Opinions 7-99

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

Issued September 24, 1999

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 majority vote of a quorum of its members present, approved the following opinion, at its meeting on September 24, 1999.

PERMISSIBLE PRACTICE OF LAW DURING THE 360 DAY PERIOD OF RULE 49 (c)(8)

The District of Columbia attracts a large number of attorneys from across the United States, including many who are established in the practice of law in their home states. Often, circumstances prevent such attorneys from fulfilling the requirements for admission to the D.C. Bar prior to arrival in the District of Columbia. Accordingly, on December 9, 1997, the District of Columbia Court of Appeals adopted Rule 49 (c)(8). The rule allows persons who are admitted to practice in other states or territories to practice law within the District of Columbia for a limited period of time following their application to the D.C. Bar so long as they apply promptly (within 90 days of commencing the practice of law in the District), their practice is supervised by a D.C. Bar member who takes responsibility for the quality of the work, and the public is fully informed of the status of membership and the supervision. The period of such practice is limited to "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."

Inquiry has been made to the Committee of the nature and scope of Rule 49 (c)(8) and the 360-day period in the following context: An attorney was admitted to the bar of a state which does not notify bar candidates of their score on the Multistate Bar Examination (MBE). The attorney relocated to the District of Columbia in anticipation that the MBE score would be high enough to waive into the D.C. Bar. The attorney has decided for personal reasons to leave the District of Columbia, but wishes to continue the supervised practice of law in the District of Columbia for the remainder of the 360-day period set forth in Rule 49 (c)(8).

The inquiry thus is whether an attorney can continue to practice law within the District of Columbia for a period after the attorney has failed to satisfy and/or abandoned efforts to satisfy the requirements to become a member of the D.C. Bar. The Committee has considered this issue and determined that the practice of law in the District of Columbia under such circumstances is not permitted.

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 Rule offers a one-time accommodation to incoming attorneys by allowing them to practice law here (with appropriate supervision and disclosure) for a maximum of 360 days while their timely applications for admission to the D.C. Bar are pending. As soon as an application is rejected or withdrawn, the exception no longer exists, and the attorney is no longer entitled to practice law in the District of Columbia, even under supervision. Rule 49 (c)(8) establishes a simple, objective test: a person may practice in the District under this exception until the application is no longer pending, 360 days have passed since the person began practicing law, or the person did not file an application within 90 days after commencing the practice of law ☐whichever comes first.

This is true regardless of the reason the application is no longer pending. Indeed, it would not be administratively manageable for the Committee to ascertain the subjective reason for a person's decision not to pursue an application. Clearly, where the Committee on Admissions determines after 180 days that an attorney-applicant lacks the character and integrity to practice law in the District of Columbia, the applicant cannot invoke Rule 49 (c)(8) to practice law here for the remaining 180 days of the 360-day window. The same is true of an attorney-applicant who takes and fails the bar examination within the 360-day period: the Rule does not allow continued practice of law after such failure.

The Committee sees no principal reason to give different treatment to an attorney who withdraws his or her application in anticipation of rejection because of, as here, a non-qualifying MBE score or where an attorney fails to complete steps necessary to the application (e.g., taking the bar examination). An attorney who commenced the practice of law within the District pursuant to Rule 49 (c)(8) with a genuine intention to file an application within 90 days must immediately cease such practice if she changes her mind and decides not to apply. In each of these cases, the "pendency of a person's first application" has been terminated and, along with it, the special permission to practice law.

Rule 49 prohibits the practice of law within the District of Columbia by any person who has not satisfied the qualifications of legal knowledge and personal integrity necessary for admission to the D.C. Bar, unless they fall within a specified exception to this Rule. The Court of Appeals has recognized the increasingly mobile nature of the practice of law and, through Rule 49 (c)(8), significantly eased the transition into the District of Columbia for attorneys from other states and territories. Rule 49 (c)(8), however, does not give carte blanche to attorneys of other jurisdictions to come into the District of Columbia to practice law for 360 days irrespective of the standards of the D.C. Bar.

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

Done this 24th day of September 1999.