

Opinion 10-01

of the District of Columbia Court of Appeals Committee on the Unauthorized Practice of Law

Issued February 27, 2001

Pursuant to District of Columbia Court of Appeals Rule 49 (the "Rule" or "Rule 49"), and specifically its section 49(d)(3)(G), the District of Columbia Court of Appeals 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 February 23, 2001:

Use of the limited duration practice exception by a lawyer who has previously practiced in the District under another exception to Rule 49

The Committee has received an inquiry from an attorney involving the interpretation of Rule 49(c)(8), which authorizes an attorney admitted in another jurisdiction to practice in the District for a limited duration, under specified restrictions, while the attorney's D.C. Bar application is pending. The inquiry involves in particular the portion of section (c)(8) that requires a bar applicant invoking the (c)(8) limited duration practice exception to submit a D.C. Bar application within 90 days after commencing practice in the District. The inquiring attorney asks whether an applicant who has practiced in the District for longer than 90 days under one of the other exceptions of Rule 49(c) can nevertheless meet the 90-day requirement and qualify for the (c)(8) exception. The Committee believes, for the reasons set forth below, that the 90-day limitation in subsection (c)(8) does not apply to practice which is specifically permitted under one of the other exceptions of Rule 49(c).

This issue arises with some frequency. For example, many attorneys not admitted to the D.C. Bar practice legitimately in the District under the (c)(1) exception for U.S. government employees, the (c)(2) and (c)(5) exceptions for attorneys who limit their practice to certain federal or D.C. agencies, the (c)(4) exception for D.C. government employees, and the (c)(6) exception for internal counsel. When these attorneys leave the government for private practice or wish to expand the scope of their private practice, they must become members of the D.C. Bar if they wish to continue to practice in the District. Rule 49(c)(8) allows attorneys admitted in another jurisdiction to practice in the District under the supervision of a member of the D.C. Bar for up to 360 days while their bar application is pending.¹ This exception accommodates the significant number of attorneys who come to District to practice law after being admitted to the bar in another jurisdiction, and the supervision and notice requirements help to ensure that the public is protected while the attorney's D.C. Bar application is pending. Rule 49(c)(8) provides a window in which attorneys licensed in other jurisdictions can establish their qualification to practice law in the District of Columbia without undue disruption of their careers and livelihoods.

The (c)(8) exception requires an attorney to submit the application within 90 days of the date of commencement of practice in the District. The question here is whether the period of practice under another exception to Rule 49 is counted in determining whether an attorney applied for admission to the D.C. Bar within 90 days after commencing practice under the (c)(8) exception. The Committee concludes that it does not.

The (c)(8) exception is available for 360 days "from the commencement of *such practice*" (emphasis added), not from "any" practice under any Rule 49 exception. The words "such practice," otherwise undefined, can only refer back to the opening lines of subsection (c)(8). Those lines describe a specific type of practice—practice from a principal office in the District, while a member of the bar of another jurisdiction, under the direct supervision of a D.C. Bar member. The term "such practice" does not describe practice under the (c)(1) exception or any of the other exceptions of Rule 49(c). Consequently, the limited duration practice permitted by subsection (c)(8) does not include periods of time in which the attorney practiced under other exceptions. While the 90-day requirement in subsection (c)(8) refers to "practice in the District of Columbia" and does not use the limiting adjective "such," the Committee believes the 90-day application period is intended to form an integral part of the 360-day limited duration practice allowed in the (c)(8) exception.

This interpretation not only gives meaning and consistency to the language of section (c)(8), but it is wholly consistent with, and promotes, the purpose of Rule 49. The contrary interpretation would, for example, force a government lawyer to apply for admission to the D.C. Bar at the

commencement of government service if the lawyer wanted to preserve the opportunity eventually to enter private practice without potentially substantial delay while the attorney's D.C. Bar application is pending. That approach would undermine the purposes of the other Rule 49 exceptions, without any countervailing benefit to the public. The supervision and notice requirements protect the public during the pendency of an application by an attorney who previously practiced under another exception, and the 90-day requirement ensures that such an attorney will apply promptly for D.C. Bar membership after another exception ceases to apply. The exceptions to Rule 49 permit attorneys not admitted to the D.C. Bar to engage in certain types of legal practice under specified conditions. To the extent an attorney wishes to move beyond these specified areas and engage in types of practice for which D.C. Bar membership is required, it is the intent of Rule 49 to encourage such membership and facilitate the membership process through the (c)(8) limited duration practice exception. The Committee's interpretation of the (c)(8) exception is consistent with both the letter and the spirit of Rule 49 to protect the public and avoid undue interruption in attorneys' careers.

The 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.

¹ The (c)(8) exception applies to a person "[p]racticing 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 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 practitioner's bar status."

Done this 27th day of February, 2001.