

Opinion 1-98 of the District of Columbia Court of Appeals Committee on the Unauthorized Practice of Law

Issued February 2, 1998

Pursuant to District of Columbia Court of Appeals Rule 49 (the Rule), section 49(d)(3)(G), the Committee on the unauthorized Practice of Law (the "Committee"), by a majority vote of a quorum of its members then present, approved the following opinion, at its meeting on January 30, 1998:

Compliance With Exception 49(c)(8)

Effective February 1, 1998, section 49(c)(8) of the Rule provides that the following activity in the District of Columbia is excepted from the prohibitions of section (a) of the Rule, provided the person in question is not otherwise engaged in the practice of law or holding out as authorized or competent to practice law in the District of Columbia:

Limited Duration Supervision

By D.C. Bar Member:

Practicing Law from a principal office located in the District of Columbia, while an active member in good standing of the highest court of a state or territory, under the direct supervision of an enrolled, active member of the District of Columbia Bar, for one period, not to exceed 360 days from the commencement of such practice, during the pendency of a person's first application for admission to the District of Columbia Bar; provided that the practitioner has submitted the application for admission within ninety (90) days of commencing practice in the District of Columbia, that the District of Columbia Bar member takes responsibility for the quality of the work and complaints concerning the services, and gives notice to the public of the member's supervision and the bar status.

In order to assist persons seeking to comply with the Rule, and particularly with the limited dispensation provided by section 49(c)(8), the Committee states the following concerning its opinion of the interpretation and application of that section:

Each requirement must be met: When considering whether section 49(c)(8) covers a person's practice of law in the District of Columbia, all requirements must be met. That is, for example, a person seeking to utilize the exemption of the section must be an active member in good standing in another jurisdiction of the United States; the supervision must be by an enrolled, active member of the D.C. Bar, not merely an inactive member; the supervision must be direct; and the exemption is available only once for only one year while the practitioner's first application is pending.

There is no exemption allowing the practitioner to wait until she or he may be eligible to waive into the D.C. Bar. If the only method available for admission during the first 90 days of practice is by examination, then the person must apply for admission by examination.

All the conditions of the proviso must be met also.

Guidance on notice to the public: The following legend will be considered by the Committee to meet the requirement of notice to the public:

Admitted Only in [the other jurisdiction]; Supervision by [name of D.C. Bar member], a member of the D.C. Bar.

Of course, multiple jurisdictions and multiple supervising Bar members should be indicated where appropriate. Such notice must be included on all business documents signed or expressly presented by the practitioner who is not admitted to the D.C. Bar, including without limitation: letterhead or signature blocks (but not necessarily both); business cards; promotional materials; and filings or formal submissions. While it is not necessary that the supervising Bar member sign such documents, it is necessary that he or she directly supervises the preparation, distribution and submission of them in the exercise of direct supervision of the practitioner's work. The substance of the notice also must be conveyed orally by the non-admitted practitioner or the supervisor, when necessary to make certain that members of the public are aware of the practitioner's limited

authorization to practice law in the District of Columbia.

Actions which tend to contradict or override the notice will, to the same degree, tend to eliminate the availability of the exemption.

Covered practitioners: The exception covers both persons who come to the District of Columbia to practice law from a location outside the District, and persons entering into practice in the District from a status that is expressly exempt under section 49(c) of the Rule.

Application of the 90-day provision: For persons entering into the practice of law after the Court of Appeals issued its order adopting the revision to Rule 49 (December 9, 1997), the 90-day period within which a person must file her or his application under the rule shall run from February 1, 1998, or the date the person enters into the practice of law in the District of Columbia, whichever shall first occur. Where a person has entered into the practice of law before December 9, 1997, his or her compliance with the rule will be considered under the former interpretation, of which section 49(c)(8) is a more precise statement, such that the person must submit her or his application "promptly" after entering into the practice of law in the District of Columbia.

This staff of the Committee shall cause this opinion to be submitted for publication in the same manner as the opinions rendered under the Rules of Professional Conduct.

Done this 2nd day of February, 1998.

Erik P. Christian, Chair
District of Columbia Court of Appeals
Committee on the Unauthorized Practice of Law