

Opinion 5-98 of the District of Columbia Court of Appeals Committee on the Unauthorized Practice of Law

Issued December 23, 1998

Pursuant to District of Columbia Court of Appeals Rule 49 (the "Rule" or "Rule 49"), and specifically its 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 December 11, 1998:

Notices to be given by lawyers having limited authority to practice law in the District of Columbia: In directory listings, marketing material, letterhead, business cards, telephone listings and the like

Increasingly since adoption of the revision of the Rule 49, the Committee has received inquiries concerning the proper forms of notice to be presented in a variety of written expressions issued for or by a lawyer who is admitted and in good standing in one or more states or territories other than the District of Columbia, where the lawyer's principal place of professional business is the District of Columbia, and where the lawyer is practicing law under one of the enumerated exceptions set forth in subsection (c) of the Rule.

Most inquiries to the Committee have addressed the provisions of paragraphs 49(c)(2) ("United States Government Practitioner"), 49(c)(5) ("District of Columbia Practitioner"), and 49(c)(8) ("Limited Duration Supervision By D.C. Bar Member"), each of which specifically requires notice to third parties and the public at large of the limited nature of an attorney's authority to practice law under the exception.† Because not all frequently used types of listings are adequately extensive to include the notices required by paragraphs 49(c)(2), (5) and (8), and because those notices may necessarily vary from particular matters to general holdings out, the Committee has issued this opinion with the primary purpose of giving specific guidance to persons practicing under the exceptions set forth in those paragraphs.‡ For listings that do not fall within the discussion in this opinion, the Committee is available to assist in consideration of appropriate notices upon request.

Descriptive Listings

Where an attorney who is practicing in the District of Columbia under one of the exceptions set forth in paragraphs 49(c)(2), (5) or (8) is identified in a substantially descriptive listing, such as attorney listings in the telephone yellow pages, or specialty listings like Martindale Hubbell, or firm letterhead, full conformity with the notice requirement of the respective paragraph of the Rule is required.

Accordingly, where an attorney is practicing under paragraph 49(c)(2) - the federal agency exception - she is required to include in any such descriptive listing the statement that her practice is "limited to matters and proceedings before federal courts and agencies." Where the attorney is practicing under 49(c)(5), he is required to include in any such descriptive listing the statement that his practice is "limited to matters and proceedings before [specifically-named agencies] under District of Columbia Court of Appeals Rule 49(c) (5)." Where the practitioner shows admission in another jurisdiction, that notice should follow the form, "admitted only in [the other jurisdiction(s)]."

Where an attorney is practicing under paragraph 49(c)(8) - the limited duration practice dispensation - the exception requires that she include in a descriptive listing statements that she is "admitted only in [the other jurisdiction(s)]" and that her practice is supervised directly by an identified member of the D.C. Bar. Where the descriptive listing refers to a particular matter, all supervising D.C. Bar members should be identified. Where the listing refers generally to the person's practice, however, it is not reasonable to require that multiple supervisors be specifically identified. Accordingly, although 49(c)(8) requires that specific notice be given of the particular supervising D.C.-admitted attorney, where there is a general holding out for any attorney practicing under 49(c)(8), where two or more D.C. attorneys are supervising the attorney's work, and where

those attorneys are principals of the firm, it is sufficient simply to state in a descriptive listing that the non-admitted attorney's work is supervised by "principals of the firm."

Marketing Materials

The notices in marketing materials, such as brochures, biographies or web sites, should follow the guidelines stated above for Descriptive Listings. Such materials should be carefully designed, however, to avoid any reasonable implication that the lawyer is authorized to practice law outside the applicable exception(s) under Rule 49(c).

Business Cards

The notices on business cards should follow the guidelines noted above for Descriptive Listings.

Individual Correspondence

Where an attorney is practicing under the exceptions set forth in paragraphs 49(c)(2) or (5) - the "agency exceptions," and where he issues correspondence which addresses a particular matter or matters on letterhead that does not list his name, he should follow the guidelines noted above for Descriptive Listings by showing the required notice under his signature.

Where an attorney is practicing under the exception set forth in paragraph 49(c)(8), and where she issues correspondence which addresses a particular matter or matters on letterhead that does not list her name, she should include a statement under her signature that she is admitted "only in [specified other jurisdiction(s)]" and is "directly supervised by [a specifically identified principal who is admitted to the D.C. Bar]."

Routine Telephone Listings

Where telephone listings permit professional identification only by such simple abbreviations as "atty.," attorneys practicing under the agency exceptions in paragraph 49(c)(2) or (5) may use that general designation. Attorneys practicing under 49(c)(8) may not use that designation, however, because their privilege of practicing under that exception is temporary.

Grace Period for Compliance

In consideration of the wide range of practice concerning the listings addressed in this opinion, the fact that this is the first specific consideration of compliance with the Rule concerning such listings, and the fact that many of those listings cannot be changed immediately, the Committee will consider an attorney to be in compliance with the notice requirements discussed herein if the relevant listing meets those requirements within three months of the date of this opinion, or upon the next regularly scheduled amendment to the listing, whichever should later occur.

Where an attorney is in doubt concerning the appropriate public notice of her limited practice status under Rule 49, she should submit a written inquiry to the Committee, setting forth all relevant facts, to the Committee offices at Room 4200, Moultrie Courthouse, 500 Indiana Avenue, Washington, D.C. 20001.

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 23rd day of December, 1998.

†Paragraph 49(c)(9) ("Pro Bono Legal Services"), while not specifically requiring public notice of the limited scope of the practitioner's authority, does require the filing of a certificate with the court under subparagraph (A). This opinion would conclude that an additional, specific form of public notice would be required only if the activity of the practitioner under 49(c)(9)(A) could reasonably mislead third parties or the public concerning his authority.

‡We do not address the notice to be given by attorneys practicing under exceptions other than Rule 49(c)(2), (5), and (8), in listings other than lobby directories, as we have had not received inquiries concerning such other listings and, accordingly, do not perceive a need to anticipate.

