

Opinion 9-01

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, 2000:

PRO HAC VICE STATEMENTS BY LAWYERS PRACTICING IN THE DISTRICT OF COLUMBIA PURSUANT TO AN EXCEPTION TO RULE 49

The Committee has received several inquiries about whether lawyers practicing in the District of Columbia pursuant to an exception to Rule 49 may make appropriate changes to the sworn statements that Rule 49(c)(7)(ii) requires lawyers to submit with their applications for admission *pro hac vice* in District of Columbia courts. In particular, Rule 49(c)(7)(ii) requires to swear statement to affirm "that I do not practice or hold out to practice law in the District of Columbia." Lawyers who are legitimately practicing from a principal office in the District of Columbia pursuant to Rule 49(c)(8) for up to 360 days while their applications to the D.C. Bar are pending have asked whether they may change this language when they apply for admission *pro hac vice*. The same issue arises with respect to persons practicing from an office in the District of Columbia pursuant to other exceptions in Rule 49 (c), such as subsections (c)(2) and (c)(5) for providing legal services solely before certain U.S. and D.C. government agencies and other conduct reasonably ancillary to such representation (which may include litigation relating to agency proceedings), (c)(4) for D.C. government employees, (c)(6) for internal counsel, and (c)(9) for provision of legal services *pro bono publico* in specified circumstances.

As Rule 49(c)(7)(iii) states, any person who maintains or operates from an office or location for the practice of law within the District of Columbia generally may *not* be admitted to practice *pro hac vice* before a District of Columbia court. However, Rule 49(c)(7)(iii) also recognizes that some people who maintain or operate from an office or location for the practice of law within the District of Columbia may qualify to practice in the District under an express exception other than Rule 49(c)(7). To appear in District of Columbia courts, such persons must apply for admission *pro hac vice*. In order to ensure additional accountability and compliance with court rules, District of Columbia courts generally require persons who are not members of the D.C. Bar and who provide legal services in these courts to apply for admission *pro hac vice* even if another exception to Rule 49 permits them to maintain an office in the District of Columbia.

In the Committee's opinion, Rule 49(c)(7)(ii) requires only that a person applying for admission *pro hac vice* who does *not* otherwise qualify for any exception in Rule 49(c) shall submit a sworn statement containing *all* of the provisions set forth in this subsection. An applicant who does qualify under another exception may make changes necessary to make the sworn statement accurate and complete. For example, persons practicing law pursuant to Rule 49(c)(8) from a principal office located in the District of Columbia while their applications to the D.C. Bar are pending can, and should, replace the statement "I do not practice or hold out to practice law in the District of Columbia" with the statement "I practice law in the District of Columbia pursuant to Rule 49(c)(8)." Such an applicant could not accurately state that he or she does not practice law, or hold out to practice law, in the District of Columbia. Nothing in Rule 49(c)(7)(ii) forces anyone eligible for admission *pro hac vice* to choose between swearing to an inaccurate statement or foregoing rights under the proviso in Rule 49(c)(7)(iii).

The sworn statement of an applicant for admission *pro hac vice* who qualifies under an exception other than Rule 49(c)(7) should include appropriate certifications set forth in Rule 49(c)(7)(ii), including the certification that the applicant has "complied fully with District of Columbia Court of Appeals Rule 49." An applicant for admission *pro hac vice* who qualifies under an exception other than Rule 49(c)(7) must therefore ensure that he or she has complied fully with the requirements of that other exception. For example, Rule 49(c)(8) requires that a person (1) be an active member in good standing of the highest court of a state or territory, (2) practice under the direct supervision of

an enrolled, active member of the District of Columbia Bar, (3) have a District of Columbia Bar member take responsibility for the quality of the work and complaints concerning the services, (4) submit an application for admission to the D.C. Bar within ninety days of commencing practice in the District of Columbia, (5) limit practice pursuant to this exception to no more than 360 days, and (6) give notice to the public of the member's supervision and the practitioner's bar status. Submission or grant of an application to admission *pro hac vice* for a particular case does not relieve a lawyer of any of the requirements of another exception to Rule 49.

It is the Committee's understanding that the clerk's offices of both the District of Columbia Court of Appeals and the Superior Court will accept for filing sworn statements in support of applications for admission *pro hac vice* that contain appropriate modifications of the language in Rule 49(c)(7)(ii) by applicants who qualify under another express exception in section (c).

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 27th day of February, 2001.