

**Opinion 2-98
of the District of Columbia Court of Appeals Committee on the Unauthorized Practice of
Law**

Issued March 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 February 27, 1998:

Procedure For Application for Admission *Pro Hac Vice* Under Exception 49(c)(7)

Effective February 1, 1998, section 49(c)(7) of the Rule provides as follows concerning applications for admission *pro hac vice*:

[49(c)] The following activity in the District of Columbia is excepted from the prohibitions of section (a) of the Rule, provided 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:

7. Pro Hac Vice

Providing legal services in the courts of the District of Columbia, following admission *pro hac vice*, provided:

- i. Limitation to 5 Applications Per Year. No 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.
- ii. Applicant Declaration. Each application for admission *pro hac vice* shall be accompanied by a sworn statement as follows:

I declare under penalty of perjury: (1) that I have not applied for admission *pro hac vice* in more than five cases in courts of the District of Columbia this calendar year, (2) that I am a member in good standing of the highest court(s) of the State(s) of _____ (state all states) _____, (3) that there are no disciplinary complaints pending against me for violation of the rules of the courts of those states, (4) that I have not been suspended or disbarred for disciplinary reasons from practice in any court, (5) that I am associated with _____ (name the D.C. Bar member and give his/her Bar number) _____ under Super. Ct. Civ. R. 101, (6) that I do not practice or hold out to practice law in the District of Columbia, and (7) that I have read the rules of the relevant division of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals, and have complied fully with District of Columbia Court of Appeals Rule 49 and, as applicable, Super. Ct. Civ. R. 101. The reason(s) I am applying for admission *pro hac vice* are as follows:

_____ I acknowledge the power and jurisdiction of the courts of the District of Columbia over my professional conduct, and I agree to be bound by the District of Columbia Court of Appeals Rules of Professional Conduct in this matter, if I am admitted *pro hac vice*.

- iii. Office Outside of D.C. No person who maintains or operates from an office or location for the practice of law within the District of Columbia may be admitted to practice before a court of the District of Columbia *pro hac vice*, unless that person qualifies under another express exception provided in section (c) hereof.
- iv. Supervision. Any person admitted *pro hac vice* must comply with Super. Ct. Civ. R. 101 and other applicable rules of the District of Columbia courts.
- v. Application Fee. Application to participate *pro hac vice* shall be accompanied by a fee of \$100.00 to be paid to the Clerk of Court. Proof of payment of the fee shall

accompany the application for admission *pro hac vice*. The application fee shall be waived for a person whose conduct is covered by section (c)(9) hereof, or whose client's application to proceed in forma pauperis has been granted.

- vi. Filing. The applicant first shall submit a copy of the application to the office of the Committee, pay the application fee, and there receive a receipt for payment of the fee; whereupon the applicant shall file the application with the receipt in the appropriate office of the Clerk of Court. Only certified checks, cashiers checks, or money orders will be accepted in payment of the fee, made payable to "Clerk, D.C. Court of Appeals". The application will not be accepted for filing without the required receipt.
- vii. Power of the Court. The court to which the relevant litigation matter is assigned may grant or deny applications, and withdraw admissions to participate *pro hac vice* in its discretion.

In order to assist persons seeking to be admitted *pro hac vice* in the courts of the District of Columbia, the Committee advises the following concerning the procedure and salient requirements for applying for admission *pro hac vice*:

Steps Of The Application Process: As indicated in the Rule, the steps for applying and for admission *pro hac vice* are as follows:

8. Obtain an application form from the Office of the Committee on the Unauthorized Practice of Law, Room 4200 in the Moultrie Courthouse (the CUPL Office);
9. Complete the application and submit it with the required \$100.00 fee to the CUPL Office (note the methods of payment prescribed in the Rule), retaining a copy;

Pro bono practitioners acting under the exception set forth in section 49(c)(9), who may be specially requested by the court to file a motion for admission *pro hac vice*, are not required to pay the fee.

10. Obtain a receipt for payment of the fee from the CUPL Office;
11. File a motion for admission *pro hac vice* in the appropriate Clerk's office, in compliance with the applicable rules for motions, which shall include at least:
 - a. a caption stating the case or matter in which *pro hac vice* participation is sought;
 - b. the completed application, as an attachment;
 - c. the receipt for payment of the fee, as an attachment;
 - d. signature by the applicant and the supervising D.C. Bar member;
 - e. proof of service on the parties as required by the appropriate court rule; and
 - f. a proposed order.
12. Be prepared to present a copy of the completed filing to the Court, if requested.

Discretion of the Court: Even if all the required steps have been followed, and the applicant is otherwise eligible for admission *pro hac vice*, the Court retains full discretion to deny the application. See section 49(c)(7)vii.

Superior Court Rule 101: As indicated in section 49(c)(7)iv, an applicant must comply with Superior Court Civil Rule 101 in participating *pro hac vice* in any court of the District of Columbia. In pertinent part, that rule provides:

[101(a)](3) An attorney who is a member in good standing of the bar of any United States court or of the highest court of any state but who is not a member in good standing of the District of Columbia Bar may enter an appearance, and file pleadings in this Court, and if granted permission by the Court may participate in proceedings in this Court, *pro hac vice*, provided that such attorney joins of record a member in good standing of the District of Columbia Bar who will at all times be prepared to go forward with the case, and who shall sign all papers subsequently filed and shall attend all subsequent proceedings in the action unless this latter requirement is waived by the

judge presiding at the proceeding in question. An attorney seeking permission to appear under this section shall file a praecipe indicating the attorney's name, address, telephone number, the jurisdiction(s) where the attorney is a member of a bar and the number of times the attorney has previously sought to appear under this Rule. Any attorney seeking to appear on a *pro hac vice* must comply with the restrictions prescribed by the District of Columbia Court of Appeals Rule 49(c). The attorney shall also serve a copy of the praecipe on the District of Columbia Court of Appeals Committee on the Unauthorized Practice in the manner provided in SCR Civil 5. Proof of service shall be made by the filing of a certificate of the attorney showing the date and manner of service. Any member of the District of Columbia Bar who joins the attorney seeking special permission to appear shall also sign the praecipe and the certificate.

In consideration of the incorporation of the requirements of District of Columbia Court of Appeals Rule 49(c) in Superior Court Civil Rule 101(a)(3), the Court of Appeals rule governs in event of conflict or inconsistency. Accordingly, the following are the requirements of Superior Court Rule 101(a)(3) which are added to the requirements of District of Columbia Court of Appeals Rule 49(c)(7), and with which an attorney must comply to be eligible and to participate *pro hac vice*:

1. The attorney participating *pro hac vice* must join of record a member in good standing of the District of Columbia Bar who will at all times be prepared to go forward with the case, and who shall sign all papers subsequently filed and shall attend all subsequent proceedings in the action unless this latter requirement is waived by the judge presiding at the proceeding in question.
2. The joined member of the District of Columbia Bar must also sign the proof of service on the parties.

There is no requirement for a praecipe in addition to the filing of the motion for admission *pro hac vice*. Indeed, a praecipe would not present the question of admission directly to the Court; and, accordingly, a praecipe would be inadequate to satisfy the provisions of the Rule, esp. section 49(c)(7)vii.

Although Superior Court Civil Rule 101(a)(3) permits a person to participate *pro hac vice* merely upon being admitted to a court of the United States, District of Columbia Court of Appeals Rule 49(c)(7) limits *pro hac vice* participation only to those who are members in good standing to the highest court of a state. See section 49(c)(7)ii. Accordingly, the narrower permission of the Court of Appeals rule governs.

Note, however, that other exceptions to Court of Appeals Rule 49 allow practice by persons not admitted to the District of Columbia Bar, e.g. United States employees and agency practitioners (sections 49(c)(1) and (2)); District of Columbia employees and agency practitioners (sections 49(c)(4) and (5)); limited duration practice by attorneys admitted in other states (section 49(c)(8)); and *pro bono* legal services (section 49(c)(9)). Where persons not admitted to the District of Columbia Bar are properly practicing in the District of Columbia under such other exceptions, they are eligible to be admitted under the *pro hac vice* exceptions, if they comply with the requirements of that section. See section 49(c)(7)iii.

Limit to 5 Appearances Per Year: No person may apply for Limit to 5 Appearances Per Year: No 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.

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 3rd day of March, 1998.