



DISTRICT OF COLUMBIA COURT OF APPEALS
COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW
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**OPINION 23-18: Practice of Law in Disciplinary Matters
by Attorneys Admitted Outside the District of Columbia**

The Committee on Unauthorized Practice of Law and the Board on Professional Responsibility have received several inquiries about the application of Court of Appeals Rule 49 to attorneys who are not licensed in the District but who wish to appear on behalf of respondents in D.C. attorney-discipline matters. To assist practitioners seeking to comply with Rule 49, the Committee has determined to issue this opinion pursuant to its authority under Rule 49(d)(3)(G).

In short, the Committee concludes that an attorney licensed outside D.C. may represent respondents in disciplinary proceedings without violating Rule 49's prohibition on unauthorized practice of law so long as the attorney meets the requirements for *pro hac vice* admission described in Rule 49(c)(7).

The Latin term *pro hac vice* means "for this occasion or particular purpose," and "usually refers to a lawyer who has not been admitted to practice in a particular jurisdiction but who is admitted there temporarily for the purposes of conducting a particular case."¹ As a general principle, an attorney appearing *pro hac vice* is not engaged in the unauthorized practice of law because the attorney's appearance is affirmatively authorized by the court that permitted the attorney to appear. Because handling a case necessarily requires an attorney to provide legal services outside the courtroom, admission *pro hac vice* likewise extends to legal services related to the court proceeding.

In the District of Columbia, *pro hac vice* practice is governed by Court of Appeals Rule 49 as a specific exception to the general prohibition on the practice of law by those who are not members of the D.C. Bar.² Accordingly, we look to the text of the exception to determine whether it covers appearing on behalf of a respondent in an attorney-discipline proceeding.

Rule 49(c)(7) defines the exception as: "Providing legal services in or reasonably related to a pending or potential proceeding in a court of the District of Columbia, if the person has been or reasonably expects to be admitted *pro hac vice*." Thus, the exception has two requirements: (1) the legal services must be reasonably related to a pending or potential proceeding in a D.C. court; and (2) the attorney must be admitted or reasonably expect to be admitted *pro hac vice* in the proceeding. The first requirement defines the scope of legal services that are covered under

¹ BLACK'S LAW DICTIONARY 1227 (10th ed. 2014).

² D.C. Ct. App. R. 49(a), 49(c)(7); *see also* D.C. Super. Ct. Civ. R. 101(a)(3) & D.C. Super. Ct. Crim. R. 115 (requiring attorneys licensed in other jurisdictions to comply with Rule 49 to appear *pro hac vice*); *Brookens v. Committee on Unauthorized Practice of Law*, 538 A.2d 1120, 1124 (D.C. 1988).

the exception; the second describes the conditions under which the attorney providing those services would not be engaged in unauthorized practice of law.

The scope of services that are covered by the exception 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.³

Turning to the question at hand, we conclude that legal services provided to a respondent in an attorney-discipline proceeding are within the scope of the *pro hac vice* exception because they are reasonably related to potential proceedings in the D.C. Court of Appeals. To understand why, we take a short tour of D.C.’s attorney-discipline system.

Attorneys for respondents in disciplinary proceedings typically appear in the first instance before a hearing committee appointed by the Board on Professional Responsibility.⁴ Hearing committees are composed of two attorney volunteers and one non-attorney member of the public; thus, they are not courts and cannot grant attorneys permission to appear *pro hac vice*.⁵ Even so, hearing committees conduct hearings in a trial-like setting on formal charges of misconduct, proposed negotiated disciplines, and contested petitions for reinstatement.⁶ Although the typical path for those matters begins with a hearing committee, it ends at the Court of Appeals.

For example, after conducting a hearing on formal charges of misconduct, hearing committees submit findings and recommendations to the Board on Professional Responsibility. The Board is not a court either and thus cannot admit attorneys to practice *pro hac vice*. But when the parties take exception to a hearing committee’s report, the Board schedules briefing and hears oral arguments. Whether exceptions are taken or not, the Board makes its own findings and submits them at last to the Court of Appeals, which *is* a court of the District of Columbia.⁷ Negotiated disciplines and contested petitions for reinstatement take a slightly different path in that hearing committees submit their findings and recommendations to the Court directly, but they wind up at the same place.⁸

Once a disciplinary matter reaches the Court of Appeals, an out-of-state attorney representing the respondent can apply to the Court for *pro hac vice* admission. Until then, a Court of Appeals proceeding may only be “potential,” but that is enough for the *pro hac vice* exception. And though it is possible for disciplinary proceedings to be concluded without being referred to the Court,⁹ those matters still had the potential to become a proceeding in the Court of

³ This opinion is not intended to define what qualifies as a “potential” court hearing beyond attorney-discipline proceedings.

⁴ D.C. Bar R. XI § 4(e)(4).

⁵ *Id.*

⁶ *Id.* § 5(c)(1).

⁷ *Id.* §§ 4(e)(7); 5(c)(2); 9(b)–(d).

⁸ *Id.* § 5(c)(3).

⁹ *See, e.g., id.* § 4(e)(8) (regarding reprimands).

Appeals. Legal services provided to a respondent in an attorney-discipline proceeding before it reaches the Court are “reasonably related,” in the words of the *pro hac vice* exception, to the Court of Appeals proceeding that the matter has the potential to become.

That conclusion does not end the inquiry, however. The second requirement for legal services to fall within the *pro hac vice* exception is that the attorney providing the services reasonably expects to be admitted *pro hac vice*.¹⁰ That means that the attorney must have a reasonable expectation that he or she will comply with the procedures and limitations on *pro hac vice* admission described in Rule 49(c)(7). For example, the Rule requires that the applicant make certifications about: the frequency of his or her *pro hac vice* applications in D.C. courts; bar status and good standing; disciplinary history; and practice of law in the District.¹¹ It also excludes persons who operate from an office within the District of Columbia from admission *pro hac vice* and requires the applicant to associate with a member of the D.C. Bar for the proceeding.¹²

Accordingly, an out-of-state attorney intending to represent a respondent in an attorney-discipline proceeding should review the *pro hac vice* application procedure described in Rule 49(c)(7) to determine whether he or she can reasonably expect to be admitted. If so, the attorney’s appearances before the hearing committee and the Board of Professional Responsibility will be covered by the *pro hac vice* exception.

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This opinion was adopted by the Committee on Unauthorized Practice of Law by vote of a quorum of its members then present on April 12, 2018. The staff of the Committee shall cause the opinion to be submitted for publication in the same manner as the opinions rendered under the Rules of Professional Conduct.

April 12, 2018


Jack Metzler
Committee Member

¹⁰ D.C. Ct. App. R. 49(c)(7).

¹¹ See *id.* R. 49(c)(7)(ii).

¹² *Id.* R. 49(c)(7)(iii)–(iv); D.C. Super. Ct. Civ. R. 101. Notably, associating with a member of the D.C. Bar is a requirement for actual *pro hac vice* admission; it is not required in a disciplinary proceeding before it reaches the Court of Appeals, though it may still be advisable.