Chair), Geoffrey M. Klineberg, Theodore P. Metzler, Jr., Matthew J. Herrington, Alexis P. Taylor, John Longstreth, Andres Echeverri, David C. Simmons, Jeff Bartos, German Gomez, and Sharon Hutchins.[1] The Honorable Roy W. McLeese serves as judicial liaison to the UPL Committee, and the Committee is assisted by Court personnel, especially Shela Shanks (Director, Committee on Admissions and the Unauthorized Practice of Law) and Deshawn Dade (Investigative Review Specialist).

The UPL Committee's duties include investigating alleged unauthorized practice of law and alleged violations of court rules governing the unauthorized practice of law. The

[1] Woody Peterson also assisted with this project during his time on the UPL Committee.

UPL Committee also provides opinions as to what constitutes the unauthorized practice of law. The UPL Committee typically meets ten times per year. It also conducts substantial business between meetings. None of the UPL Committee members receives any monetary compensation for this service.

Since 2018, the UPL Committee has devoted attention to a comprehensive evaluation of Rule 49. The UPL Committee solicited and received public comments on Rule 49 and on ways it might be improved. The UPL Committee met with, and received written feedback from, the Association of Corporate Counsel, the Pro Bono Institute, and the D.C. Access to Justice Commission. The UPL Committee has conducted research into the jurisprudence on the unauthorized practice of law in the District of Columbia and other jurisdictions, the rules governing the unauthorized practice of law in other jurisdictions, the Model Rules of Professional Conduct as proposed by the American Bar Association and as adopted in the District of Columbia and other jurisdictions, secondary sources addressing licensure and the unauthorized practice of law, and the UPL Committee's published formal opinions. For more than two years, the UPL Committee has devoted significant time nearly each month to an ongoing, systematic review of Rule 49 and its Commentary, mindful of the policy considerations that prompted the Court to adopt Rule 49 in the first place:

> (1) to protect members of the public from persons who are not qualified by education, competence, and fitness to provide professional legal advice or other legal services;
>
> (2) to ensure that those who practice law in the District of Columbia or hold out as authorized to do so are subject to the disciplinary system of the District of Columbia 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 the activities of the District of Columbia Bar are appropriately supported financially by those exercising the privilege of law practice in the District of Columbia.

In addition, the UPL Committee has considered whether provisions of Rule 49 should be relaxed to increase access to justice and/or to permit representational activities that existing Rule 49 forbids.

The UPL Committee's review has been informed by the UPL Committee members' collective experience with Rule 49 and its application in scores of docketed cases of possible unauthorized practice, as well as the UPL Committee's knowledge of the questions that members of the public most frequently pose to the UPL Committee about Rule 49's application. An employee of the District of Columbia Courts, Associate General Counsel

Laura M.L. Wait, provided invaluable advice on earlier drafts. The result of this years-long process is the attached proposal, which has the unanimous support of the UPL Committee.

Many of the UPL Committee's proposed revisions are matters of style, rather than substance. The UPL Committee has sought to simplify the structure and language of Rule 49, to harmonize language across different parts of Rule 49, and to harmonize Rule 49's language with the language of the Rules of Professional Conduct where similar concepts appear and such harmonization is desirable. For example, the proposed revision would amend Rule 49(c)(13)—which authorizes "Incidental and Temporary Practice" in the District of Columbia under certain circumstances—to clarify that practice under this provision is not authorized for a person who "maintain[s] an office or other systematic and continuous presence in the District of Columbia . . . for the practice of law"—verbiage borrowed from Rule 5.5(b)(1) of the ABA Model Rules of Professional Conduct, which has been adopted in numerous jurisdictions. *See* Rule 5.5 ("Unauthorized Practice of Law; Multijurisdictional Practice of Law"). The proposed revision to Rule 49(c)(13) also eliminates the term "incidental" and replaces it with language borrowed from ABA Model Rule 5.5 that, in the UPL Committee's view, addresses the same concept.

As another example, existing Rule 49 uses a variety of confusingly similar formulations: "D.C. Bar member," "an enrolled, active member … of the D.C. Bar," "an enrolled, active member … of the D.C. Bar in good standing," "members of the D.C. Bar," "enrolled inactive … member of the D.C. Bar," "enrolled retired member of the D.C. Bar," person "enrolled as an active Member of the D.C. Bar," and "person not admitted to the D.C. Bar." The variety of formulations used throughout existing Rule 49 has prompted questions from the public about whether the Court, in enacting Rule 49, meant to draw fine distinctions between these formulations (e.g., Is a "D.C. Bar member" different from an "enrolled, active member … of the D.C. Bar"?). The UPL Committee's proposed revision would simplify Rule 49 by adopting a unitary definition of "District of Columbia Bar Member" and using that term wherever it is appropriate, along with explicit language highlighting any intended distinctions. *See, e.g.*, Exhibit A (Proposed Revised Rule 49(c)(9)) (authorizing *pro bono* practice under certain circumstances by anyone who "previously was a District of Columbia Bar Member").

The proposed revisions also would clarify other arguably ambiguous language that generates frequent questions from members of the public. For example, the proposed revisions would add specific definitions of "*pro bono*" and "regulate," terms that appear elsewhere in Rule 49 but are not currently defined. Furthermore, the proposed revisions would incorporate into the body of Rule 49 and its official commentary language reflecting judicial decisions and previous guidance that the UPL Committee has published in its formal opinions. For instance, under the proposal, Rule 49(b) would be amended to add a definition of the term "supervise," which the UPL Committee interpreted in UPL Committee Opinion No. 12-02. Such incorporation of concepts into the body of Rule 49 and

its official commentary should make the law of unauthorized practice in the District of Columbia more accessible and comprehensible to the public.

For organizational and conceptual simplicity, the proposal would combine the substance of existing Rule 49(c)(2) ("Representation Before United States Government Special Court, Department or Agency") and existing Rule 49(c)(5) ("Representation Before District of Columbia Department or Agency") into a single, unitary Rule 49(c)(2): "Practice Before Certain Government Agencies."

The proposed revisions would codify the UPL Committee's longstanding view that persons practicing law in the District of Columbia pursuant to certain Rule 49(c) exceptions (e.g., United States government employees) not only are permitted to practice law but also to "*hold out* as authorized to provide such services" (emphasis added).

The proposed revisions would remove confusing language that led some members of the public to conclude erroneously that a person authorized to provide legal services pursuant to one of Rule 49(c)(2), (3), (5), (7), (8), and (12)—provisions that set forth exceptions to the general prohibition on the practice of law by persons who are not D.C. Bar members—was forbidden to practice law in the District pursuant to any other Rule 49(c) provision. *See, e.g.*, Rule 49(c)(2) (authorizing federal agency practice if, *inter alia*, the person "provide[s] legal services … *solely* before a special court, department, or agency of the United States, [and] when . . . legal services are *confined* to representation before such fora . . . .") (emphasis added). In the UPL Committee's view, Rule 49(c) was never meant to bar practitioners from practicing pursuant to more than one of these exceptions, so long as the entirety of the person's practice in the District of Columbia is authorized by one or more Rule 49(c) exceptions. For instance, it should be permissible under Rule 49, in the UPL Committee's view, for the same Virginia or Maryland lawyer to represent an employment discrimination client before a federal court in the District of Columbia, the federal Equal Employment Opportunity Commission, and the District of Columbia Commission on Human Rights, assuming the requirements of Rule 49(c)(2), (3), and (5) are all met, and the practice is permitted by the pertinent court and agency rules. The Committee's proposed revisions would clarify that a person does not engage in the unauthorized practice of law so long as all aspects of the person's practice in the District of Columbia are "authorized by one or more of Rules 49(c)(1)-(12)."

In addition to making these stylistic changes and codifying existing understandings, the proposed revisions would make some substantive changes to the rules governing the practice of law in the District of Columbia by persons who are not D.C. Bar Members:

- **90-day application deadline for out-of-District lawyers applying to the D.C. Bar**. Existing Rule 49(c)(8) authorizes lawyers admitted in other United States jurisdictions to practice law in the District of Columbia "during pendency of the person's first application for admission to the D.C. Bar" if,

among other conditions, "the person has submitted the application for admission within 90 days of commencing practice in the District of Columbia." In effect, this gives lawyers from other states who decide to seek admission to the District of Columbia Bar a 90-day period in which they can enjoy the privilege of practicing law in the District of Columbia before applying for that privilege. We know of no other United States jurisdiction that offers such a privilege to potential bar applicants, who, in other jurisdictions, must confine their activities to paralegal or law clerk functions upon moving to the jurisdiction, often until the date they are *admitted* to the bar.

The existing 90-day application period in Rule 49(c)(8) creates logical and practical complexities. If a person begins practicing law in the District of Columbia on January 1 and continues practicing into March, then existing Rule 49(c)(8) will deem the person, *nunc pro tunc*, to have been practicing either with or without authority, depending on whether the practitioner ends up submitting a bar application by March 31. If the person determines not to submit a District of Columbia bar application—e.g., because she decides on March 15 to relocate to California or to begin a job that does not require D.C. Bar Membership—then her prior practice is deemed retroactively to have been unauthorized, and she will have committed at least a technical violation of Rule 49 and, perhaps, Rule 5.5 of the Rules of Professional Conduct. She can avoid such a result only by submitting a timely D.C. Bar application (and significant application fee), which she then could withdraw.

The 90-day rule introduces another idiosyncrasy: If a person submits a D.C. Bar application on Day 91 after commencing practice, not only is the person's prior practice deemed to have been unauthorized, but also the person is forever barred from taking advantage of the approximately one-year Rule 49(c)(8) practice authorization that would have been available if the person had managed to submit an application one day earlier.

The UPL Committee recommends replacing this complexity with a straightforward rule that, under specified circumstances, "[a] person who is not a D.C. Bar Member may practice law in the District of Columbia . . . if the person has pending the person's first application to the District of Columbia Bar." Such a rule—which would make submission of a District of Columbia Bar application a prerequisite to the start of the law practice authorized by Rule 49(c)(8)—would eliminate the above idiosyncrasies and encourage prompt applications to the District of Columbia Bar. Most persons coming to the District of Columbia to practice law would be required to confine their activities to law-clerk type functions (or to forms of law practice authorized by other parts of Rule 49) only for the hours or days it takes them to submit their District of Columbia Bar application. Presumably, most persons

already admitted to a state bar would submit their applications before relocating to the District.

With such a revision to Rule 49(c)(8), and in view of the existing rule's "grace period" authorizing a person to practice law for nearly a year while the person's District of Columbia Bar application is pending (of longer, if extended by the Director of the Committee on Admissions for "good cause"), the District of Columbia would remain more welcoming to lawyers from other jurisdictions than any United States jurisdiction of which we are aware.

Finally, the UPL Committee proposes to eliminate as wasteful and unnecessary the requirement that persons practicing in the District of Columbia under Rule 49(c)(8) apply *pro hac vice* for appearances in the courts of the District of Columbia. The supervision, disclosure, and other requirements in Rule 49(c)(8) already serve the purposes served by *pro hac vice* requirements.

- **360-day authorizations**. Existing Rule 49(c)(4) authorizes, under certain circumstances, law practice "during the first 360 days of employment as a lawyer for the government of the District of Columbia." Existing Rule 49(c)(8) authorizes, under certain circumstances, law practice "for a period not to exceed 360 days from the commencement of such practice." The UPL Committee proposes extending these 360-day periods to 365 days for ease of understanding and application.

- ***Pro bono*.** To increase access to *pro bono* legal services, the UPL Committee proposes that the Court amend Rule 49(c)(9) to permit practicing or retired lawyers from other jurisdictions, or retired D.C. Bar Members, to provide *pro bono* services "in affiliation with … the legal *pro bono* program of the person's regular employer, provided that the employer is not a law firm." Existing Rule 49(c)(9) already authorizes such persons to provide *pro bono* services in affiliation with D.C. *pro bono* organizations, so this revision would allow an additional avenue (employer-sponsored *pro bono* programs) for their provision of *pro bono* services.

  The UPL Committee proposes to eliminate the requirement that law school graduates with pending bar applications be certified by their law school deans as being of good moral character and competent legal skill. For persons who succeeded at graduating from law school, who have applied to the D.C. Bar, and who desire to provide *pro bono* legal services, the societal benefit of requiring a former dean's certification—which necessarily must on occasion be made *pro forma* and without the law school dean's having direct personal insight into the applicant's moral character—does not, in the

UPL Committee's view, warrant the burden associated with requesting and providing such certifications.

The UPL Committee also recommends dispensing with the Rule 49(c)(9)(E)(ii) requirement that *pro bono* practitioners submit to the Court "Form 9" in connection with *pro bono* court appearances, because the burden of preparing and submitting the form outweighs its potential utility, which seems negligible. Indeed, the UPL Committee's investigation did not reveal any valuable use by the Superior Court or Court of Appeals of Form 9 that could not be achieved through a simpler and less burdensome disclosure requirement that the UPL Committee proposes to add to Rule 49(c)(9).

Finally, for the sake of shortening and simplifying Rule 49, the UPL Committee proposes that Public Defender Services and *pro bono* organization employees who are not admitted to the D.C. Bar not be permitted to practice indefinitely while their D.C. Bar applications are pending, but instead be subject to the same approximately one-year limitation as out-of-District lawyers who are practicing in the District of Columbia under Rule 49(c)(8). Again, the Director of the Committee on Admissions is already empowered to extend that approximately one-year grace period for "good cause."

- **Disclosures of bar status by practitioners before government agencies**. Under existing Rule 49, persons who represent clients before *federal* agencies in the District of Columbia, but who do not have an office in the District of Columbia, need not notify clients or others that they are not D.C. Bar Members. *See* Rule 49(c)(2). In contrast, persons who represent clients before *District of Columbia* agencies, but who do not have an office in the District of Columbia, must notify clients for such District of Columbia agency practice that they are not D.C. Bar Members. *See* Rule 49(c)(5)(D). In addition, persons who represent clients before *District of Columbia* agencies, and who have an office in the District of Columbia, must notify *all* clients—not just clients for their District of Columbia agency practice—that they are not D.C. Bar Members. *See* Rule 49(c)(5)(E). No substantial justification appears to warrant the different disclosure requirements for practitioners before federal and District of Columbia agencies in the District of Columbia. Nor does the location of a person's office seem, in the UPL Committee's view, to warrant such different disclosure requirements, or the confusion the differing requirements create. The UPL Committee therefore proposes that the Court harmonize the federal and District of Columbia agency practice exceptions by providing a single, simple disclosure requirement that exists regardless of the location of the person's office and regardless of whether the person appears before federal or District of Columbia agencies: that "the

person give[] prominent notice in all business documents *specifically concerning such [federal or District of Columbia agency] practice* . . . that the person is not a District of Columbia Bar Member and that the person's practice is limited to providing specified types of legal services authorized by one or more of Rules 49(c)(1)-(12)." (emphasis added).

- **Labor negotiations and arbitrations.** The UPL Committee proposes that the Court add a new exception to the general prohibition on law practice by persons who are not D.C. Bar Members—to be codified as new Rule 49(c)(5)—for labor negotiations and arbitrations. In keeping with federal labor policy, many disputes arising under a collective bargaining agreement between a labor organization or worker, on the one hand, and an employer, on the other hand, are resolved through labor arbitration. While attorneys are involved in some matters of this nature, it is common for the parties to be represented by non-attorneys (whether a union representative or a labor relations officer of the employer). At the early stages of the grievance-resolution process, which can include informal hearings that are necessary steps before arbitration, the use of attorneys is even more rare. Representational activity by non-attorneys in this context is a commonplace. The UPL Committee proposes that the Court join other states that have expressly codified a rule that such practice does not constitute the unauthorized practice of law. *See* Cal. Code of Civil Procedure § 1282.4(h); Washington Rules of Court, General Rule 24(b)(5).

- ***Pro hac vice***. Existing Rule 49(c)(7) requires that, for a person to appear in more than five cases *pro hac vice* in the prior 365 days, the person must establish "exceptional cause" for a court to grant such admission. The UPL Committee proposes replacing the "exceptional cause" standard with the more familiar "good cause" standard.

* * *

The UPL Committee expects that the Court's publication of this explanatory letter and the attached proposal will generate additional valuable comments from members of the public that could result in further improvements to the proposal and to Rule 49. The UPL Committee would be pleased to consider any such comments, or to attempt to answer any questions that the Court may pose.

Respectfully submitted,

Charles Davant IV
Chair, Committee on the
Unauthorized Practice of Law

cc: The Honorable Roy W. McLeese
Rachel Ferguson
Hwa Sung Doucette

Rule 49. Unauthorized Practice of Law.

(a) IN GENERAL. No person may practice law in the District of Columbia or hold out as authorized to do so unless:

(1) the person is a D.C. Bar Member; or

(2) the conduct is permitted by one or more of Rules 49(c)(1)-(13).

(b) DEFINITIONS. The following definitions apply to Rule 49:

(1) "Person" means any individual, firm, unincorporated association, partnership, corporation, or other legal or business entity.

(2) "Practice law" means to provide legal services for or on behalf of another person within a client relationship of trust or reliance. A person is presumed to be practicing law when doing the following for or on behalf of another:

(A) preparing any legal document, including a deed, mortgage, assignment, discharge, lease, trust instrument, will, codicil, or contract, except a person is not presumed to be practicing law when preparing a routine agreement incidental to a regular course of business as a non-attorney;

(B) preparing or expressing a legal opinion or giving legal advice;

(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 at a location within the District of Columbia.

(4) "Hold out as authorized" 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 in the District of Columbia. Among the terms that ordinarily 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.

(6) "D.C. Bar Member" means a person who was admitted by the court under Rule 46 or 46-A, and who has taken the oath under Rule 46(l); it does not include persons with inactive, retired, suspended, or disbarred status, and it does not include special legal consultants as defined in Rule 46.

(7) "Admitted" in a jurisdiction means to be a member in good standing of the legal profession in a state, territory, or foreign country where the members of the profession are admitted to practice as counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority; a person is not "admitted" in a jurisdiction if the person was disbarred or suspended for disciplinary reasons, or resigned with charges pending, or if the person has inactive, judicial, or retired status.

(8) "Business document" means any document submitted or made available to any client, third party, the public, or any official entity in connection with a person's provision of legal or law-related services, and may include letters, e-mails, business cards, website biographies, pleadings, filings, discovery requests and responses, formal papers of all kinds, advertisements, and social media.

(9) "Supervise" means to make reasonable efforts to ensure that another person conforms to the applicable Rules of Professional Conduct.

(10) "Regulate" means to control by rule or other restriction. Examples of the regulation of persons who appear on behalf of another in a legal matter include: establishing minimum requirements to ensure the competent and ethical provision of services, requiring familiarity with and adherence to forum procedures, creating a registry of authorized practitioners, and imposing sanctions or disqualification from future practice for misconduct.

(11) "*Pro bono*" means provided without fee or for a nominal processing fee for one or more individuals with limited means.

(12) "Law firm" means an attorney or attorneys in a law partnership, professional corporation, sole proprietorship, or other association engaged in the business of practicing law, but does not include the legal department of a corporation or other organization, or any government entity.

(c) ACTIVITIES THAT PERSONS WHO ARE NOT D.C. BAR MEMBERS MAY PERFORM.

(1) *United States Employee.* A person who is not a D.C. Bar Member may provide legal services to the United States as an employee of the United States and may hold out as authorized to provide those services.

(2) *Practice Before Certain Government Agencies.* A person who is not a D.C. Bar Member may provide legal services in or reasonably related to a pending or potential proceeding in any department, agency, or office of the United States or of the District of Columbia, or any tribunal created by an international treaty to which the United States is a party, and may hold out as authorized to provide those services, if:

(A) the services are authorized by statute or by a department, agency, office, or

tribunal rule that expressly permits and regulates practice before the department, agency, office, or tribunal; and

(B) the person gives prominent notice in all business documents specifically concerning practice authorized by Rule 49(c)(2) that the person is not a D.C. Bar Member and that the person's practice in the District of Columbia is limited to providing the types of legal services authorized by one or more of Rule 49(c)(2), (3), (5), (6), (7), (9), (10), (11), or (12), and specifying which of those types of services the person provides in the District of Columbia.

(3) *Practice Before Federal Courts.* A person who is not a D.C. Bar Member may provide legal services in the District of Columbia in or reasonably related to a pending or potential proceeding in any court of the United States, and may hold out as authorized to provide those services, if

(A) the person has been or reasonably expects to be admitted to practice in that court; and

(B) if the person has an office in the District of Columbia, the person gives prominent notice in all business documents that the person is not a D.C. Bar Member and that the person's practice is limited to providing the types of legal services authorized by one or more of Rule 49(c)(2), (3), (5), (6), (7), (9), (10), (11), or (12), and specifying which of those types of services the person provides in the District of Columbia.

The District of Columbia Court of Appeals and the Superior Court of the District of Columbia are not courts of the United States within the meaning of this Rule 49(c)(3).

(4) *District of Columbia Employee.* A person who is not a D.C. Bar Member may provide legal services to the District of Columbia as an employee of the District of Columbia, and may hold out as authorized to provide those services, during the first 365 days of employment as an attorney for the District of Columbia if the person is admitted in another United States jurisdiction.

(5) *Labor Negotiations and Arbitrations.* A person who is not a D.C. Bar Member may provide legal services in or reasonably related to negotiation of, or a grievance arising under, a collective bargaining agreement between a labor organization and an employer, including arbitration of a grievance, and may hold out as authorized to provide those services, if the recipient of the services does not reasonably expect that the services are being provided by a D.C. Bar Member. This Rule 49(c)(5) does not authorize a person to appear in any court, or in any department, agency, or office of the United States or the District of Columbia.

(6) *In-House Counsel*. A person who is not a D.C. Bar Member may provide legal services to the person's employer or its organizational affiliates, and may hold out as authorized to provide those services, if the employer understands that the person is not a D.C. Bar Member. This Rule 49(c)(6) does not authorize a person to appear in any court, or in any department, agency, or office of the United States or the District of Columbia.

(7) *Pro Hac Vice*. A person who is not a D.C. Bar Member may provide legal services in or reasonably related to a pending or potential proceeding in the District of Columbia Court of Appeals or the Superior Court of the District of Columbia, and may hold out as authorized to

provide those services, if the person has been or reasonably expects to be admitted *pro hac vice*, in accordance with the requirements in Rule 49(c)(7)(A).

(A) *Requirements for Admission Pro Hac Vice.* A person may be admitted *pro hac vice* in the District of Columbia Court of Appeals or the Superior Court of the District of Columbia only if the person:

(i) is admitted in another United States jurisdiction;

(ii) before applying for *pro hac vice* admission, has associated with a D.C. Bar Member who has agreed to be prepared at all times to go forward with the proceeding, and who will sign all court filings and attend all court appearances in the proceeding unless the court waives this latter requirement;

(iii) before applying for *pro hac vice* admission, has read all of this Rule 49(c)(7) and has read either all the rules of the District of Columbia Court of Appeals or all the rules of the relevant division of the Superior Court of the District of Columbia, as applicable to the proceeding for which admission is to be sought;

(iv) does not practice law in the District of Columbia or hold out as authorized to do so other than in the matter for which *pro hac vice* admission is to be sought, except to the extent that the person's practice or holding out is authorized by one or more of Rules 49(c)(1)-(6) or (8)-(12); and

(v) has not applied for admission *pro hac vice* in 5 or more proceedings (excluding *pro bono* proceedings) in the courts of the District of Columbia in the prior 365 days, unless the person reasonably believes good cause exists for the court to grant admission in more than 5 proceedings.

(B) *Applying for Admission Pro Hac Vice*. To apply for admission *pro hac vice* in the District of Columbia Court of Appeals or Superior Court of the District of Columbia, a person must:

(i) prepare an application in which the person, under penalty of perjury:

(a) declares that the person meets all of the requirements in Rule 49(c)(7)(A);

(b) identifies all United States states or territories where the applicant is admitted to practice and the applicant's bar number in each of those jurisdictions;

(c) declares that no disciplinary complaints are pending against the applicant, or describes all pending complaints;

(d) declares that the applicant has never been denied admission to the District of Columbia Bar, or describes the circumstances of any denials;

(e) identifies the name, address, and D.C. Bar number of the D.C.

Bar Member with whom the applicant has associated under Rule 49(c)(7)(A)(ii);

(f) if the person practices law in the District of Columbia or holds out as authorized to do so other than in the matter for which *pro hac vice* admission is sought, explains the reasons one or more of Rules 49(c)(1)-(12) authorize all aspects of the person's practice or holding out;

(g) if the person applied for admission *pro hac vice* in 5 or more proceedings (excluding *pro bono proceedings*) in the courts of the District of Columbia in the prior 365 days, sets forth grounds constituting good cause for the court to grant admission notwithstanding Rule 49(c)(7)(A)(v);

(h) acknowledges the power and jurisdiction of the courts of the District of Columbia over the applicant's conduct in or concerning the proceeding;

(i) agrees to abide by the District of Columbia Rules of Professional Conduct in the proceeding if the applicant is admitted *pro hac vice*; and

(j) agrees promptly to notify the court if, during the proceeding, the applicant is suspended or disbarred for disciplinary reasons or resigns with charges pending in any jurisdiction or court.

(ii) submit a copy of the application to the Office of Admissions, pay a $100 application fee to the Clerk of the District of Columbia Court of Appeals (unless the court has authorized the person's client to proceed *in forma pauperis*), and receive a receipt for payment of the fee; and

(iii) file the application with the receipt in the office of the clerk of the court in which *pro hac vice* admission is sought.

(C) *Power of the Court*. The court in which *pro hac vice* admission is sought may grant or deny applications for admission *pro hac vice*, and may revoke an admission, in its discretion.

(D) *Duties of Persons Admitted Pro Hac Vice*. A person admitted *pro hac vice* is subject to the power and jurisdiction of the courts of the District of Columbia, and must abide by the District of Columbia Rules of Professional Conduct, for conduct in or concerning a proceeding in which the person is admitted *pro hac vice*. A person admitted *pro hac vice* must notify the court promptly if, during the proceeding, the person is suspended or disbarred for disciplinary reasons or resigns with charges pending in any jurisdiction or court.

(8) *While Bar Application Is Pending*.

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

(i) the person's first application to the District of Columbia Bar is pending;

(ii) the person is admitted in another United States jurisdiction;

(iii) the person is supervised by a D.C. Bar Member on each client matter, and the D.C. Bar Member agrees to be jointly responsible for the quality of the work on each client matter; and

(iv) the person gives prominent notice in all business documents that the person's practice is supervised by one or more D.C. Bar Members and that the person is not a D.C. Bar Member.

(B) *Extension of Time*. On request and for good cause, the Director of the Committee on Admissions may extend beyond 365 days the period during which a person is authorized to practice by Rule 49(c)(8). The Director must inform the person in writing of the length of the extension.

(9) *Pro Bono.*

(A) *Attorneys Working Pro Bono.* A person who is not a D.C. Bar Member may provide *pro bono* legal services, and may hold out as authorized to provide those services, if the person:

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

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

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

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

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

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

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

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

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

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

(i) the person graduated from an American Bar Association-approved law school;

(ii) the person's first application to be admitted in a United States jurisdiction is pending;

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

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

(C) *Applicability of Rules of Professional Conduct*. A person practicing under Rule 49(c)(9) is subject to the power and jurisdiction of the courts of the District of Columbia, and must abide by the District of Columbia Rules of Professional Conduct.

(10) *Authorized Court Programs*. A person who is not a D.C. Bar Member may provide legal services as part of a program 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 complies with all requirements that the authorizing court has imposed for the program.

(11) *Organizations in Small Claims or Landlord-Tenant Disputes.* A person who is not a D.C. Bar Member and who is an officer, director, or employee of a corporation, partnership, or similar organization may provide legal services on behalf of the organization in:

(A) an attempt to settle either a landlord-tenant dispute or a dispute that would be within the jurisdiction of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia;

(B) an appearance in the Landlord and Tenant Branch of the Civil Division of the Superior Court of the District of Columbia solely for the purpose of entry of a consent judgment, if the person at the time of appearing files a declaration under penalty of perjury that the person is authorized to bind the organization in settlement; or

(C) a pending or potential proceeding in which the organization is or is to be a defendant (and not a cross-claimant or counter-claimant) in the Small Claims and Conciliation Branch of the Civil Division of the Superior Court of the District of Columbia, if the person at the time of appearing files a declaration under penalty of perjury that the person is authorized to bind the organization in settlement or trial.

(12) *Alternative Dispute Resolution*. A person who is not a D.C. Bar Member may provide

legal services in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution ("ADR") proceeding, and may hold out as authorized to provide those services, if the person:

(A) is admitted in another jurisdiction or court;

(B) provides these services in no more than 5 ADR proceedings in the District of Columbia per calendar year (excluding *pro bono* proceedings); and

(C) does not otherwise practice law in the District of Columbia or hold out as authorized to do so except to the extent that the person's practice or holding out is authorized by one or more of Rules 49(c)(1)-(12).

(13) *Incidental and Temporary Practice.* A person who is not a D.C. Bar Member and who does not maintain an office or other systematic and continuous presence in the District of Columbia or use a District of Columbia address for the practice of law may provide legal services on a temporary basis, and may hold out as authorized to provide those services, if the services:

(A) are in or reasonably related to a pending or potential proceeding before a court or other tribunal in another jurisdiction in which the person is admitted or reasonably expects to be authorized by law or order to appear; or

(B) arise out of or are reasonably related to the person's practice in a jurisdiction in which the person is admitted.

(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 D.C. Bar Member to a standing committee known as the Committee on Unauthorized Practice of Law. 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 Director of the Committee on Admissions or the Director's designee will serve as Executive Secretary to the Committee and will coordinate 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 it by notifying the Executive Secretary.

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

(B) *Confidentiality.* Any matter under investigation by the Committee must remain confidential until resolution of the matter under Rule 49(d)(12)(B), (C), or (D), except that formal hearings under Rule 49(d)(11) will be open to the public. 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 Committee decision between meetings 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 to a Committee member for preliminary investigation.

(B) *Conduct and Content of Investigation.* The investigation must consist of an analysis of the complaint, a survey of the applicable law, and, if appropriate, 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 will 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.

(11) *Formal Hearings.* The Committee may take sworn testimony of witnesses and the respondent in formal hearings open to the public.

(A) *Written Notice to Respondent.* Before conducting a formal hearing, the Committee must give the respondent written notice 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 e-mail 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 the formal 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 any reasonable limitations that 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).

(12) *Actions by the Committee.* 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 the action given to the complainant. A formal agreement may require restitution to the clients of fees obtained by the respondent, payment to the D.C. Bar, or another remedy that the Committee considers appropriate. 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 hearing 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, then 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 ancillary equitable remedies 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 Rule 49(a):

Rule 49 is applied first by determining whether the conduct in question falls within the definitions of practicing law or holding out in the District of Columbia. If the conduct falls within those definitions, then the conduct by a person who is not a D.C. Bar Member is a violation of Rule 49, unless one or more of Rules 49(c)(1)-(13) authorizes the conduct. (Notwithstanding the prohibitions of Rule 49, a person licensed to practice as a Special Legal Consultant may render legal services in the District of Columbia, and may hold as authorized to do so, to the extent permitted by, and subject to the conditions in, Rule 46.)

While one has a right to represent oneself, one has no right to represent or advise another as an attorney. Authority to provide legal services to others is a privilege granted only to those who have the education, competence, and fitness to practice law. When a person is formally recognized to possess those qualifications by membership in the District of Columbia Bar, one is authorized to practice law.

Rule 49 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, unless a person is a D.C. Bar Member or otherwise authorized to practice law.

The rule against unauthorized practice of law has four general purposes:

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

(2) to ensure that those who practice law in the District of Columbia or hold out as authorized to do so are subject to the disciplinary system of the District of Columbia Bar;

(3) to maintain the efficacy and integrity of the administration of justice and the system of regulation of practicing attorneys; and

(4) to ensure that the activities of the District of Columbia Bar are appropriately supported financially by those exercising the privilege of law practice in the District of Columbia.

Education, 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 District of Columbia Bar further protects the interests of members of the public by maintaining a clients' security fund through membership dues.

Commentary to Rule 49(b)(2):

The definition of "practice law" in Rule 49(b)(2) is designed to focus on the two essential elements of the practice of law: (1) the provision of legal services and (2) a client relationship of trust or reliance. A person who provides legal services to another within a client relationship of trust or reliance implicitly represents that the person is authorized and 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 law" may not anticipate every relevant circumstance, the Court has provided three other tools to assist in defining the phrase: (1) an enumerated list of the most common activities that 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 Rule 49(d)(14).

The definition of "practice 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 Rule 49, as set forth in the commentary to Rule 49(a).

The presumption that a person engaged in an activity enumerated in Rule 49(b) is practicing law may be rebutted by showing that the activity does not involve a client relationship of trust or reliance, that the person has made no explicit or implicit representation of authority or competence to practice law, or that neither condition is present.

While Rule 49 is meant to embrace every client relationship in which legal services are rendered, or one holds oneself out as authorized or competent to provide legal services, Rule 49 is not intended to cover conduct that 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 the professor 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 advising the person's employer what 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. Law clerks, paralegals and summer associates are not practicing law if they do not advise clients or otherwise hold themselves out to the public as having authority or competence to practice law. Tax accountants, real estate agents, title company personnel, financial advisors, pension consultants, claims adjusters, social workers, and the like who do not indicate they are providing legal services based on education, competence, and authority to practice 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 services are being given. Nor is it the practice of law under Rule 49 for a person to draft an agreement or resolve a controversy in a business context, where no reasonable expectation exists that the person is acting as a qualified or authorized attorney. Consistent with the holding of *Merrick v. American Securities & Trust Co.*, Rule 49 recognizes that one is not presumed to be practicing law when preparing a routine legal document incidental to a regular course of business as a non-attorney. *See* 107 F.2d 271, 274 (D.C. Cir. 1939) (drawing a distinction between "drafting legal papers *as a business* and drafting legal papers *pertinent to other business* which the [organization] was authorized to carry on") (emphasis added).

Rule 49 is not intended to forbid a person from acting as a mediator, arbitrator, or other alternative dispute resolution provider. This intent is expressed in the first sentence of the definition of "practice law," which requires the presence of two essential factors: The provision of legal services and a client relationship of trust or reliance. Mediators and arbitrators ordinarily do not form a client relationship of trust or reliance, and it is common for providers of mediation and arbitration services to advise participants that they are not providing the services of legal counsel.

Rule 49 is not meant to preclude persons who are not D.C. Bar Members from lobbying legislative or executive branch officials or agencies—including through preparing or expressing legal opinions, written or oral advocacy, preparation of position papers, or strategic advice—so long as the activities are intended to influence legislative lawmaking functions, as opposed to investigative, enforcement, or adjudicative functions. Permissible lobbying activities are not provided based on a reasonable expectation that learned and authorized professional legal services are being given in an attorney-client relationship. Some activities that have a relationship with legislative actions may constitute the practice of law. For example, advising a client about how testimony before Congress might affect pending or prospective criminal or civil litigation may constitute the practice of law. *See* D.C. UPL Comm. Op. 19-07.

Neither is Rule 49 intended to forbid a person from counseling or representing another person without compensation in proceedings or before bodies that are purely internal to an organization and that do not result in decisions directly appealable to a court, such as disciplinary or similar proceedings internal to a university, labor union, fraternity or sorority, religious organization, club, or membership organization.

Regarding discovery service companies and document reviewers, terms like "document review" and "the discovery process" encompass numerous discrete tasks, some of which involve the application of legal judgment, and some of which do not. These companies and persons do not violate Rule 49 when performing work that does not involve the application of legal knowledge, training, or judgment, and when the person is not held out or billed as an attorney. *See* D.C. UPL Comm. Op. 21-12. When a person is hired and billed as an attorney, the person is generally engaged in the practice of law, and is certainly being held out as authorized to practice law. Clients would reasonably assume that a person held out as a "contract lawyer" or "contract attorney," for example, performs functions that are different in degree, if not in kind, from those performed by paralegals or law clerks, and the cost of services performed by contract attorneys reflects the legal training and judgment that they bring to the work they perform. In addition, if a contract attorney is supervised not as a paralegal or law clerk but as a subordinate attorney would be supervised, the contract attorney is engaged in the practice of law. D.C. UPL Comm. Op. 16-05.

While payment of a fee is often a strong indication of an attorney-client relationship, it is neither essential nor dispositive.

Ordinarily, a person who provides or offers to provide legal services to clients in the District of Columbia implicitly represents to the consumer that the person has the education, competence, and authority to practice law in the District of Columbia. It is not sufficient for a person who is not a D.C. Bar Member merely to give notice that the person is not an attorney while engaging in conduct that is likely to mislead others into believing that the person is authorized to practice law. Where consumers continue to seek services after this 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 provide legal services in the District of Columbia. *See In re Banks*, 561 A.2d 158 (D.C. 1987).

Rule 49 also confines the practice of law to provision of legal services for another. People who represent themselves are not required to be admitted to the District of Columbia Bar.

Regarding "furnishing" attorneys, individual attorneys and non-attorneys commonly refer or recommend attorneys in a wide variety of circumstances without violating Rule 49. The term 'furnishing' within the meaning of Rule 49(b)(2)(F) involves more than simply recommending a particular attorney. Rule 49(b)(2)(F) is generally addressed to the business of providing attorneys, or systematically referring attorneys, in response to requests from non-attorney members of the public for representation in a specific, pending legal matters. This activity is included in the definition of the 'practice of law,' because, properly made, attorney referrals generally involve the exercise of the trained judgment of an attorney. *See* D.C. UPL Comm. Op. 6-99. The basic concern behind Rule 49(b)(2)(F) is that a non-attorney member of the public seeking an attorney for a particular matter will rely inappropriately on the judgment of non-attorneys who are regularly engaged in referring attorneys for similar matters.

Temporary attorney placement services lawfully may provide names of attorneys to law firms or legal departments, provided, however, that an attorney at the law firm or law department, possessing an attorney-client relationship with the client, selects the temporary attorney. In these circumstances, temporary attorney services do not exercise, or purport to exercise, professional legal judgment, as they leave the selection of candidates to the judgment of the attorneys responsible for the matter or matters requiring temporary professional assistance. *See* D.C. UPL Comm. Op. 6-99. Furthermore, discovery services companies do not run afoul of Rule 49 by handling the administrative aspects of hiring and supervising a document review attorney. This could include interviewing individuals to create a roster of attorneys available to assist with document review projects, providing the attorney's working space and equipment, ensuring that the person works a regular day and works at an acceptable pace, providing salary and benefits, and similar supervisory activities that do not require the application of professional legal judgment. *See* D.C. UPL Comm. Op. 21-12.

As another example, advocacy organizations such as the American Civil Liberties Union and the National Association for the Advancement of Colored People would not engage in unauthorized practice of law by systematically referring attorneys to potential clients, *provided a D.C. Bar Member within the organization was responsible for the referral judgment*. *See* D.C. UPL Comm. Op. 4-98 (discussing the American Civil Liberties Union and the National Association for the Advancement of Colored People). In that circumstance, only qualified attorneys subject to the regulatory and disciplinary system of the District of Columbia will be making professional judgments on the appropriate attorneys to which specific clients should be referred for representation in specific matters.

Commentary to Rule 49(b)(3):

Rule 49(b)(3) clarifies the geographic extent of Rule 49.

Rule 49 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 or holding out as authorized to practice in the District of Columbia.

The practice of law subject to Rule 49 is not confined to matters subject to District of Columbia law. Rule 49 applies to the practice of all substantive areas of the law and requires admission to the District of Columbia Bar where the practice is carried on in the District of Columbia and is not authorized by any of Rules 49(c)(1)-(13). It applies to legal services in the District of Columbia even if those legal services pertain to a matter involving federal law, foreign law, or the law of a state or territory.

A person is engaged in the practice of law in the District of Columbia when the person provides legal services from an office or location within the District. That is true if the person practices in a residence or in a commercial building; if all of the person's clients are located in other jurisdictions; if the person provides legal services only by telephone, letter, e-mail, or other means; if the person provides legal services only concerning the laws of jurisdictions other than the District of Columbia; or if the person informs the client that the person is not authorized to practice law in the District of Columbia and does not provide advice about District of Columbia law. An attorney in the District of Columbia who advises clients or otherwise provides legal services in another jurisdiction also may be subject to the rules of that jurisdiction concerning unauthorized practice of law.

The prohibition on unauthorized practice applies only if an attorney 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 an attorney located outside the District advises a client in-person only when the client visits the attorney in the attorney's office, or if the attorney advises the client only by telephone, regular mail, or e-mail. However, if an attorney is physically present in the District even once during the course of a matter, the attorney may be engaged in the District of Columbia in the practice of law with respect to the entire matter, even if the attorney otherwise operates only from a location outside the District.

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 D.C. Bar Member. Persons who provide legal services to one or more clients from a location in the District of Columbia, with or without bar memberships elsewhere, are practicing law in the District and are in violation of Rule 49, unless their practice is authorized by one or more of Rules 49(c)(1)-(13).

For a discussion of telecommuting/teleworking/working from home, see the Commentary to Rule 49(c)(13) ("Incidental and Temporary Practice").

For a discussion of the geographic reach of Rule 49 as applied to discovery services companies, *see* D.C. UPL Comm. Op. 21-12.

Commentary to Rule 49(b)(4):

Persons who are not D.C. Bar Members must avoid giving the impression that they are qualified legal professionals subject to the ethical standards and discipline of the District of Columbia Bar.

The listing of terms that 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 that gives the impression that one is qualified or authorized to practice. *See In re Banks*, 561 A.2d 158 (D.C. 1987). The terms "associate" or "counsel," when used in a legal context, convey to members of the public that an individual is authorized to practice law. *See* D.C. UPL Comm. Op. 22-17.

To avoid improper holding out, lobbyists practicing with a District of Columbia law firm who are not D.C. Bar Members must make clear that they are not and that their practice is limited to lobbying matters that do not constitute the practice of law. *See* D.C. UPL Comm. Op. 19-07.

A non-attorney who holds himself or herself out as the functional equivalent of an attorney may violate Rule 49 and may be liable under the District of Columbia's consumer-protection statutes even if the recipient of the services knows that the services are not being provided by a D.C. Bar Member or other attorney. *See Banks v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 634 A.2d 433 D.C. 1993).

Although Rule 49'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, such as by associating himself or herself with an address or post office box in the District of Columbia in connection with law-related communications.

Commentary to Rule 49(b)(9):

Rule 49 employs the supervision standard of Rule 5.1 of the Rules of Professional Conduct. That Rule requires the supervising attorney to make reasonable efforts to ensure conformity with, among other Rules, Rule 1.1 requiring competent representation and Rule 1.3 requiring zealous and diligent representation within the bounds of the law. Whether reasonable supervision requires the supervising attorney to attend personally with the supervised attorney a trial, hearing, or meeting depends on the circumstances. That is true in both litigation and non-litigation matters. The supervising attorney should consider all factors relevant to the appropriate degree and manner of supervision, including the experience and skill of the supervised attorney and the nature of the matter. Thus, in deciding whether to be present for a trial, hearing, or conference before a court or other tribunal, the supervising attorney should consider, among other factors, the experience and skill of the supervised attorney, the nature of the case, and the type of proceeding. For example, whether the supervising attorney should be present at a jury trial depends in part on the nature and extent of the supervised attorney's prior jury trial experience, and in-person supervision may not be necessary if the supervised attorney has extensive experience trying similar cases in other jurisdictions where the person is licensed or has been admitted *pro hac vice*. In some situations, a responsible supervisor ought to be present in court with the supervised attorney, but in others, the supervisor may reasonably decide that the supervisor does not need to be present.

Whether or not the supervising attorney is physically present when the supervised attorney provides legal services, the supervising attorney remains accountable under Rule 5.1(b) if the supervising attorney fails to make reasonable efforts to ensure that the other attorney conforms to the Rules of Professional Conduct.

Commentary to Rule 49(c)(1):

Departments, agencies, and courts of the federal government are entitled to advice and representation from their employees as part of their official duties. This advice and representation includes both internal consultation and external representation in contact with the public and the courts.

Commentary to Rule 49(c)(2):

Rule 49(c)(2) provides a limited exception to the requirement for admission to the District of Columbia Bar for persons who practice before federal and District of Columbia agencies in certain circumstances.

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).

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 this 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 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, Rule 49 does not apply because the activity, even if the practice of law, is not carried on "in the District of Columbia." See Rule 49(b)(3) and commentary thereto.

Rule 49(c)(2) is designed to permit persons to practice before a department or agency without becoming members of the Bar where the practice is authorized by law or agency rule, where the agency has a rule to regulate the practice, and where the public is adequately informed of the limited nature of the person's authority to practice.

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 D.C. Bar Member, because this advice is reasonably

ancillary to representation before the agency and is subject to the jurisdiction of the federal courts. *See* Rule 49(c)(3). Rule 49(c)(2) does not, however, otherwise authorize advice to or representation of persons in the courts.

Rule 49(c)(2) also authorizes practice before certain District of Columbia fora. This provision was added in recognition that some of the foregoing considerations support allowing persons not admitted as attorneys to represent members of the public before some District of Columbia fora. In addition, some client matters may warrant a practitioner taking simultaneous or coordinated actions in federal and District of Columbia fora.

To be clear, neither Rule 49(c)(2) nor anything else in Rule 49 authorizes persons who are not D.C. Bar Members to provide legal services to another person merely because those legal services concern federal law. *See Kennedy v. Bar Ass'n of Montgomery County, Inc.*, 561 A.2d 200, 208–09 (Md. Ct. App. 1989) ("[A]dvising clients by applying legal principles to the client's problem is practicing law. . . . This is so whether the legal principles [applied are] established by the law of Montgomery County, the State of Maryland, some other state of the United States, the United States of America, or a foreign nation."); *Bluestein v. State Bar*, 13 Cal. 3d 162, 173–74 (1974) (holding that "law," as used in the California statute barring unauthorized practice, includes foreign law); *In re Roel*, 144 N.E.2d 24, 26 (N.Y. 1957) ("Whether a person gives advice as to New York law, Federal law, the law of a sister State, or the law of a foreign country, he is giving legal advice."). Rule 49 includes no "federal law" exception to its general prohibition on the practice of law by persons who are not D.C. Bar Members.

Persons could satisfy the notice requirement of Rule 49(c)(2)(B) with prominent written statements that, for example, the person is "not admitted to the D.C. Bar; practice limited to matters before the U.S. Patent & Trademark Office" or "Admitted only in Virginia; practice limited to matters before federal courts, federal agencies, and District of Columbia agencies." *See* D.C. UPL Comm. Op. 5-98.

Commentary to Rule 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 a D.C. Bar Member, the practitioner may use the District of Columbia 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 D.C. Bar Member and that the practice is limited to matters before that federal court (or to other matters authorized by Rule 49(c)(2), (c)(3), (c)(6), (c)(9), (c)(10), or (c)(12).). Rule 49(c)(3) applies only if a person's entire practice in the District of Columbia is authorized by one or more of Rules 49(c)(2), (c)(3), (c)(6), (c)(9), (c)(10), or (c)(12); if any part of the person's law practice is not so authorized, Rule 49 requires a practitioner with an office in the District of Columbia to be a D.C. Bar Member. 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 D.C. Bar Member.

Again, to be clear, neither Rule 49(c)(3) nor anything else in Rule 49 authorizes persons

who are not D.C. Bar Members to provide legal services to another merely because those legal services concern federal law.

Persons could satisfy the notice requirement of Rule 49(c)(3) with prominent written statements that, for example, the person is "not admitted to the D.C. Bar; practice limited to U.S. courts" or "Admitted only in Maryland; practice limited to matters before federal courts, federal agencies, and District of Columbia agencies." *See* D.C. UPL Comm. Op. 5-98.

Commentary to Rule 49(c)(4):

Permission for District of Columbia employees to practice in the District is more limited than permission for United States employees. Departments, agencies, and courts of the District of Columbia are entitled to legal services from their employees as part of their official duties under the circumstances set forth in Rule 49(c)(4). These legal services include both internal consultation and external representation in contact with the public and the courts.

Commentary to Rule 49(c)(5):

In keeping with federal labor policy, many disputes arising under a collective bargaining agreement between a labor organization or worker, on the one hand, and an employer, on the other hand, are resolved through labor arbitration. While attorneys are involved in some matters of this nature, it is common for the parties to be represented by non-attorneys (whether a union representative or a labor relations officer of the employer). At the early stages of the grievance-resolution process, which can include informal hearings that are necessary steps before arbitration, the use of attorneys is even more rare. Some states have addressed this issue through specific rules which expressly permit non-attorney representation in labor arbitration. *See* Cal. Code of Civil Procedure § 1282.4(h); Washington Rules of Court, General Rule 24(b)(5). The Supreme Court has written:

> The right of [union] members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel. . . . [A State] undoubtedly has broad powers to regulate the practice of law within its borders, but we . . . recognize that in regulating the practice of law a State cannot ignore the rights of individuals secured by the Constitution. … [F]or them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics.

Bhd. of RR Trainmen v. Va. ex rel. Va. State Bar, 377 U.S. 1, 6-7 (1964); *see also UMWA v. Ill. State Bar Ass'n*, 389 U.S. 217, 222 (1967) ("That the States have broad power to regulate the practice of law is . . . beyond question. . . . But it is equally apparent that broad rules framed to protect the public and to preserve respect for the administration of justice can in their actual operation significantly impair the value of associational freedoms.").

Rule 49(c)(5) recognizes the federal policy to facilitate the inexpensive and informal protection of workers' and employers' rights protected by federal labor law, and it recognizes the practical reality that non-attorneys for decades have played important representational functions in

the context of negotiations, grievances, and arbitrations connected to collective bargaining agreements.

Commentary to Rule 49(c)(6):

Rule 49(c)(6) addresses in-house attorneys and others who are employed to provide legal services to their employer or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. The provision of legal services by in-house counsel or advisors generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the attorney's qualifications and the quality of the attorney's work.

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

Rule 49(c)(6) provides a limited exception arising from the position of the attorney, the confinement of the attorney's professional services to activities internal to the employer, and the absence of conduct creating a reasonable expectation that the employer is receiving the services of a D.C. Bar Member.

Rule 49(c)(6) does not authorize in-house attorneys to represent individual employees of their employer or its affiliates.

Commentary to Rule 49(c)(7):

The District of Columbia courts are open to attorneys from other jurisdictions. 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).

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 *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. Accordingly, a person

generally may not apply for admission *pro hac vice* in more than five cases pending in District of Columbia courts per calendar year.

The scope of services that are covered by Rule 49(c)(7) includes legal services that are rendered both "in" a court proceeding and also those that are "reasonably related" to the proceeding. The court "proceeding"—to which the legal services must be related—is defined broadly. Specifically, the court proceeding need not be "pending" when legal services are rendered for the services to be covered; services that are reasonably related to a "potential proceeding" in a D.C. court also qualify. Thus, for example, legal services provided to a respondent in an attorney-discipline proceeding may be within the scope of the *pro hac vice* exception because they are reasonably related to potential proceedings in the D.C. Court of Appeals. *See* D.C. UPL Comm. Op. 23-18. As another example, legal services provided to an applicant to the District of Columbia Bar in connection with a formal hearing before the Committee on Admissions or provided to a respondent in connection with a formal hearing before the Committee on the Unauthorized Practice of Law are within the scope of the *pro hac vice* exception if the requirements of Rule 49(c)(7) are met.

Commentary to Rule 49(c)(8):

Rule 49(c)(8) is designed to provide a one-time grace period within which attorneys admitted in other jurisdictions who wish to practice law in the District of Columbia may do so under the supervision of one or more D.C. Bar Members, while they promptly pursue admission to the District of Columbia Bar.

Regarding the notice requirement, persons could satisfy it with prominent written statements that, for example, the person is "not admitted to the D.C. Bar; practice supervised by D.C. Bar Members" or "Admitted only in Maryland; practice supervised by D.C. Bar Members." *See* D.C. UPL Comm. Op. 5-98. The term "admission pending" may not be used. That term is likely to be misleading because it implies that the grant of a pending application for admission to the D.C. Bar is a formality. Even if an individual meets some of the requirements for applying for admission to the D.C. Bar, admission to the D.C. Bar is not automatic. *See* D.C. UPL Comm. Op. 20-08. The term "application pending" may raise similar concerns, depending on context. *See id.*

A person practicing under Rule 49(c)(8) need not apply for admission *pro hac vice* to appear in the Superior Court of the District of Columbia or the District of Columbia Court of Appeals. This represents a departure from a prior version of Rule 49(c)(8), and Opinion 18-06 of the Committee is no longer applicable.

Commentary to Rule 49(c)(9):

Rule 49(c)(9) is intended to increase access to justice in the District of Columbia for those unable to afford an attorney by providing an exception to the requirement of admission to the District of Columbia Bar for attorneys formerly admitted in the District of Columbia or currently or formerly admitted in other United States jurisdictions (or law school graduates who are awaiting their bar application results) so that they may provide *pro bono* representation where the requirements of the exception are met.

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

Commentary to Rule 49(c)(10):

Rule 49(c)(10) is intended to give a rule-based authorization to the number of individual- and group-assistance programs, services, and projects that the courts of the District of Columbia have approved or in the future may approve.

Commentary to Rule 49(c)(11):

Landlord-tenant disputes and small claims matters may not, as a general matter, warrant the expense of hiring an attorney. Rule 49(c)(11) therefore creates an exception to the general prohibition on law practice by persons who are not D.C. Bar Members for the three situations referenced in Rule 49(c)(11).

Rule 49(c)(11) does not authorize a person who is not a D.C. Bar Member to appear in a representative capacity in an action that has been filed in the Landlord and Tenant Branch of the Civil Division of the Superior Court, except for the purpose of entering a consent judgment. Nor does it authorize a person who is not a D.C. Bar Member to appear on behalf of a plaintiff, cross-claimant, or counterclaimant in the Small Claims and Conciliation Branch of the Civil Division of the Superior Court, or to appear on behalf of any party if a case is certified to the Civil Actions Branch.

Commentary to Rule 49(c)(12):

Rule 49(c)(12) furthers 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 mediation or arbitration or other dispute resolution proceedings in the District of Columbia the option to retain attorneys not admitted in the District of Columbia. This rule is intended to be analogous to the *pro hac vice* exception in Rule 49(c)(7).

Rule 49(c)(12) allows attorneys to represent clients in mediation, arbitration, or other alternative dispute resolution proceedings that require more than incidental or temporary presence in the District. Separate from the authority granted by Rule 49(c)(12), an attorney may represent parties in mediation, arbitration, or other alternative dispute resolution proceedings under Rule 49(c)(13) if the attorney's presence in the District is incidental and temporary.

As explained in the Commentary to Rule 49(b)(2), attorneys who serve as arbitrators, mediators, or other kinds of neutrals are not engaged in the practice of law.

Commentary to Rule 49(c)(13):

There are occasions in which an attorney admitted in another jurisdiction may provide legal services on a temporary basis in the District of Columbia under circumstances that do not create

an unreasonable risk to the interests of their clients, the public, or the courts. Rule 49(c)(13) authorizes law practice in two circumstances.

There is no single test to determine whether an attorney's services are provided on a "temporary" basis in the District, and may therefore be permissible under Rule 49(c)(13). Services may be "temporary" even though the attorney provides services in the District on a recurring basis, or for an extended period of time, as when the attorney is representing a client in a single lengthy negotiation or litigation. For example, an attorney 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 in the District for purposes of Rule 49(c)(13). If an attorney's principal place of business is in the District, the attorney is not practicing law in the District on a temporary basis.

Rule 49(c)(13) provides that an attorney rendering services in the District on a temporary basis does not violate Rule 49 when the attorney engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the attorney is admitted or in which the attorney reasonably expects to be admitted *pro hac vice*. Examples of permissible conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, an attorney admitted only in another jurisdiction may engage in conduct temporarily in the District in connection with pending litigation in another jurisdiction in which the attorney is or reasonably expects to be authorized to appear, including taking depositions in the District.

An attorney rendering services in the District on a temporary basis does not violate Rule 49 when the services arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted. Several factors may be relevant to whether the services provided in the District of Columbia arise out of or are reasonably related to an attorney's practice in a jurisdiction in which the lawyer is admitted. The attorney's client may have been previously represented by the attorney, or may be resident in or have substantial contacts with the jurisdiction in which the attorney is admitted. The matter, although involving other jurisdictions, may have a significant connection with the jurisdiction in which the attorney is admitted. In other cases, significant aspects of the attorney's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their attorney in assessing the relative merits of each. In addition, the services may draw on the attorney's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally uniform, foreign, or international law. Another relevant factor is whether the attorney not admitted to the District of Columbia Bar is the only attorney for a party, or whether the attorney is co-counsel or the attorney'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, an attorney 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 under Rule 49(c)(13). However, an attorney 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 under Rule 49(c)(13). Whether the attorney who is not admitted to the District of Columbia Bar and whose principal office is outside the District is associated with or supervised by a D.C.

Bar Member is a relevant, but not controlling, factor in determining whether the attorney's practice in the District is authorized by Rule 49(c)(13)

Legal services provided in connection with a matter pending in a court, tribunal, or agency in the District of Columbia generally are not authorized by Rule 49(c)(13). Legal services provided in connection with a matter pending before a congressional committee often are.

Rule 49(c)(13) 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 attorney 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 attorney be in good standing as an attorney or counselor at law (or the equivalent of either) in the country where the person is authorized to practice law.

A person who occasionally practices law from the person's residence in the District of Columbia, either by telecommuting or working from home, or who practices temporarily from a hotel or short-term rental accommodation while on vacation in the District of Columbia, does not violate Rule 49, provided the person: (1) maintains a law office in a jurisdiction where the attorney is admitted to practice; (2) avoids using a District of Columbia address in any business document or otherwise holding out as authorized to practice law in the District of Columbia, and (3) does not regularly conduct in-person meetings with clients or third parties in the District of Columbia.

A contract attorney who regularly takes short-term assignments in the District of Columbia is not engaged in temporary practice here, even if each assignment, considered in isolation, might constitute temporary practice. *See* D.C. UPL Comm. Op. 16-05. Regular work exceeds what Rule 49(c)(13) authorizes.

Commentary to Rule 49(d):

Rule 49(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).

It is expected that most matters considered by the Committee will be resolved through informal proceedings.

Commentary to Rule 49(e):

The powers and procedures provided in Rule 49(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 District of Columbia 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 unauthorized 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. ~~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.~~to do so unless:

(1) the person is a D.C. Bar Member; or

(2) the conduct is permitted by one or more of Rules 49(c)(1)-(13).

(b) DEFINITIONS. The following definitions apply to ~~this rule~~Rule 49:

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

(2) "Practice ~~of~~ law" means ~~providing professional~~to provide legal ~~advice or~~ services ~~where there is a~~ for or on behalf of another person within a client relationship of trust or reliance. ~~One~~A person is presumed to be practicing law when ~~engaging in any of~~doing the following ~~conduct~~for or 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~~, or contract, except a person is not presumed to be practicing law when preparing a routine agreement incidental to a regular course of business as a non-attorney;

(B) preparing or expressing a legal opinion or giving legal advice;

(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~~at a 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~~that ordinarily 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~~.

(6) "D.C. Bar Member" means a person who was admitted by the court under Rule 46 or 46-A, and who has taken the oath under Rule 46(l); it does not include persons with inactive, retired, suspended, or disbarred status, and it does not include special legal consultants as defined in Rule 46.

(7) "Admitted" in a jurisdiction means to be a member in good standing of the legal profession in a state, territory, or foreign country where the members of the profession are admitted to practice as counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority; a person is not "admitted" in a jurisdiction if the person was disbarred or suspended for disciplinary reasons, or resigned with charges pending, or if the person has inactive, judicial, or retired status.

(8) "Business document" means any document submitted or made available to any client, third party, the public, or any official entity in connection with a person's provision of legal or law-related services, and may include letters, e-mails, business cards, website biographies, pleadings, filings, discovery requests and responses, formal papers of all kinds, advertisements, and social media.

(9) "Supervise" means to make reasonable efforts to ensure that another person conforms to the applicable Rules of Professional Conduct.

(10) "Regulate" means to control by rule or other restriction. Examples of the regulation of persons who appear on behalf of another in a legal matter include: establishing minimum requirements to ensure the competent and ethical provision of services, requiring familiarity with and adherence to forum procedures, creating a registry of authorized practitioners, and imposing sanctions or disqualification from future practice for misconduct.

(11) "*Pro bono*" means provided without fee or for a nominal processing fee for one or more individuals with limited means.

(12) "Law firm" means an attorney or attorneys in a law partnership, professional corporation, sole proprietorship, or other association engaged in the business of practicing law, but does not include the legal department of a corporation or other organization, or any government entity.

(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.~~ACTIVITIES THAT PERSONS WHO ARE NOT D.C. BAR MEMBERS MAY PERFORM.

(1) *United States ~~Government~~ Employee.* A person who is not a D.C. Bar Member may provide legal services to the United States as an employee ~~thereof~~of the United States and may hold out as authorized to provide those services.

(2) ~~*Representation*~~*Practice Before ~~United States~~ Certain Government ~~Special Court, Department, or Agency.~~Agencies.* A person who is not a D.C. Bar Member may provide legal services ~~to members of the public solely before a special court,~~in or reasonably related to a pending or potential proceeding in any 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~~of the United States or of the District of Columbia, or any tribunal created by an international treaty to which the United States is a party, and may hold out as authorized to provide those services, if:

(A) the services are authorized by statute or by a department, agency, office, or tribunal rule that expressly permits and regulates practice before the department, agency, office, or tribunal; and

(B) the person ~~expressly~~ gives prominent notice in all business documents ~~of the person's bar status and that his or her~~specifically concerning practice authorized by Rule 49(c)(2) that the person is not a D.C. Bar Member and that the person's practice in the District of Columbia is limited ~~consistent with Rule 49 (c).~~ to providing the types of legal services authorized by one or more of Rule 49(c)(2), (3), (5), (6), (7), (9), (10), (11), or (12), and specifying which of those types of services the person provides in the District of Columbia.

(3) *Practice Before ~~United States Court.~~Federal Courts.* A person who is not a D.C. Bar Member may provide legal services in the District of Columbia in or reasonably related to a pending or potential proceeding in any court of the United States, and may hold out as authorized to provide those services, if

(A) the person has been or reasonably expects to be admitted to practice in that court~~, but~~ ; and

(B) if the person has an office in the District of Columbia, the person ~~must expressly give~~gives prominent notice in all business documents ~~of~~that the person is not a D.C. Bar Member and that the person's ~~bar status and that his or her~~ practice is limited ~~consistent with~~to providing the types of legal services authorized by one or more of Rule 49 ~~(c~~(c)(2), (3), (5), (6), (7), (9), (10), (11), or (12), and specifying which of those types of services the person provides in the District of Columbia.

The District of Columbia Court of Appeals and the Superior Court of the District of Columbia are not courts of the United States within the meaning of this Rule 49(c)(3).

(4) *District of Columbia Employee*. A person who is not a D.C. Bar Member may provide legal services to the ~~government of the~~ District of Columbia as an employee of the District of Columbia, and may hold out as authorized to provide those services, during the first ~~360~~365 days of employment as ~~a lawyer~~an attorney for the ~~government of the~~ District of Columbia~~, when~~ if the person~~:~~

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

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

~~(C) has not resigned with charges pending in any~~United States 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).~~

(5) *Labor Negotiations and Arbitrations*. A person who is not a D.C. Bar Member may provide legal services in or reasonably related to negotiation of, or a grievance arising under, a collective bargaining agreement between a labor organization and an employer, including arbitration of a grievance, and may hold out as authorized to provide those services, if the recipient of the services does not reasonably expect that the services are being provided by a D.C. Bar Member. This Rule 49(c)(5) does not authorize a person to appear in any court, or in any department, agency, or office of the United States or the District of Columbia.

(6) ~~*Internal*~~*In-House Counsel*. A person who is not a D.C. Bar Member may provide legal ~~advice only~~services to ~~one's regular~~the person's employer~~, when~~ or its organizational affiliates, and may hold out as authorized to provide those services, if the employer ~~does not reasonably expect~~understands that ~~it is receiving advice from a~~ the person ~~authorized to practice law~~is not a D.C. Bar Member. This Rule 49(c)(6) does not authorize a person to appear in any court, or in any department, agency, or office of the United States or the District of Columbia.

(7) *Pro Hac Vice* ~~*in the Courts of the District of Columbia.*~~. A person who is not a D.C. Bar Member may provide legal services in or reasonably related to a pending or potential proceeding in ~~a~~the District of Columbia Court of Appeals or the Superior Court of the District of Columbia, and may hold out as authorized to provide those services, if the person has been or reasonably expects to be admitted *pro hac vice*, in accordance with the ~~following provisions.~~requirements in Rule 49(c)(7)(A).

(A) ~~*Limitation to 5 Applications Per Year*. No person may apply~~ *Requirements for Admission Pro Hac Vice*. A person may be admitted *pro hac vice* in the District of Columbia Court of Appeals or the Superior Court of the District of Columbia only if the person:

(i) is admitted in another United States jurisdiction;

(ii) before applying for *pro hac vice* admission, has associated with a D.C. Bar Member who has agreed to be prepared at all times to go forward with the proceeding, and who will sign all court filings and attend all court appearances in the proceeding unless the court waives this latter requirement;

(iii) before applying for *pro hac vice* admission, has read all of this Rule 49(c)(7) and has read either all the rules of the District of Columbia Court of Appeals or all the rules of the relevant division of the Superior Court of the District of Columbia, as applicable to the proceeding for which admission is to be sought;

(iv) does not practice law in the District of Columbia or hold out as authorized to do so other than in the matter for which *pro hac vice* admission is to be sought, except to the extent that the person's practice or holding out is authorized by one or more ~~than 5 cases pending~~of Rules 49(c)(1)-(6) or (8)-(12); and

(v) has not applied for admission *pro hac vice* in 5 or more proceedings (excluding *pro bono* proceedings) in the courts of the District of Columbia ~~per calendar year, except for exceptional cause shown to the court~~in the prior 365 days, unless the person reasonably believes good cause exists for the court to grant admission in more than 5 proceedings.

(B) ~~*Applicant Declaration*. Each application~~ *Applying for Admission Pro Hac Vice*. To apply for admission *pro hac vice* in the District of Columbia Court of Appeals or Superior Court of the District of Columbia, a person must ~~be accompanied by a declaration~~:

(i) prepare an application in which the person, 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~~(a) declares that the person meets all ~~jurisdictions and courts~~ of the requirements in Rule 49(c)(7)(A);

(b) identifies all United States states or territories where the applicant is ~~authorized~~admitted to practice ~~law~~ and ~~whether~~ the ~~applicant is in good standing~~applicant's bar number in each ~~such jurisdiction or court;~~ of those jurisdictions;

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

~~(iv) certifying~~(d) declares that the applicant has ~~not~~never 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~~denied admission to the ~~D.C.~~District of Columbia Bar ~~denied~~, or ~~describing~~describes the circumstances of any denials;

~~(vi) agreeing~~(e) identifies the name, address, and D.C. Bar number of the D.C. Bar Member with whom the applicant has associated under Rule 49(c)(7)(A)(ii);

(f) if the person practices law in the District of Columbia or holds out as authorized to do so other than in the matter for which *pro hac vice* admission is sought, explains the reasons one or more of Rules 49(c)(1)-(12) authorize all aspects of the person's practice or holding out;

(g) if the person applied for admission *pro hac vice* in 5 or more proceedings (excluding *pro bono proceedings*) in the courts of the District of Columbia in the prior 365 days, sets forth grounds constituting good cause for the court to grant admission notwithstanding Rule 49(c)(7)(A)(v);

(h) acknowledges the power and jurisdiction of the courts of the

District of Columbia over the applicant's conduct in or concerning the proceeding;

(i) agrees to abide by the District of Columbia Rules of Professional Conduct in the proceeding if the applicant is admitted *pro hac vice*; and

(j) agrees 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~~ (ii) submit a copy of the application to the ~~Committee~~Office of Admissions, pay ~~an~~a $100 application fee~~,~~ to the Clerk of the District of Columbia Court of Appeals (unless the court has authorized the person's client to proceed *in forma pauperis*), and receive a receipt for payment of the fee~~. The applicant must then~~ ; and

(iii) 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~~court in which *pro hac vice* admission is sought.

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

(D) *Duties of Persons Admitted Pro Hac Vice*. A person admitted *pro hac vice* is subject to the power and jurisdiction of the courts of the District of Columbia, and must abide by the District of Columbia Rules of Professional Conduct, for conduct in or concerning a proceeding in which the person is admitted *pro hac vice*. A person admitted *pro hac vice* must notify the court promptly if, during the proceeding, the person is suspended or disbarred for disciplinary reasons or resigns with charges pending in any jurisdiction or court.

(8) ~~*Limited Duration Supervision by D.C.*~~ *While* *Bar* ~~*Member*~~*Application Is Pending*.

(A) *In General*. A person who is not a D.C. Bar Member may ~~practice law from a principal office located~~provide legal services in the District of Columbia, and may hold out as authorized to provide those services, for a period not to exceed ~~360~~365 days from the ~~commencement of such practice, during pendency~~start of the practice if:

(i) the person's first application ~~for admission to the D.C. Bar, if:~~

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

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

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

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

~~(v) the person has submitted the application for admission within 90 days of commencing practice in~~ to the District of Columbia~~;~~ Bar is pending;

~~(vi)~~ (ii) the person is admitted in another United States jurisdiction;

(iii) the person is supervised by a D.C. Bar Member ~~takes responsibility~~on each client matter, and the D.C. Bar Member agrees to be jointly responsible for the quality of the work ~~and complaints concerning the services;~~ on each client matter; and

~~(vii)~~ (iv) the person ~~or the D.C. Bar member~~ gives prominent notice ~~to the public of the member's supervision and~~in all business documents that the person's ~~bar status;~~practice is supervised by one or more D.C. Bar Members and that the person is not a D.C. Bar Member.

~~(viii) the person is admitted *pro hac vice* to the extent he or she provides legal services in the~~

~~courts of the District of Columbia.~~

(B) *Extension of Time*. On request and for good cause ~~shown~~, the Director of the Committee on Admissions may extend beyond ~~360~~365 days the period during which a person is authorized to practice ~~under~~by Rule 49(c)(8). The Director must inform the person in writing of the length of the extension.

~~(8A) *Emergency Temporary Practice by Recent Law School Graduates Under Supervision by D.C. Bar Member.*~~

~~(A) *Eligibility Requirements.* Subject to the time limits in (C), a person may practice law in the District of Columbia, and may hold out as authorized to do so, if the person:~~

~~(i) received a J.D. degree in 2019 or 2020 from an ABA-approved law school;~~

~~(ii) has or had timely completed an application, including payment of the required fee, to take a bar examination scheduled to be administered in this jurisdiction in 2020 or 2021;~~

~~(iii) has not been admitted to a bar in a different jurisdiction, failed a bar examination, or had a bar application denied;~~

~~(iv) has passed the Multistate Professional Responsibility Exam, as provided in D.C. App. R. 46(c);~~

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

~~(vi) has read the District of Columbia Bar Rules and Rules of Professional Conduct, and, within sixty days of beginning practice under this rule, completes the Mandatory Course on the District of Columbia Rules of Professional Conduct and District of Columbia Practice presented by the D.C. Bar;~~

~~(vii) is supervised on each client matter by an enrolled, active member of the D.C. Bar who (a) has practiced law in the District of Columbia for at least five years; (b) is in good standing, has never been disbarred or resigned from any bar with disciplinary charges pending, and has no pending disciplinary charges in any jurisdiction or court; (c) is the person's employer, works for the person's employer or law firm, or works for a non-profit organization in the District of Columbia that provides legal services to people of limited means at no charge or for a limited processing fee; and (d) takes responsibility for the quality of the person's work and complaints concerning that work; and~~

~~(viii) gives prominent notice in all business documents that the person's practice is supervised by one or more D.C. Bar members and that the person is not a member of the D.C. Bar.~~

~~(B) *Other Requirements.*~~

~~(i) A person practicing law under this rule accepts the jurisdiction of the courts of the District of Columbia over the person's practice of law and agrees to be bound by the District of Columbia~~

~~Rules of Professional Conduct.~~

~~(ii) A person practicing law under this provision may not ask for or receive any compensation or remuneration of any kind directly from a client and may not negotiate a fee agreement or be a party to a fee agreement. The person's employer or law firm may pay compensation to the person and may charge clients for the person's legal services.~~

~~(C) *Duration*. A person's authorization to practice law under this provision expires:~~

~~(i) if the person no longer meets the eligibility requirements of (A);~~

~~(ii) if the person is admitted to the D.C. Bar;~~

~~(iii) after the application deadline for the next in-person bar examination in the District of Columbia, unless the person has submitted a timely application to take that bar examination, in which case until the person is granted or denied admission to the D.C. Bar or the person's application is withdrawn or deemed abandoned;~~

~~(iv) if authorization is withdrawn by order of the court for cause, after notice and an opportunity to be heard in writing; or~~

~~(v) if the court provides for a different expiration date by subsequent order.~~

~~(D) *Waiver*. Upon motion filed with the court showing extraordinary circumstances relating to the COVID-19 pandemic, the court may waive one or more of the eligibility requirements provided in (A)(i), (A)(ii), and (A)(iii).~~

(9) *Pro Bono* ~~*Legal Services*~~.

(A) ~~*Person Affiliated with*~~ *Attorneys Working Pro Bono.* A person who is not a ~~*Non-Profit Organization*. A person~~D.C. Bar Member may provide *pro bono* legal services ~~*pro bono publico* in affiliation with, but not~~, and may hold out as ~~an employee of, a non-profit organization located in the District of Columbia that provides legal~~ authorized to provide those 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;~~

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

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

(iii) is supervised by ~~an enrolled, active member of the~~ a D.C. Bar Member on each *pro bono* matter;

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

~~(B) *Employee of the Public Defender Service or a Non-Profit Organization.* A person who is~~ (v) if the matter involves appearance in the District of Columbia Court of Appeals or the Superior Court of the District of Columbia, the person, in the first pleading or other paper filed with the court, identifies the supervising D.C. Bar Member by name, address, e-mail address, telephone number, and D.C. Bar number;

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

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

(a) a non-profit organization in the District of Columbia that routinely provides *pro bono* legal services ~~to individuals with limited means at no charge;~~ or ~~for a nominal processing fee~~

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

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

(i) the person graduated from an American Bar Association-approved law school;

(ii) the person's first application to ~~the D.C. Bar is either granted or denied, if the person:~~ be admitted in a United States jurisdiction is pending;

~~(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) the person is trained and supervised by ~~an enrolled, active member of the~~a D.C. Bar ~~in good standing~~Member who is affiliated with the Public Defender Service or ~~the~~a non-profit organization that provides *pro bono* legal services on each *pro bono* matter; and

(iv) ~~in addition to complying with Rule 49 (c)(9)(E),~~ the person gives prominent notice ~~to the public and on~~ in all ~~pleadings~~business documents specifically concerning each *pro bono* matter that the person's work on the matter is supervised by a D.C. Bar Member and that the person is not ~~authorized~~admitted to practice law in any United States jurisdiction ~~but is practicing under the supervision of a member of the D.C. Bar pursuant to Rule 49 (c)(9)(C)~~.

(C~~D~~) *Applicability of Rules of Professional Conduct*. A person practicing under Rule 49(c)(9~~)(A) (C~~) is subject to the power and jurisdiction of the courts of the District of Columbia, and must abide by the District of Columbia Rules of Professional Conduct ~~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 who is not a D.C. Bar Member 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~~complies with all requirements that the authorizing court has imposed for the program.

(11) ~~*Limited Practice for Corporations*~~ *Organizations in Small Claims* *or* ~~*Partnerships.*~~

~~An authorized~~ *Landlord-Tenant Disputes.* A person who is not a D.C. Bar Member and who is an officer, director, or employee of a corporation~~ or,~~ partnership, or similar organization may ~~appear in defense~~provide legal services on behalf of the ~~corporation or partnership~~organization in~~ a small claims action, or in settlement of~~ :

(A) an attempt to settle either a landlord-tenant ~~matter, if:~~dispute or a dispute that would be within the jurisdiction of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia;

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

(B) an appearance in the Landlord and Tenant Branch of the Civil Division of the Superior Court of the ~~person so~~ District of Columbia solely for the purpose of entry of a consent judgment, if the person at the time of appearing files ~~at the time~~a declaration under penalty of ~~appearance an affidavit vesting in~~perjury that the person ~~the requisite authority~~is authorized to bind the organization~~.~~ in settlement; or

(C) a pending or potential proceeding in which the organization is or is to be a defendant (and not a cross-claimant or counter-claimant) in the Small Claims and Conciliation Branch of the Civil Division of the Superior Court of the District of Columbia, if the person at the time of appearing files a declaration under penalty of perjury that the person is authorized to bind the organization in settlement or trial.

(12) ~~*Practice in ADR Proceedings.*~~ *Alternative Dispute Resolution*. A person who is not a D.C. Bar Member may provide legal services in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution ("ADR") proceeding, and may hold out as authorized to provide those services, if the person:

(A) is ~~authorized to practice law and in good standing~~admitted 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)~~ (B) provides these services in no more than 5 ADR proceedings in the District of Columbia per calendar year~~; and~~ (excluding *pro bono* proceedings); and

~~(E)~~ (C) 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~~ or hold out as authorized to do so except to the extent that the person's practice or holding out is authorized by one or more of Rules 49(c)(1)-(12).

(13) *Incidental and Temporary Practice*. A person ~~may provide legal services~~ who is not a D.C. Bar Member and who does not maintain an office or other systematic and continuous presence in the District of Columbia or use a District of Columbia address for the practice of law

may provide legal services on ~~an incidental and~~ a temporary basis ~~if the person is~~, and may hold out as authorized to ~~practice law and~~ provide those services, if the services:

(A) are in ~~good standing~~or reasonably related to a pending or potential proceeding before a court or other tribunal in another ~~state or territory or~~ jurisdiction in which the person is admitted or reasonably expects to be authorized ~~to~~ by law or order to appear; or

(B) arise out of or are reasonably related to the person's practice ~~law in a foreign country, is not disbarred or suspended for disciplinary reasons, and has not resigned with charges pending~~ in ~~any~~a jurisdiction ~~or court~~in which the person is admitted.

(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~~.~~ Member to a standing committee known as the Committee on Unauthorized Practice of Law. 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~~Director of the Committee on Admissions or the Director's designee will ~~designate a deputy clerk to~~ serve as Executive Secretary to the Committee and will ~~provide~~coordinate 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~~it by notifying the Executive Secretary.

(A) *Chair or Vice Chair Presides*. The Chair or, in the Chair's absence, the Vice-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~~)~~), (C), or (~~C).~~D), except that formal hearings under Rule 49(d)(11) will be open to the public. 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~~Committee decision between meetings 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~~The investigation must consist of an analysis of the complaint, a survey of the applicable law, and, if appropriate, 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~~will 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~~Hearings*. ~~To assist t~~The Committee ~~in performing its functions, it~~ may take sworn testimony of witnesses and the respondent in formal hearings open to the public.

(A) *Written Notice to Respondent*. ~~Formal proceedings before~~Before conducting a formal hearing, the Committee ~~are commenced by~~must give the respondent 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 e-mail 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~~the formal 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~~any reasonable limitations ~~as~~that 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 t~~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~~the action given to the complainant. A formal agreement may require restitution to the clients of fees obtained by the respondent~~.~~, payment to the D.C. Bar, or another remedy that the Committee considers appropriate. 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~~hearing 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, then 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*~~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.~~(a):

~~The rule~~Rule 49 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~~then the conduct by a person who is not ~~admitted to the~~ a D.C. Bar Member is a violation of ~~the rule~~Rule 49, unless ~~there is an express exception covering~~one or more of Rules 49(c)(1)-(13) authorizes the conduct. (Notwithstanding the prohibitions of Rule 49, a person licensed to practice as a Special Legal Consultant may render legal services in the District of Columbia, and may hold as authorized to do so, to the extent permitted by, and subject to the conditions in, Rule 46.)

While one has a right to represent oneself, ~~there is~~one has no right to represent or advise another as ~~a lawyer~~an attorney. 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~~a person is formally recognized to possess those qualifications by ~~admission to~~membership in the ~~D.C.~~District of Columbia Bar, ~~he or she~~one is authorized to practice law.

~~The rule~~Rule 49 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~~.~~, unless a person is a D.C. Bar Member or otherwise authorized to practice law.

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

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

(2) ~~(2)~~ to ensure that ~~any person~~those who ~~purports or holds out to perform~~practice law in the ~~services~~District of ~~a lawyer is~~Columbia or hold out as authorized to do so are subject to the disciplinary system of the ~~D.C.~~District of Columbia Bar;

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

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

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

~~Competence~~Education, 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.~~District of Columbia Bar further protects the interests of members of the public by maintaining a clients' security fund through membership dues.

Commentary to ~~§~~Rule 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~~ Rule 49(b)(2) is designed to focus ~~first~~ on the ~~2~~two 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~~A person who provides ~~such advice or~~ legal services to another within ~~such~~ a client relationship~~, there is an implicit representation~~ of trust or reliance implicitly represents that the ~~provider~~person is authorized ~~or~~and 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~~Court has provided three other tools to assist in defining the phrase: (1) an enumerated list of the most common activities ~~which~~that 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~~ Rule 49(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~~Rule 49, as set forth in the commentary to ~~sections~~ Rule 49(a~~) and (b~~).

The presumption that ~~one's engagement~~a person engaged in ~~one of the~~an activity enumerated ~~activities~~in Rule 49(b) is ~~the "practice of~~practicing law~~"~~ may be rebutted by showing that ~~there is no~~the activity does not involve a client relationship of trust or reliance, ~~or~~ that ~~there is~~the person has made no explicit or implicit representation of authority or competence to practice law, or that ~~both are absent~~neither condition is present.

While ~~the rule~~Rule 49 is meant to embrace every client relationship ~~where~~in which legal ~~advice or~~ services are rendered, or one holds oneself out as authorized or competent to provide ~~such~~legal services, ~~the rule~~Rule 49 is not intended to cover conduct ~~which~~that 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~~the professor 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~~advising the person's 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~~if they do not ~~engage in providing advice to~~advise 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~~personnel, financial advisors, pension consultants, claims adjusters, social workers, and the like~~,~~ who do not indicate they are providing legal ~~advice or~~ services based on education, competence, and ~~standing in the~~authority to practice 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~~services are being given. Nor is it the practice of law under ~~the rule~~Rule 49 for a person to draft an agreement or resolve a controversy in a business context, where ~~there is~~ no reasonable expectation exists that ~~she~~the person is acting as a qualified or authorized attorney. Consistent with the holding of *Merrick v. American Securities & Trust Co.*, Rule 49 recognizes that one is not presumed to be practicing law when preparing a routine legal document incidental to a regular course of business as a non-attorney. *See* 107 F.2d 271, 274 (D.C. Cir. 1939) (drawing a distinction between "drafting legal papers *as a business* and drafting legal papers *pertinent to other business* which the [organization] was authorized to carry on") (emphasis added).

~~The rule~~Rule 49 is not intended to ~~cover the provision of mediation or~~forbid a person from acting as a mediator, arbitrator, or other alternative dispute resolution ~~("ADR") services.~~provider. 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~~Mediators and arbitrators ordinarily do not ~~given in circumstances where there is~~form a client relationship of trust or reliance~~;~~, and it is common ~~practice~~ for providers of ~~ADR~~mediation and arbitration services ~~explicitly~~ to advise participants that they are not providing the services of legal counsel.

Rule 49 is not meant to preclude persons who are not D.C. Bar Members from lobbying legislative or executive branch officials or agencies—including through preparing or expressing legal opinions, written or oral advocacy, preparation of position papers, or strategic advice—so long as the activities are intended to influence legislative lawmaking functions, as opposed to investigative, enforcement, or adjudicative functions. Permissible lobbying activities are not provided based on a reasonable expectation that learned and authorized professional legal services are being given in an attorney-client relationship. Some activities that have a relationship with legislative actions may constitute the practice of law. For example, advising a client about how testimony before Congress might affect pending or prospective criminal or civil litigation may constitute the practice of law. *See* D.C. UPL Comm. Op. 19-07.

Neither is Rule 49 intended to forbid a person from counseling or representing another person without compensation in proceedings or before bodies that are purely internal to an organization and that do not result in decisions directly appealable to a court, such as disciplinary or similar proceedings internal to a university, labor union, fraternity or sorority, religious

organization, club, or membership organization.

Regarding discovery service companies and document reviewers, terms like "document review" and "the discovery process" encompass numerous discrete tasks, some of which involve the application of legal judgment, and some of which do not. These companies and persons do not violate Rule 49 when performing work that does not involve the application of legal knowledge, training, or judgment, and when the person is not held out or billed as an attorney. *See* D.C. UPL Comm. Op. 21-12. When a person is hired and billed as an attorney, the person is generally engaged in the practice of law, and is certainly being held out as authorized to practice law. Clients would reasonably assume that a person held out as a "contract lawyer" or "contract attorney," for example, performs functions that are different in degree, if not in kind, from those performed by paralegals or law clerks, and the cost of services performed by contract attorneys reflects the legal training and judgment that they bring to the work they perform. In addition, if a contract attorney is supervised not as a paralegal or law clerk but as a subordinate attorney would be supervised, the contract attorney is engaged in the practice of law. D.C. UPL Comm. Op. 16-05.

While payment of a fee is often a strong indication of an attorney-client relationship, it is ~~not~~neither essential nor dispositive.

Ordinarily, ~~one~~a person who provides or offers to provide legal ~~advice or~~ services to clients in the District of Columbia ~~implies~~implicitly represents to the consumer that ~~he or she is authorized and competent~~the person has the education, competence, and authority to practice law in the District of Columbia. It is not sufficient for a person who is not ~~an enrolled, active member of the~~a D.C. Bar Member merely to give notice that ~~he~~the person is not ~~a lawyer~~an attorney while engaging in conduct that is likely to mislead ~~consumers~~others into believing ~~he~~that the person is ~~a licensed attorney at~~authorized to practice law. Where consumers continue to seek services after ~~such~~this 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~~provide legal services in the District of Columbia. *See In re Banks*, 561 A.2d 158 (D.C. 1987).

~~The rule~~Rule 49 also confines the practice of law to provision of legal services ~~under engagement~~ for another. ~~One~~People who ~~represents himself or herself is~~ represent themselves are not required to be admitted to the District of Columbia Bar.

Regarding "furnishing" attorneys, individual attorneys and non-attorneys commonly refer or recommend attorneys in a wide variety of circumstances without violating Rule 49. The term 'furnishing' within the meaning of Rule 49(b)(2)(F) involves more than simply recommending a particular attorney. Rule 49(b)(2)(F) is generally addressed to the business of providing attorneys, or systematically referring attorneys, in response to requests from non-attorney members of the public for representation in a specific, pending legal matters. This activity is included in the definition of the 'practice of law,' because, properly made, attorney referrals generally involve the exercise of the trained judgment of an attorney. *See* D.C. ~~Bar.~~ UPL Comm. Op. 6-99. The basic concern behind Rule 49(b)(2)(F) is that a non-attorney member of the public seeking an attorney for a particular matter will rely inappropriately on the judgment of non-attorneys who are regularly engaged in referring attorneys for similar matters.

~~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.~~

Temporary attorney placement services lawfully may provide names of attorneys to law firms or legal departments, provided, however, that an attorney at the law firm or law department, possessing an attorney-client relationship with the client, selects the temporary attorney. In these circumstances, temporary attorney services do not exercise, or purport to exercise, professional legal judgment, as they leave the selection of candidates to the judgment of the attorneys responsible for the matter or matters requiring temporary professional assistance. *See* D.C. UPL Comm. Op. 6-99. Furthermore, discovery services companies do not run afoul of Rule 49 by handling the administrative aspects of hiring and supervising a document review attorney. This could include interviewing individuals to create a roster of attorneys available to assist with document review projects, providing the attorney's working space and equipment, ensuring that the person works a regular day and works at an acceptable pace, providing salary and benefits, and similar supervisory activities that do not require the application of professional legal judgment. *See* D.C. UPL Comm. Op. 21-12.

As another example, advocacy organizations such as the American Civil Liberties Union and the National Association for the Advancement of Colored People would not engage in unauthorized practice of law by systematically referring attorneys to potential clients, *provided a D.C. Bar Member within the organization was responsible for the referral judgment. See* D.C. UPL Comm. Op. 4-98 (discussing the American Civil Liberties Union and the National Association for the Advancement of Colored People). In that circumstance, only qualified attorneys subject to the regulatory and disciplinary system of the District of Columbia will be making professional judgments on the appropriate attorneys to which specific clients should be referred for representation in specific matters.

Commentary to ~~§~~Rule 49(b)(3):

~~Subsection~~ Rule 49(b)(3) clarifies ~~by explicit definition~~ the geographic extent of ~~the rule~~Rule 49.

~~The rule~~Rule 49 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~~.~~ or holding out as authorized to practice in the District of Columbia.

The practice of law subject to ~~this rule~~Rule 49 is not confined to ~~the~~ matters subject to ~~the law of the~~ District of Columbia~~. The rule~~ law. Rule 49 applies to the practice of all substantive areas of the law and requires admission to the ~~D.C.~~ District of Columbia Bar where the practice is carried on in the District of Columbia and ~~does~~is not ~~fall within one~~authorized by any of ~~the exceptions enumerated~~Rules 49(c)(1)-(13). It applies to legal services in ~~section (c).~~the District of Columbia even if those legal services pertain to a matter involving federal law, foreign law, or the law of a state or territory.

A ~~lawyer~~person is engaged in the practice of law in the District of Columbia when the ~~lawyer~~person provides legal ~~advice~~services from an office or location within the District. That is true if the ~~lawyer~~person practices in a residence or in a commercial building~~,~~; if all of the ~~lawyer's~~person's clients are located in other jurisdictions~~,~~; if the ~~lawyer~~person provides legal ~~advice~~services only by telephone, letter, ~~email~~e-mail, or other means~~,~~; if the ~~lawyer~~person provides legal ~~advice~~services only concerning the laws of jurisdictions other than the District of Columbia~~,~~; or if the ~~lawyer~~person informs the client that the ~~lawyer~~person is not authorized to practice law in the District of Columbia and does not provide advice about District of Columbia law. ~~A lawyer~~An attorney in the District of Columbia who advises clients or otherwise provides legal services in another jurisdiction also may be subject to the rules of that jurisdiction concerning unauthorized practice of law.

The prohibition on unauthorized practice applies only if ~~a lawyer~~an attorney 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~~an attorney located outside the District advises a client in-person only when the client visits the ~~lawyer~~attorney in the ~~lawyer's~~attorney's office, or if the ~~lawyer~~attorney advises the client only by telephone, regular mail, or ~~electronic~~ e-mail. However, if ~~a lawyer~~an attorney is physically present in the District even once during the course of a matter, the ~~lawyer~~attorney may be engaged in the District of Columbia in the practice of law with respect to the entire matter, even if the ~~lawyer~~attorney 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 Member. Persons who provide legal services ~~as lawyers with law firms and other legal organizations~~to one or more clients from a location in the District of Columbia, with or without bar memberships elsewhere, are practicing law in the District and are in violation of ~~the rule~~Rule 49, unless ~~they fall within~~their practice is authorized by one or more of ~~the express exceptions set forth in section~~ Rules 49(c)(1)-(13).

For a discussion of telecommuting/teleworking/working from home, see the Commentary to ~~§~~Rule 49(c)(13) ("Incidental and Temporary Practice").

For a discussion of the geographic reach of Rule 49 as applied to discovery services companies, *see* D.C. UPL Comm. Op. 21-12.

Commentary to Rule 49(b)(4):

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

The listing of terms~~, which~~ that 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~~that gives the impression that one is qualified or authorized to practice. *See In re Banks*, 561 A.2d 158 (D.C. 1987). The terms "associate" or "counsel," when used in a legal context, convey to members of the public that an individual is authorized to practice law. *See* D.C. UPL Comm. Op. 22-17.

~~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~~To avoid improper holding out, lobbyists practicing with a District of Columbia law firm who are not D.C. Bar Members must make clear that they are not and that their practice is limited to lobbying matters that do not constitute the practice of law. *See* D.C. UPL Comm. Op. 19-07.

A non-attorney who holds himself or herself out as the functional equivalent ~~to those performed by a lawyer, that person is subject to sanction~~of an attorney may violate Rule 49 and may be liable under the District of Columbia's consumer-protection statutes ~~of the District of Columbia.~~even if the recipient of the services knows that the services are not being provided by a D.C. Bar Member or other attorney. *See Banks v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 634 A.2d 433 ~~(~~D.C. 1993).

Although ~~the rule's~~Rule 49'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, such as by associating himself or herself with an address or post office box in the District of Columbia in connection with law-related communications.

Commentary to ~~§~~Rule 49 ~~(c~~(b)(9)):

~~When it appears in this rule, 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.~~

Rule 49 employs the supervision standard of Rule 5.1 of the Rules of Professional Conduct. That Rule requires the supervising attorney to make reasonable efforts to ensure conformity with, among other Rules, Rule 1.1 requiring competent representation and Rule 1.3 requiring zealous and diligent representation within the bounds of the law. Whether reasonable supervision requires the supervising attorney to attend personally with the supervised attorney a trial, hearing, or meeting depends on the circumstances. That is true in both litigation and non-litigation matters. The supervising attorney should consider all factors relevant to the appropriate degree and manner of supervision, including the experience and skill of the supervised attorney and the nature of the

matter. Thus, in deciding whether to be present for a trial, hearing, or conference before a court or other tribunal, the supervising attorney should consider, among other factors, the experience and skill of the supervised attorney, the nature of the case, and the type of proceeding. For example, whether the supervising attorney should be present at a jury trial depends in part on the nature and extent of the supervised attorney's prior jury trial experience, and in-person supervision may not be necessary if the supervised attorney has extensive experience trying similar cases in other jurisdictions where the person is licensed or has been admitted *pro hac vice*. In some situations, a responsible supervisor ought to be present in court with the supervised attorney, but in others, the supervisor may reasonably decide that the supervisor does not need to be present.

Whether or not the supervising attorney is physically present when the supervised attorney provides legal services, the supervising attorney remains accountable under Rule 5.1(b) if the supervising attorney fails to make reasonable efforts to ensure that the other attorney conforms to the Rules of Professional Conduct.

Commentary to ~~§~~Rule 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~~advice and ~~represent~~representation from their ~~employers~~employees as part of their official duties. ~~Such~~This 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 ~~§~~Rule 49(c)(2):

~~Subsection~~ Rule 49(c)(2) provides a limited exception to the requirement for admission to the ~~D.C.~~District of Columbia Bar for persons who practice before federal ~~fora~~and District of Columbia agencies in certain 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~~this 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~~Rule 49 does not apply because the activity, even if the practice of law, is not carried on ~~within~~"in the District of Columbia~~.~~." See Rule 49(b)(3) and ~~the~~ commentary thereto.

~~Subsection~~ Rule 49(c)(2) is designed to permit persons to practice before a ~~federal~~ department or agency without becoming members of the Bar where the practice is authorized by law or agency rule, where the agency has a ~~system in place~~rule to regulate ~~practitioners not admitted to the Bar~~the practice, 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~~ Member, because this 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~~ Rule 49(c)(2) does not, however, otherwise authorize ~~active~~ advice to or representation of persons in the courts.

Rule 49(c)(2) also authorizes practice before certain District of Columbia fora. This provision was added in recognition that some of the foregoing considerations support allowing

persons not admitted as attorneys to represent members of the public before some District of Columbia fora. In addition, some client matters may warrant a practitioner taking simultaneous or coordinated actions in federal and District of Columbia fora.

To be clear, neither Rule 49(c)(2) nor anything else in Rule 49 authorizes persons who are not D.C. Bar Members to provide legal services to another person merely because those legal services concern federal law. *See Kennedy v. Bar Ass'n of Montgomery County, Inc.*, 561 A.2d 200, 208–09 (Md. Ct. App. 1989) ("[A]dvising clients by applying legal principles to the client's problem is practicing law. . . . This is so whether the legal principles [applied are] established by the law of Montgomery County, the State of Maryland, some other state of the United States, the United States of America, or a foreign nation."); *Bluestein v. State Bar*, 13 Cal. 3d 162, 173–74 (1974) (holding that "law," as used in the California statute barring unauthorized practice, includes foreign law); *In re Roel*, 144 N.E.2d 24, 26 (N.Y. 1957) ("Whether a person gives advice as to New York law, Federal law, the law of a sister State, or the law of a foreign country, he is giving legal advice."). Rule 49 includes no "federal law" exception to its general prohibition on the practice of law by persons who are not D.C. Bar Members.

Persons could satisfy the notice requirement of Rule 49(c)(2)(B) with prominent written statements that, for example, the person is "not admitted to the D.C. Bar; practice limited to matters before the U.S. Patent & Trademark Office" or "Admitted only in Virginia; practice limited to matters before federal courts, federal agencies, and District of Columbia agencies." *See* D.C. UPL Comm. Op. 5-98.

Commentary to ~~§~~Rule 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~~a D.C. Bar Member, the practitioner may use the ~~D.C.~~District of Columbia 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 Member and that the practice is limited to matters before that federal court (or to other matters ~~within the scope of other exceptions in section~~ authorized by Rule 49(c~~)). This exception~~)(2), (c)(3), (c)(6), (c)(9), (c)(10), or (c)(12).). Rule 49(c)(3) applies only if a person's entire practice ~~falls within section (c~~in the District of Columbia is authorized by one or more of Rules 49(c)(2), (c)(3), (c)(6), (c)(9), (c)(10), or (c)(12); if any part of the person's law practice is not ~~covered by an exception~~so authorized, Rule 49 requires a practitioner with an office in the District of Columbia to be ~~an active member of the~~a D.C. Bar Member. 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 Member.

Again, to be clear, neither Rule 49(c)(3) nor anything else in Rule 49 authorizes persons who are not D.C. Bar Members to provide legal services to another merely because those legal services concern federal law.

Persons could satisfy the notice requirement of Rule 49(c)(3) with prominent written

statements that, for example, the person is "not admitted to the D.C. Bar; practice limited to U.S. courts" or "Admitted only in Maryland; practice limited to matters before federal courts, federal agencies, and District of Columbia agencies." *See* D.C. UPL Comm. Op. 5-98.

Commentary to ~~§~~Rule 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 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).~~

Permission for District of Columbia employees to practice in the District is more limited than permission for United States employees. Departments, agencies, and courts of the District of Columbia are entitled to legal services from their employees as part of their official duties under the circumstances set forth in Rule 49(c)(4). These legal services include both internal consultation and external representation in contact with the public and the courts.

Commentary to ~~§~~Rule 49(c)(~~6~~5):

~~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.~~

In keeping with federal labor policy, many disputes arising under a collective bargaining agreement between a labor organization or worker, on the one hand, and an employer, on the other hand, are resolved through labor arbitration. While attorneys are involved in some matters of this nature, it is common for the parties to be represented by non-attorneys (whether a union representative or a labor relations officer of the employer). At the early stages of the grievance-resolution process, which can include informal hearings that are necessary steps before arbitration, the use of attorneys is even more rare. Some states have addressed this issue through specific rules

which expressly permit non-attorney representation in labor arbitration. *See* Cal. Code of Civil Procedure § 1282.4(h); Washington Rules of Court, General Rule 24(b)(5). The Supreme Court has written:

> The right of [union] members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel. . . . [A State] undoubtedly has broad powers to regulate the practice of law within its borders, but we . . . recognize that in regulating the practice of law a State cannot ignore the rights of individuals secured by the Constitution. … [F]or them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics.

Bhd. of RR Trainmen v. Va. ex rel. Va. State Bar, 377 U.S. 1, 6-7 (1964); *see also UMWA v. Ill. State Bar Ass'n*, 389 U.S. 217, 222 (1967) ("That the States have broad power to regulate the practice of law is . . . beyond question. . . . But it is equally apparent that broad rules framed to protect the public and to preserve respect for the administration of justice can in their actual operation significantly impair the value of associational freedoms.").

Rule 49(c)(5) recognizes the federal policy to facilitate the inexpensive and informal protection of workers' and employers' rights protected by federal labor law, and it recognizes the practical reality that non-attorneys for decades have played important representational functions in the context of negotiations, grievances, and arbitrations connected to collective bargaining agreements.

Commentary to Rule 49(c)(6):

Rule 49(c)(6) addresses in-house attorneys and others who are employed to provide legal services to their employer or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. The provision of legal services by in-house counsel or advisors generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the attorney's qualifications and the quality of the attorney's work.

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,~~Rule 49(c)(6), as they do not give the employer a reasonable expectation that it is being served by ~~an authorized member of the~~a D.C. Bar Member. Similarly, ~~a lawyer~~an employee on the staff of a trade association who gives only advice concerning leases, personnel, and contractual matters~~,~~ would be covered by ~~the exception~~Rule 49(c)(6) if, in fact, the ~~lawyer~~employee does not give the employer reason to believe ~~she~~that the employee is ~~an authorized member of the~~a D.C. Bar Member.

~~This exception is~~Rule 49(c)(6) provides a limited ~~one~~exception arising from the position of the ~~lawyer~~attorney, the confinement of the ~~lawyer's~~attorney'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~~a D.C. Bar~~.~~ Member.

Rule 49(c)(6) does not authorize in-house attorneys to represent individual employees of their employer or its affiliates.

Commentary to §Rule 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~~five 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.~~

The scope of services that are covered by Rule 49(c)(7) includes legal services that are

rendered both "in" a court proceeding and also those that are "reasonably related" to the proceeding. The court "proceeding"—to which the legal services must be related—is defined broadly. Specifically, the court proceeding need not be "pending" when legal services are rendered for the services to be covered; services that are reasonably related to a "potential proceeding" in a D.C. court also qualify. Thus, for example, legal services provided to a respondent in an attorney-discipline proceeding may be within the scope of the *pro hac vice* exception because they are reasonably related to potential proceedings in the D.C. Court of Appeals. *See* D.C. UPL Comm. Op. 23-18. As another example, legal services provided to an applicant to the District of Columbia Bar in connection with a formal hearing before the Committee on Admissions or provided to a respondent in connection with a formal hearing before the Committee on the Unauthorized Practice of Law are within the scope of the *pro hac vice* exception if the requirements of Rule 49(c)(7) are met.

Commentary to ~~§~~Rule 49(c)(8):

~~Subsection~~ Rule 49(c)(8) is designed to provide a one-time grace period within which attorneys admitted in other jurisdictions who ~~come~~wish to practice law in the District of Columbia ~~as their principal office~~ may ~~continue to practice law~~do so under the ~~active~~ supervision of ~~a member of the~~one or more D.C. Bar Members, 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~~Bar.

~~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.~~

Regarding the notice requirement, persons could satisfy it with prominent written statements that, for example, the person is "not admitted to the D.C. Bar; practice supervised by D.C. Bar Members" or "Admitted only in Maryland; practice supervised by D.C. Bar Members." *See* D.C. UPL Comm. Op. 5-98. The term "admission pending" may not be used. That term is likely to be misleading because it implies that the grant of a pending application for admission to

the D.C. Bar is a formality. Even if an individual meets some of the requirements for applying for admission to the D.C. Bar, admission to the D.C. Bar is not automatic. *See* D.C. UPL Comm. Op. 20-08. The term "application pending" may raise similar concerns, depending on context. *See id.*

A person practicing under Rule 49(c)(8) need not apply for admission *pro hac vice* to appear in the Superior Court of the District of Columbia or the District of Columbia Court of Appeals. This represents a departure from a prior version of Rule 49(c)(8), and Opinion 18-06 of the Committee is no longer applicable.

Commentary to ~~§~~Rule 49(c)(9):

~~Subsection~~ Rule 49(c)(9) is intended to increase access to justice in the District of Columbia for those unable to afford an attorney by providing an exception to the requirement of admission to the ~~D.C. Bar for lawyers licensed in other~~District of Columbia Bar for attorneys formerly admitted in the District of Columbia or currently or formerly admitted in other United States jurisdictions (or law school graduates who are awaiting their bar application results) ~~to~~ so that they may provide *pro bono* representation~~,~~ where the requirements of the exception are met. ~~Subsection (c)(9)(A) creates a single provision permitting inactive~~

Regarding the notice requirement in Rule 49(c)(9)(C), persons could satisfy it with prominent written statements that, for example, the person is "not admitted to the D.C. Bar; practice supervised by D.C. Bar Members" or ~~retired members of the D.C. Bar or the bar of another state or territory or a member in good standing of the bar of another state or territory to perform pro bono services under specified conditions. By allowing inactive or retired members of the bars of other states or territories to perform pro bono services, this section ensures that lawyers who have retired from practicing in the District of Columbia under another exception (e.g., federal employees, internal counsel, etc.) can do pro bono work under specified conditions without having to apply for membership in the D.C. Bar. In referring to "enrolled inactive or enrolled retired member of the D.C. Bar or the bar of another state or territory" the court intends to include any lawyer who has retired from the~~"Admitted only in Maryland; practice ~~of law yet remains authorized to provide pro bono services (sometimes called "emeritus" in certain jurisdictions) as well as those who have not retired but who are not actively practicing law in the jurisdiction~~supervised by D.C. Bar Members." *See* D.C. UPL Comm. Op. 5-98.

~~Subsection (c)(9)(B) creates a single provision applicable to employees of the Public Defender Service (PDS) and of non-profit organizations providing legal services at no charge (or for a nominal processing fee) to individuals of limited means. The provision requires these employees to apply to the D.C. Bar within 90 days of commencing practice.~~

~~Subsection (c)(9)(C) permits law school graduates to provide legal services in affiliation with or as an employee of PDS or a non-profit organization providing legal services at no charge (or for a nominal processing fee) to individuals of limited means while their bar applications are pending. Rule 48 currently allows students who participate in law school clinics to practice under certain conditions. This section permits students to provide pro bono legal services after they graduate but before they have been admitted, so long as they have applied to a bar and taken the bar examination, the law school certifies that they demonstrate "good character and competent legal ability," and they remain subject to the specified notice and supervision requirements.~~

~~Subsection (c)(9)(D) provides that attorneys practicing under the Rule 49 (c)(9) exception are subject to the District of Columbia Rules of Professional Conduct and the D.C. Bar's enforcement authority, to the same extent as if they were enrolled, active members of the D.C. Bar.~~

~~Subsection (c)(9)(E) provides a notice procedure for all attorneys practicing under the Rule 49 (c)(9) exception. Attorneys must complete and submit a certificate (Form 9) and email it to the Committee on Admissions. This certificate provides the Committee on Admissions with the information it needs regarding the eligibility of individual lawyers to practice law under the Rule 49 (c)(9) exception, as well as the name of the D.C. Bar member who is supervising their work. Attorneys who appear in court are required to file a copy of the certificate (Form 9) each time they file a praecipe of appearance in a case. Employees of PDS and other non-profit organizations providing legal services at no charge (or for a nominal processing fee) to individuals of limited means need only submit a single certificate (Form 9) covering their work from the start of their employment until their application for admission to the D.C. Bar is granted or denied, although they must submit a new certificate (Form 9) if any information (such as the name of their supervisor) changes.~~

~~Whether the requirement that the attorney practicing under the Rule 49 (c)(9) exception be "supervised by an enrolled, active member of the D.C. Bar" means that the supervising attorney must personally attend particular events such as a trial, hearing, or meeting depends on the circumstances. The supervising attorney should consider all factors relevant to the appropriate degree and manner of supervision, including the experience and skill of the supervised attorney and the nature of the matter. In some situations, the supervisor ought to be present in court with the supervised attorney. However, in many circumstances, the supervisor may reasonably conclude that he or she does not need to be present. This approach is consistent with the purpose of the Rule 49 (c)(9) exception — "to provide the broadest access to *pro bono* legal services, while serving the purposes of Rule 49 to protect the public from unlicensed legal practitioners." *UPL Opinion 3-98: Procedure for Practice Pro Bono Publico Under Exception 49 (c)(9)*, at 2. It would place a substantial burden on the Public Defender Service and other non-profit organizations with limited budgets to send supervising attorneys to court with all lawyers practicing under the Rule 49 (c)(9) exception. *See UPL Opinion 12-02: Supervision of Attorneys Under Rule 49 (c)*, at 2 ("[W]hether or not the supervising attorney is physically present when the supervised attorney provides legal services, the supervising attorney remains responsible for the conduct of the supervised attorney. Any recourse the client may have against the supervising attorney is not affected by whether the supervision is in-person.").~~

Commentary to ~~§~~Rule 49(c)(10):

~~Subsection~~ Rule 49(c)(10) is intended to give ~~express~~a rule-based 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 have approved or in the future may approve.

Commentary to ~~§~~Rule 49(c)(11):

Landlord-tenant disputes and small claims matters may not, as a general matter, warrant the expense of hiring an attorney. Rule 49(c)(11) therefore creates an exception to the general

prohibition on law practice by persons who are not D.C. Bar Members for the three situations referenced in Rule 49(c)(11).

Rule 49(c)(11) does not authorize a person who is not a D.C. Bar Member to appear in a representative capacity in an action that has been filed in the Landlord and Tenant Branch of the Civil Division of the Superior Court, except for the purpose of entering a consent judgment. Nor does it authorize a person who is not a D.C. Bar Member to appear on behalf of a plaintiff, cross-claimant, or counterclaimant in the Small Claims and Conciliation Branch of the Civil Division of the Superior Court, or to appear on behalf of any party if a case is certified to the Civil Actions Branch.

Commentary to Rule 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~~Rule 49(c)(12) furthers 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~~mediation or arbitration or other dispute resolution proceedings ~~an~~in the District of Columbia the option to retain attorneys not admitted in the District of Columbia ~~that~~. This rule is ~~generally equivalent~~intended to ~~the option provided through~~ be analogous to the *pro hac vice* exception in ~~subsection~~ Rule 49(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~~)(12) allows ~~lawyers~~attorneys to represent clients in ~~ADR~~mediation, arbitration, or other alternative dispute resolution proceedings that require more than incidental or temporary presence in the District. Separate from the authority granted by ~~this exception, a lawyer~~ Rule 49(c)(12), an attorney may represent parties in ~~ADR~~mediation, arbitration, or other alternative dispute resolution proceedings ~~(or other matters)~~ under ~~subsection~~ Rule 49(c)(13) if the ~~lawyer's~~attorney'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~~attorneys who serve as arbitrators, mediators, or other kinds of neutrals ~~in ADR proceedings~~ are not engaged in the practice of law.

Commentary to ~~§~~Rule 49(c)(13):

~~The exception~~There are occasions in ~~subsection (c)(13) recognizes that Rule 49 is not intended to require admission to the D.C. Bar where~~which an attorney ~~with a principal office outside the District of Columbia is incidentally and temporarily required to come into the District of Columbia to~~ admitted in another jurisdiction may provide legal services ~~to~~on 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~~ basis 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~~of Columbia under circumstances that do not create 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~~unreasonable risk to the interests of their clients, the public, or the courts. Rule 49(c)(13) authorizes law practice in two circumstances.

~~Where, however, an~~ There is no single test to determine whether an attorney's services are provided on a "temporary" basis in the District, and may therefore be permissible under Rule 49(c)(13). Services may be "temporary" even though the attorney provides ~~legal~~ services ~~concerning a transaction related to~~in the District ~~from a location within the District~~on a recurring basis, or for an extended period of ~~Columbia,~~time, as when the attorney ~~may be engaged in the practice of~~ is representing a client in a single lengthy negotiation or litigation. For example, an attorney 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 in the District for purposes of Rule 49(c)(13). If an attorney's principal place of business is in the District, the attorney is not practicing law in the District ~~of Columbia because the attorney's presence is not incidental. Whether a transaction is related to~~ on a temporary basis.

Rule 49(c)(13) provides that an attorney rendering services in the District on a temporary basis does not violate Rule 49 when the attorney engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the attorney is admitted or in which the attorney reasonably expects to be admitted *pro hac vice*. Examples of permissible conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, an attorney admitted only in another jurisdiction may engage in conduct temporarily in the District in connection with pending litigation in another jurisdiction in which the attorney is or reasonably expects to be authorized to appear, including taking depositions in the District.

An attorney rendering services in the District on a temporary basis does not violate Rule 49 when the services arise out of ~~Columbia depends on the location of the parties, the location~~or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted. Several factors may be relevant to whether the services provided in the District of Columbia arise out of ~~the property and interests at issue, and~~or are reasonably related to an attorney's practice in a jurisdiction in which the lawyer is admitted. The attorney's client may have been previously represented by the attorney, or may be resident in or have substantial contacts with the jurisdiction

in which the attorney is admitted. The matter, although involving other jurisdictions, may have a significant connection with the jurisdiction in which the attorney is admitted. In other cases, significant aspects of the attorney's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law ~~to be applied.~~of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their attorney in assessing the relative merits of each. In addition, the services may draw on the attorney's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally uniform, foreign, or international law. Another relevant factor is whether the ~~lawyer~~attorney not admitted to the ~~D.C.~~District of Columbia Bar is the only ~~lawyer~~attorney for a party, or whether the ~~lawyer~~attorney is co-counsel or the ~~lawyer's~~attorney'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~~an attorney 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.~~under Rule 49(c)(13). However, ~~a lawyer~~an attorney 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.~~under Rule 49(c)(13). Whether the ~~lawyer~~attorney who is not admitted to the ~~D.C.~~District of Columbia Bar and whose principal office is outside the District is associated with or supervised by a ~~member of the~~ D.C. Bar Member is a relevant, but not controlling, factor in determining whether the ~~lawyer's~~attorney's practice in the District is ~~"incidental."~~ authorized by Rule 49(c)(13)

~~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~~Legal services provided in connection with a matter pending in a court, tribunal, or agency in the District of Columbia generally are not authorized by Rule 49(c)(13). Legal services provided in connection with a matter pending before a congressional committee often are.

Rule 49(c)(13) 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~~attorney 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~~attorney be in good standing as an attorney or counselor at law (or the equivalent of either) in the country where ~~he or she~~the person 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~~A person who occasionally practices law from the person's residence in the District of Columbia, either 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~~telecommuting or working from home, or who practices temporarily from a hotel or short-term rental accommodation while on vacation 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~~ , does not violate Rule 49, provided the person: (1) maintains a law office in a jurisdiction where the attorney is admitted to practice; (2) avoids using a District of Columbia ~~and who provides pro bono services~~address in any business document or otherwise holding out as authorized to practice law in the District of Columbia ~~on an incidental and temporary basis under Rule 49 (c)(13) is~~, and (3) does 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~~regularly conduct in-person meetings with clients or third parties 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.~~

A contract attorney who regularly takes short-term assignments in the District of Columbia is not engaged in temporary practice here, even if each assignment, considered in isolation, might constitute temporary practice. *See* D.C. UPL Comm. Op. 16-05. Regular work exceeds what Rule 49(c)(13) authorizes.

Commentary to ~~§~~Rule 49(d):

~~Section~~ Rule 49(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~~through informal ~~and formal~~ proceedings.

Commentary to ~~§~~Rule 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~~ Rule 49(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.~~District of Columbia 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~~unauthorized practice is found. *J.H. Marshall & Assocs., Inc. v. Burleson*, 313 A.2d 587 (D.C. 1973).