



District of Columbia Court of Appeals
Committee on Unauthorized Practice of Law
500 Indiana Avenue, N.W.
Washington, D. C. 20001
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OPINION 18-06:

**PROVISION OF PRO BONO SERVICES UNDER THE LIMITED DURATION
PRACTICE EXCEPTION IN RULE 49(c)(8)**

Issued October 20, 2006

Pursuant to District of Columbia Court of Appeals Rule 49, and specifically its section 49(d)(3)(G), the District of Columbia Court of Appeals Committee on 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 October 20, 2006:

The Committee believes that guidance concerning the need for admission *pro hac vice* would be useful to lawyers who practice under the limited duration practice exception in Rule 49(c)(8) and who handle cases on a *pro bono* basis in the courts of the District of Columbia. If a lawyer practicing under the (c)(8) exception represents a party *pro bono* in a case in a District of Columbia court, the lawyer must file Form 9, checking the box concerning the (c)(8) exception. However, consistent with the goal of Rule 49 to facilitate *pro bono* representation, such lawyers need not apply for admission *pro hac vice* (unless a judge requires it in a particular case) or pay the \$100 fee for such applications, and cases handled on a *pro bono* basis do not count against the limit of five annual *pro hac vice* admissions that would otherwise apply under Rule 49(c)(7)(i).

The *pro hac vice* exception in Rule 49(c)(7) permits lawyers not admitted to the D.C. Bar to provide legal services in the courts of the District of Columbia following admission *pro hac vice*, provided specified conditions are met. These conditions include payment of a \$100 application fee. See Rule 49(c)(7)(v). Rule 49(c)(i) provides that “[n]o person may apply for admission *pro hac vice* in more than five (5) cases pending in the courts of the District of Columbia per calendar year, except for exceptional cause shown to the court.” See generally the Committee’s Opinion 2-98 for a discussion of the procedure for admission *pro hac vice*.

The limited duration practice exception in Rule 49(c)(8) permits a lawyer in good standing in another U.S. jurisdiction to practice law from a principal office in the District of Columbia for up to 360 days subject to several conditions, including applying for admission to the D.C. Bar within ninety days after commencing practice. See Opinion 7-99 for a discussion of permissible practice of law under Rule 49(c)(8) and Opinion 11-02 for a discussion of the applicable disclosure requirements.

The *pro bono* exception in Rule 49(c)(9) authorizes individuals to provide *pro bono* legal services in specified circumstances. As the Committee stated in Opinion 3-98, “The purpose of the exception set forth in Rule 49(c)(9) is 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.” The Committee explained that, consistent with this purpose, entitlement to practice under the (c)(9) exception “requires only the completion of a certificate that a person satisfies the requirements to practice under section 49(c)(9); neither an application nor a motion to appear *pro hac vice* in litigation is required.” That certificate is Form 9, “Certification of Practice Pro Bono Publico,” which is included in the Appendix of Forms to the Court’s Rules. The Committee continued in Opinion 3-98, “The certificate ... is adequate to authorize practice under the *pro bono* exception

both inside and outside of litigation.” The Committee noted that “[o]f course, any judge of the Superior Court or the Court of Appeals may require additional filings for participation in any particular case,” but that “[i]n such circumstance, the limitation on the number of *pro hac vice* applications would not apply.”

The Commentary to Rule 49(c)(9) states that Form 9 not only addresses practice under the *pro bono* exception in (c)(9) but also provides for “pro bono representation under the limited duration supervision exception of (c)(8).” That statement in the Commentary indicates that, consistent with the purpose of Rule 49 to expand the availability of *pro bono* legal services, lawyers practicing under the (c)(8) exception may take on *pro bono* cases in the District of Columbia courts without the financial burden of the \$100 fee and without limiting their ability to take on up to five paying cases in these courts in each calendar year. Moreover, the \$100 fee is intended “to approximate the value of the privilege to practice before the District of Columbia courts,” Commentary to Rule 49(c)(7), and that rationale applies to cases a lawyer is paid to handle, not to *pro bono* cases. *Pro bono* clients of lawyers practicing under the (c)(8) exception are protected, just like paying clients, by the supervision and notice requirements of the exception.

If a lawyer practicing under the (c)(8) exception receives compensation for handling a case in the District of Columbia courts, the lawyer must apply for admission *pro hac vice* and pay the \$100 fee, and the case counts against the limit in Rule 49(c)(7)(i) of five cases per calendar year. In 2002, the Court of Appeals amended Rule 49(c)(8) to make explicit that one of the requirements of the (c)(8) exception is “that the practitioner is admitted *pro hac vice* to the extent he or she provides legal services in the courts of the District of Columbia.” In Opinion 11-02, the Committee confirmed that “attorneys practicing under the (c)(8) exception are required to move for admission *pro hac vice* when they appear in District of Columbia courts.” However, for the reasons explained

above, these conditions do not apply when a attorney practicing under the (c)(8) exception handles cases on a *pro bono* basis.

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.

Done this 20th day of October, 2006.

Anthony C Epstein.

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