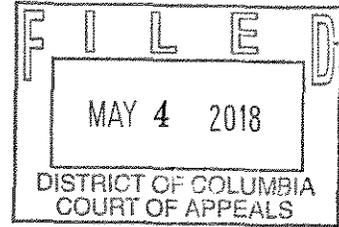


**District of Columbia
Court of Appeals**

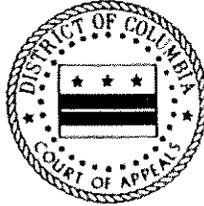


No. M-258-18

NOTICE
(FILED – May 4, 2018)

In response to proposals from the Committee on Unauthorized Practice of Law and the District of Columbia Access to Justice Commission, this court is considering whether to amend D.C. App. R. 49 (c)(9), which governs pro bono practice by persons who are not active members of the D.C. Bar. Letters explaining the proposed amendments are attached. The principal difference between the two proposals is that the Committee on Unauthorized Practice of Law focuses more narrowly on provision of legal services “at no charge (or for a nominal processing fee),” whereas the Access to Justice Commission focuses more broadly on provisions of legal services “to individuals of limited means.”

This notice is published to provide interested parties an opportunity to submit comments concerning the proposals under consideration. Comments must be submitted by July 3, 2018. They may be submitted electronically to rule@dcappeals.gov, or in writing, addressed to the Clerk, D.C. Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001. All comments submitted pursuant to this notice will be available to the public.



District of Columbia Court of Appeals
Committee on Unauthorized Practice of Law
430 F Street, N.W. — Room 123
Washington, D. C. 20001
202 / 879-2777

March 22, 2018

Via Email

The Honorable Anna Blackburne-Rigsby
Chief Judge
District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Washington, D.C. 20001

Re: **Proposed Revisions to Rule 49(c)(9) – The *Pro Bono* Exception**

Dear Chief Judge Blackburne-Rigsby:

On behalf of the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law (“UPL Committee”), I am pleased to forward to you our recommendations to revise Rule 49(c)(9), governing the *pro bono* exception to the rule prohibiting the practice of law in the District of Columbia for those who are not members of the D.C. Bar. The UPL Committee unanimously approved this proposal at its most recent meeting on March 8, 2018.

The proposed revisions were originally recommended by the D.C. Access to Justice Commission (“Commission”), reflecting a substantial consensus in the *pro bono* community. We believe that these proposed changes will simplify and enhance the ability of lawyers practicing law in the District to provide much-needed *pro bono* services while also ensuring that these lawyers are properly supervised and subject to the Rules of Professional Conduct. Although we have not, in the end, adopted every one of the Commission’s recommendations, we believe that the proposed revisions to Rule 49(c)(9) will be greeted by the Commission and providers of *pro bono* services in the District as a welcome and substantial improvement over the current rule.

I have attached to this letter the proposed revision to Rule 49(c)(9), the proposed revision to the corresponding portion of the Rule 49 Commentary, and a revised Form 9 to certify a lawyer’s eligibility to practice in court. *See* Attachment A. Please find below a brief summary of the proposed rule, including an explanation of the recommended changes:

1. Extend the Exception to Inactive Members of Other Bars – Subsection (A)(i).

The proposal would create a single provision permitting inactive D.C. Bar members and attorneys who are inactive members of other bars to perform *pro bono* services in affiliation with a non-profit organization in the District of Columbia. This entails expanding the current Rule 49(c)(9)(A) to include inactive members of the bars of states or territories other than D.C. and revising the language generally to align with the conditions for active out-of-state attorneys.

Under the current rule, only inactive members of the D.C. Bar are permitted to practice under this exception. The proposal would expand that category to include inactive members of other state bars. According to the Commission, many federal government attorneys do *pro bono* work while they are actively practicing law in the District. However, once they retire and become inactive, they can only continue doing *pro bono* work if they apply for membership in the D.C. Bar. The proposal would allow them to continue providing *pro bono* services after they go inactive. The proposal treats inactive members of the D.C. Bar and inactive members of the bars of other states in the same category.

2. Treat all Out-of-State Lawyers in a Single Subsection – Subsection (A)(ii).

The proposal would create a single provision permitting attorneys who are active members of the bars of states or territories other than D.C. to perform *pro bono* service. The current rule treats active out-of-state attorneys in three separate subsections – one for those who are employees of the Public Defender Service (“PDS”) and non-profit organizations (Rule 49(c)(B)), one for federal employees (Rule 49(c)(C)), and one for internal counsel (Rule 49(c)(D)). Although the wording of the conditions varies slightly, they all require that the member be active and in good standing in the other bar, not be disbarred or disciplined, be affiliated with an organization providing legal services to low-income individuals, and be supervised. The proposal would clarify that the same conditions apply to all active out-of-state bar members seeking to provide *pro bono* services in the District.

3. Require Only Employees of PDS and Non-Profit Organizations to Apply to the D.C. Bar – Subsection (A)(iii).

The proposal requires only employees of PDS and non-profit organizations providing legal services to individuals of limited means to apply to the D.C. Bar within 90 days of commencing practice. The proposal would, however, eliminate the current 360-day time limit, allowing employees of PDS and non-profit organizations to practice under this exception until their applications are either granted or denied.

Under the current rule, anyone who performs *pro bono* services must apply to the D.C. Bar within 90 days. As the Commission explained to us, “[t]he effect of the current provision . . . is to condition the performance of *pro bono* service on application to the Bar. This provision is an unnecessary deterrent to those who wish to perform *pro bono* work but who are not otherwise required to become D.C. Bar members.” Commission Letter at 4 (Feb. 29, 2016) (Attachment B). For example, attorneys with a purely federal practice, D.C. Government practitioners, and internal counsel are not currently required to become D.C. Bar members in order to work as lawyers here in the District, yet the current Rule 49(c)(9) requires them to apply to the D.C. Bar in order to do *pro bono* work. Similarly, out-of-state attorneys who are not

currently practicing (for example, they have left regular practice to raise their children) may wish to do some *pro bono* work, but they cannot do so under the current rule unless they apply for admission to the D.C. Bar. The Commission contends that this requirement poses an unnecessary hardship on individuals seeking to perform pro bon services, given the burden and ongoing expense of becoming a member of the D.C. Bar. For those attorneys employed by PDS or by a D.C. non-profit organization providing legal services to individuals of limited means, the requirement to apply to the D.C. Bar within 90 days of commencing practice would remain.

4. Allow Law-School Graduates Awaiting Their Bar Results to Provide *Pro Bono* Services – Subsection (A)(iv). The proposal would create a new provision permitting law school graduates performing legal services in affiliation with PDS or non-profit organizations to practice while their bar applications are pending. This proposal would codify existing Administrative Orders that permit law school graduates working with certain organizations to practice under specified conditions.

Rule 48 currently allows students who participate in law-school clinics to practice under certain conditions, but once the students graduate, they are required to revert to law clerk status. As a result, recent law school graduates can do much less as new employees of PDS and legal services organizations than they could do as clinical students in law school. This new provision is intended to permit recent law school graduates to practice under certain conditions, bringing the District in line with 40 other jurisdictions that permit law school graduates to practice while they await their bar results. In addition, this provision would align the Rule with a series of Administrative Orders permitting law clerks employed by PDS and the D.C. Volunteer Lawyers Project to practice in certain types of cases. The provisions of the proposed new section mirror the requirements in the Administrative Orders, extending the benefit to all non-profit organizations in the District. This proposal only affects recent law-school *graduates* who are no longer eligible to participate in law-school clinics. Current students must continue to enroll in clinics in order to practice under Rule 48.

5. Clarify that the Rules of Professional Conduct Apply to Anyone Practicing Under This Exception – Subsection (B). The proposal would revise the structure of the Rule to make clear that the Rules of Professional Conduct apply to everyone practicing under the exception. The current rule places the notice obligations in a final, stand-alone paragraph that could be read to apply only to the final category, when it clearly is intended to apply to all categories.

6. Revise the Notice Requirements – Subsection (C). The proposal would clarify that any attorney practicing under Rule 49(c)(9) must give prominent notice of his or her bar status in all business documents specifically pertaining to such practice. In addition, the proposal would substantially simplify the process for submitting information to the Committee on Admissions for matters appearing in court.

Under the current rule, attorneys are required to file in person a Form 9 (Certification of Practice *Pro Bono Publico*) first with the Committee on Admissions and then to append a copy

of that form, together with a receipt from the Committee on Admissions, to each praecipe of appearance filed with the Superior Court or the Court of Appeals. Attorneys have apparently reported a number of problems with this process: forms are periodically rejected in affirmative litigation where no docket number has yet been assigned to the case; attorneys are sometimes mistakenly told when they seek to file the form in Superior Court that they need to file instead a *pro hac vice* request; and PDS and non-profit organization attorneys have complained that the process is duplicative and cumbersome, because it requires them to submit in-person certifications to the Committee on Admissions in each matter in which they may appear — sometimes dozens of cases. The proposal would allow attorneys to complete and submit the Form 9 via email, eliminating the need for a receipt. This would provide the Committee on Admissions with the information it needs regarding the eligibility of individual lawyers to practice law pursuant to this limited exception. The attorneys would then file a copy of the Form 9 whenever they file a praecipe of appearance in a case. This would provide the Court with information it needs regarding whether the attorney filing an appearance is eligible to practice and regarding the contact information for the enrolled, active D.C. Bar member who is supervising the work. Moreover, employees of PDS and other non-profit organizations could submit a single Form 9 covering their work from the start of their employment until their application for admission is granted or denied or until they need to update the information on the Form 9. They would still be required to file a copy of that Form 9 with each praecipe of appearance.

7. Revise the Commentary to Explain the New Provisions and the Meaning of “Supervision” – Commentary. The proposal would expand the Commentary associated with Rule 49(c)(9) to discuss the new provisions. In addition, the UPL Committee recommends including language in the commentary that would incorporate the advice provided in *UPL Opinion 12-02: Supervision of Attorneys Under Rule 49(c)* relating to what constitutes “supervision” by an enrolled, active member of the D.C. Bar. The proposal would add language to the Commentary to clarify that whether a supervisor needs to be present at particular events depends on the circumstances and that it is the supervisor’s best judgment, based on all the circumstances, that governs. The Commission suggested that it would be helpful to incorporate this advice directly into the Commentary, rather than force lawyers to find the advice among the Committee’s opinions.

* * * * *

The primary recommendation from the Commission that the UPL Committee decided *not* to adopt concerned extending the *pro bono* exception to include the provision of so-called “low bono” services — *i.e.*, services provided not for free but for a substantially reduced fee. The Commission emphasized that its recommendation was limited to *non-profit* organizations — *i.e.*, those that are exempt from taxation under section 501(c)(3) — and that the only organization that currently qualifies in the District of Columbia is the D.C. Affordable Law Firm. This firm is committed to serving clients who are within 200% to 400% of the federal poverty level. Its standard rate is \$75/hour but a high percentage of its work is provided without charge. In May 2016, the D.C. Superior Court adopted Administrative Order 16-06, authorizing lawyers

The Honorable Anna Blackburne-Rigsby
March 22, 2018
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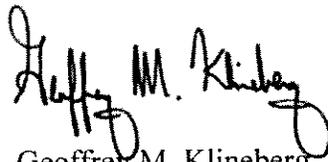
affiliated with the D.C. Affordable Law Firm to practice and designating the firm as a specifically authorized court program under Rule 49(c)(10).

After careful consideration, the UPL Committee decided not to adopt the Commission's recommendation to expand the category of *pro bono* legal services to include "low bono" or reduced-fee services. The UPL Committee was concerned that categorically allowing "low-bono" services to qualify under the Rule 49(c)(9) exception could be subject to abuse. The fact that the D.C. Affordable Law Firm has successfully qualified as a specifically authorized court program under Rule 49(c)(10) has persuaded us that a case-by-case approach makes more sense at this stage in the development of "low-bono" services. If other similar organizations need to attract lawyers who are not members of the D.C. Bar in order to perform their valuable services, the UPL Committee would encourage them to seek authorization to do so under Rule 49(c)(10).

* * * * *

The UPL Committee believes that these proposed revisions to Rule 49(c)(9) represent substantial improvements to the current rule. Not only would the proposal clarify and simplify the existing requirements, but it would meaningfully expand the number of lawyers who would qualify to provide these essential services in the District. We would welcome the opportunity to discuss these recommendations in greater detail.

Sincerely,



Geoffrey M. Klineberg
Member, UPL Committee

cc: The Honorable Roy W. McLeese III
Charles Davant IV

Attachments

ATTACHMENT A

(Proposed Revisions to Rule 49(c)(9), Commentary, and Form 9)

Proposed Revision to Rule 49(c)(9)

(9) *Pro Bono Legal Services.*

(A) A person may provide legal services *pro bono publico* under the following circumstances, provided he or she complies with the requirements of Rule 49(c)(9)(B) and (C):

(i) *Inactive Members of the D.C. Bar or the Bar of Another State or Territory.* Where the person (a) is an enrolled, inactive member of the D.C. Bar or of the bar of another state or territory; (b) is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court; (c) is providing the legal services in affiliation with, but not as an employee of, a non-profit organization located in the District of Columbia that provides legal services at no charge (or for a nominal processing fee) to individuals of limited means; and (d) is supervised by an enrolled, active member of the D.C. Bar;

(ii) *Active Members of the Bar of Another State or Territory.* Where the person (a) is a member in good standing in another state or territory; (b) is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court; (c) is providing the legal services in affiliation with, but not as an employee of, a non-profit organization located in the District of Columbia that provides legal services at no charge (or for a nominal processing fee) to individuals of limited means; and (d) is supervised by an enrolled, active member of the D.C. Bar;

(iii) *Employees of the Public Defender Service or a Non-Profit Organization Providing Legal Services to Individuals of Limited Means.* Where the person (a) is a member in good standing in another state or territory; (b) is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court; (c) is employed by the Public Defender Service or by a non-profit organization located in the District of Columbia that provides legal services at no charge (or for a nominal processing fee) to individuals of limited means; (d) is supervised by an enrolled, active member of the D.C. Bar; and (e) has submitted the application for admission to the D.C. Bar within 90 days of commencing practice in the District of Columbia. Persons practicing under this subsection may do so until their application to the D.C. Bar is either granted or denied;

(iv) *Law School Graduates Who Have Applied to the Bar and Taken the Bar Examination.* Where the person (1) has graduated from an ABA-accredited law school; (2) is providing the legal services in affiliation with the Public Defender Service or a non-profit organization located in the District of Columbia that provides legal services at no charge (or for a nominal processing fee) to individuals of limited means; (3) has applied to the bar and taken the bar examination but has not yet been admitted to any bar; (4) has been certified by the dean of the law school from which he or she has graduated as being “of good character and competent legal ability” (as described in Rule 48(b)(3)); (5) is trained and supervised by an enrolled, active member of the D.C. Bar in good standing who is affiliated with the Public Defender Service or the non-profit organization; and (6) gives notice to the public and on all pleadings that he or she is not admitted to practice law in any jurisdiction but is practicing under the supervision of a member of the D.C. Bar pursuant to the exception provided in Rule 49(c)(9)(A)(iv). Persons practicing under this subsection may do so until their bar application is either granted or denied.

(B) *Applicability of the Rules of Professional Conduct.* An attorney practicing under Rule 49(c)(9) shall be subject to the District of Columbia Rules of Professional Conduct and the enforcement procedures applicable thereto to the same extent as if he or she were an enrolled, active member of the D.C. Bar.

(C) *Notice.* An attorney practicing under Rule 49(c)(9) must give prominent notice of his or her bar status in all business documents specifically pertaining to such practice. If the matter requires the attorney to appear in any court, the attorney shall (i) provide notice to the D.C. Court of Appeals Committee on Admissions by submitting through electronic mail the certificate (Form 9) appended to this Rule; and (ii) provide notice to the court by filing a copy of the certificate (Form 9) submitted to the Committee on Admissions along with the attorney's praecipe of appearance. An attorney practicing under Rule 49(c)(9)(A)(iii) is only required to file one certificate (Form 9) with the Committee on Admissions covering the period from the commencement of employment until an application for admission to the D.C. Bar is either granted or denied; provided, however, that any such attorney must file a new certificate (Form 9) whenever necessary to ensure that the information on it remains accurate.

Commentary to Rule 49(c)(9):

Rule 49(c)(9) is intended to increase access to justice in the District of Columbia for those unable to afford an attorney by providing an exception to the requirement of admission to the D.C. Bar for lawyers licensed in other jurisdictions (or law school graduates who are awaiting their bar results) to provide *pro bono* representation, where the requirements of the exception are met.

Rule 49(c)(9)(A)(i) creates a single provision permitting inactive D.C. Bar members and attorneys who are inactive members of the bars of states or territories other than D.C. to perform *pro bono* services under specified conditions. By allowing inactive members of the bars of other states or territories to perform *pro bono* services, this section ensures that lawyers who have retired from practicing in the District of Columbia under another exception (e.g., federal employees, internal counsel, etc.) can do *pro bono* work under specified conditions without having to apply for membership in the D.C. Bar.

Rule 49(c)(9)(A)(ii) create a single provision permitting attorneys who are active members of the bars of states or territories other than D.C. to perform *pro bono* service under specified conditions.

Rule 49(c)(9)(A)(iii) creates a single provision applicable to employees of the Public Defender Service (PDS) and of non-profit organizations providing legal services at no charge (or for a nominal processing fee) to individuals of limited means. The provision requires these employees to apply to the D.C. Bar within 90 days of commencing practice.

Rule 49(c)(9)(A)(iv) permits law school graduates providing legal services in affiliation with PDS or with non-profit organizations providing legal services at no charge (or for a nominal processing fee) to individuals of limited means to practice while their bar applications are pending. Rule 48 currently allows students who participate in law-school clinics to practice under certain conditions. This section permits students to provide *pro bono* legal services after they graduate but before they have been admitted, so long as they have applied to a bar and taken the bar examination, the law school certifies that they demonstrate “good character and competent legal ability,” and they remain subject to the specified notice and supervision requirements.

Rule 49(c)(9)(B) provides that attorneys practicing under the Rule 49(c)(9) exception are subject to the District of Columbia Rules of Professional Conduct and the D.C. Bar’s enforcement authority, to the same extent as if they were enrolled, active members of the D.C. Bar.

Rule 49(c)(9)(C) provides a notice procedure for all attorneys practicing under the Rule 49(c)(9) exception. Attorneys must complete and submit a certificate (Form 9) and email it to the Committee on Admissions. This certificate provides the Committee on Admissions with the information it needs regarding the eligibility of individual lawyers to practice law under the Rule 49(c)(9) exception, as well as the name of the D.C. Bar member who is supervising their work. Attorneys who appear in court are required to file a copy of the certificate (Form 9) each time they file a praecipe of appearance in a case. Employees of PDS and other non-profit

organizations providing legal services at no charge (or for a nominal processing fee) to individuals of limited means need only submit a single certificate (Form 9) covering their work from the start of their employment until their application for admission to the D.C. Bar is granted or denied, although they must file a new certificate (Form 9) if any information (such as the name of their supervisor) changes.

Whether the requirement that the attorney practicing under the Rule 49(c)(9) exception be “supervised by an enrolled, active member of the D.C. Bar” means that the supervising attorney must personally attend particular events such as a trial, hearing, or meeting depends on the circumstances. The supervising attorney should consider all factors relevant to the appropriate degree and manner of supervision, including the experience and skill of the supervised attorney and the nature of the matter. In some situations, the supervisor ought to be present in court with the supervised attorney. However, in many circumstances, the supervisor may reasonably conclude that he or she does not need to be present. This approach is consistent with the purpose of the Rule 49(c)(9) exception — “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.” *UPL Opinion 3-98: Procedure for Practice Pro Bono Publico Under Exception 49(c)(9)*, at 2. It would place a substantial burden on the Public Defender Service and other non-profit organizations with limited budgets to send supervising attorneys to court with all lawyers practicing under the Rule 49(c)(9) exception. *See UPL Opinion 12-02: Supervision of Attorneys Under Rule 49(c)*, at 2 (“whether or not the supervising attorney is physically present when the supervised attorney provides legal services, the supervising attorney remains responsible for the conduct of the supervised attorney. Any recourse the client may have against the supervising attorney is not affected by whether the supervision is in-person”).

Form 9. Certification of Practice *Pro Bono Publico*

DISTRICT OF COLUMBIA COURT OF APPEALS
COMMITTEE ON ADMISSIONS
CERTIFICATION OF PRACTICE *PRO BONO PUBLICO*

NOTICE TO ALL: This certificate shall be submitted by electronic mail to the Committee on Admissions before or immediately upon the commencement of practice in court. The filing of a copy of the completed certificate with a praecipe or other filing in a court with jurisdiction over a matter is sufficient to authorize appearance and practice in that case or matter without further action by the clerk of the court or agency, the Committee on Admissions, or the Committee on Unauthorized Practice of Law.

I certify under District of Columbia Court of Appeals Rule 49(c)(9) that:

For inactive members of the D.C. Bar or the bar of another state or territory:

(a) Under Rule 49(c)(9)(A)(i), (i) I am an enrolled, inactive member of the D.C. Bar; (ii) I have not been disbarred or suspended for disciplinary reasons, and I have not resigned a bar membership with charges pending in any jurisdiction or court; (iii) I am providing the legal services in affiliation with, but not as an employee of, a non-profit organization located in the District of Columbia that provides legal services at no charge (or for a nominal processing fee) to individuals of limited means; (iv) I am supervised by an enrolled, active member of the D.C. Bar, whose signature and Bar number appear below; and (v) I provide notice of my bar status as required by Rule 49(c)(9)(C); or

(b) Under Rule 49(c)(9)(A)(i), (i) I am an enrolled, inactive member of the bar of another state or territory, namely _____; (ii) I have not been disbarred or suspended for disciplinary reasons, and I have not resigned a bar membership with charges pending in any jurisdiction or court; (iii) I am providing the legal services in affiliation with, but not as an employee of, a non-profit organization that is located in the District of Columbia and that provides legal services at no charge (or for a nominal processing fee) to individuals of limited means; (iv) I have previously been an active member of the bar of another state or territory for at least five years; (v) I am supervised by an enrolled, active member of the D.C. Bar, whose signature and Bar number appear below; and (vi) I provide notice of my bar status as required by Rule 49(c)(9)(C);

For active members in good standing of the bar of another state or territory:

(c) Under Rule 49(c)(9)(A)(ii), (i) I am an active member in good standing of the highest court of another state or territory, namely _____; (ii) I have not been disbarred or suspended for disciplinary reasons, and I have not resigned a bar membership with charges pending in any jurisdiction or court; (iii) I am providing the legal services in affiliation with, but not as an employee of, a non-profit organization located in the District of

ATTACHMENT B

(Letter from The D.C. Access to Justice Commission (Feb. 29, 2016))



The District of Columbia Access to Justice Commission

February 29, 2016

COMMISSIONERS

Peter B. Edelman
Chair

Eric Angel

Rochelle Bobroff

Jon Bouker

Shelley Broderick

Patty Mullahy Fugere

Hon. Sharon Goodie

Mark Herzog

Mary Kennard

George Jones

Sheldon Krantz

Andrew H. Marks

Stephen J. Pollak

William C.E. Robinson

Jonathan Smith

T.J. Sutcliffe

Rebecca R. Troth

James J. Sandman

Thomas S. Williamson, Jr.

Jessica Rosenbaum
Executive Director

Lydia Watts
Deputy Director

Ms. Cynthia Wright
Committee on Unauthorized Practice of Law
430 E Street, N.W. Room 123
Washington, D.C. 20001
Via Email to: cynthia.g.wright@usdoj.gov

Dear Ms. Wright:

The District of Columbia Access to Justice Commission is pleased to provide comments on District of Columbia Court of Appeals Rule 49(c)(9). We thank the Committee on Unauthorized Practice of Law for its careful consideration of the rule and for the opportunity to propose the revisions described below.

As the Committee is aware, the D.C. Access to Justice Commission was created by the D.C. Court of Appeals in 2005 to help improve the ability of low- and moderate-income residents to access the civil justice system. A key priority of the Commission is examining ways to increase and facilitate pro bono service. Shortly after its creation, the Commission made one of its first priorities a close examination of the civil legal needs of District residents and the capacity of the existing network to meet those needs. The resulting report – Justice for All? – documented an appalling justice gap. In every area examined the need for legal services far outstripped the supply. In domestic violence cases, for example, where the safety of a victim and often the children was imperiled, the representation rate was a mere two percent. Rates in landlord-tenant cases, where families were faced with the loss of their homes, were barely better at three percent.

Although the District has one of the most dedicated and sophisticated networks of legal services providers in the nation, the vast majority of indigent residents' legal needs remain unmet. The District has been fortunate to have one of the most robust pro bono cultures in the country, and for many years pro bono attorneys have been an integral part of the legal services delivery network. The pro bono practice exception of Rule 49 has been instrumental in making possible the critical contributions of a range of pro bono attorneys, including federal government attorneys and in-house counsel. The Commission believes, however, that certain revisions to Rule 49 would further expand the pool of attorneys eligible to perform pro bono work and would remove unnecessary obstacles for those attorneys already engaged in pro bono service. It is the Commission's understanding that the revisions proposed below are largely in alignment with those proposed by the D.C. Bar Pro Bono Committee, the D.C. Consortium of Legal Services Providers, and the Washington Council of Lawyers.

The Commission proposes the following changes, each of which is discussed in further detail below:

1. Create one provision permitting attorneys who are active members of the bars of states or territories other than D.C. to perform pro bono service. This generally entails collapsing Rule 49(c)(9)(B), (C) and (D) into a single provision articulating the same conditions for all active members of out-of-state bars.
2. Create one provision permitting inactive D.C. Bar members and attorneys who are inactive members of the bars of states or territories other than D.C. to perform pro bono service. This generally entails expanding Rule 49(c)(9)(A) to include inactive members of the bars of states or territories other than D.C. and revising the language to generally align with the conditions for active out-of-state attorneys.
3. As the conditions for practice are slightly different, create a separate provision covering employees of the Public Defender Service (PDS) and non-profit organizations providing legal services to individuals of limited means.
4. Require only employees of PDS and non-profit organizations providing legal services to individuals of limited means to apply to the D.C. Bar within ninety days of commencing practice as a condition to practice under Rule 49(c)(9).
5. Permit those required to apply to the D.C. Bar within ninety days of commencing practice to continue practicing until their application for admission is either accepted or rejected. This would revise the current language limiting practice to 360 days.
6. Create a new provision permitting law school graduates affiliated with PDS or non-profit organizations providing legal services to individuals of limited means to practice while their bar applications are pending. This proposal mirrors existing Administrative Orders which permit law graduates working with certain organizations to practice under specified conditions.
7. Revise the process for submitting a certification of practice under Rule 49(c)(9) to the Committee on Admissions to reduce unnecessary obstacles.
8. Clarify or modify other aspects of the existing requirements and add language to the commentary elucidating the supervision requirement.

The proposed rule is attached at Appendix A.

Harmonize the Conditions for Performing Pro Bono Work Under Rule 49(c)(9)

Under current Rule 49(c)(9), attorneys who are active members of the bars of states or territories other than D.C. (hereafter “out-of-state attorneys”) are permitted to perform pro bono work as long as certain conditions are met. The wording of the conditions varies slightly among 49(c)(9)(B) – (D), but the general requirements are that the attorney: 1) be a member in good standing of the highest court of any state or territory; 2) not be disbarred or suspended for disciplinary reasons and has not resigned with charges

pending in any jurisdiction or court; 3) be affiliated with an organization located in D.C. that provides legal services to low-income individuals; and 4) be supervised by an enrolled, active member of the D.C. Bar.

The descriptions of the type of organization with which an attorney must affiliate vary among 49(c)(9)(B), (C) and (D), but each formulation contemplates that the organization be one that provides legal services to individuals who cannot afford paid counsel. The Commission recommends that these provision be harmonized by changing the affiliation requirement to state “is affiliated with a non-profit organization located in the District of Columbia that provides legal services to individuals of limited means.” This formulation: 1) captures and harmonizes the varying formulations in (B) (“affiliated with a non-profit organization ...that provides legal services for indigent individuals without fee or for a nominal processing fee”), and (C) and (D) (“is assigned or referred by an organization that provides legal services to the public without fee”).¹ The Commission believes that “affiliated with” captures the appropriate relationship between the pro bono attorney and the non-profit organization, and that reference to a non-profit organization reflects the type of organization contemplated by the various iterations currently contained in the rule: an organization that provides legal services to those who cannot afford paid counsel.

The proposed language changes how the rule describes the population of individuals served by non-profit organizations to more accurately reflect legal services and pro bono practice in D.C. and across the nation. The new language refers to those who cannot afford to pay the market rate for paid counsel as “individuals of limited means” instead of “indigent individuals.” This formulation more accurately captures the client base of non-profits that provide free legal services or who provide services at a greatly-reduced rate or on a sliding-scale basis.

Create a Single Provision for Active Out-of-State Attorneys

The proposed rule collapses Rule 49(c)(9)(B), (C) and (D) into a single provision setting the same conditions for all active out-of-state attorneys. Other than the requirement under (B) regarding application to the D.C. Bar (see below), the conditions set forth in all three subsections are generally the same and can be harmonized into a single provision as follows:

Active Members of the Bar of Another State or Territory: Where the person: (i) is a member in good standing of the highest court of any state or territory; (ii) is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction; (iii) is affiliated with a non-profit organization located in the District of Columbia that provides legal services to individuals of limited means; and (iv) is supervised by an enrolled, active member of the District of Columbia Bar.

¹ It also harmonizes the language with Rule 49(c)(9)(A) (“affiliated with a legal services or referral program in any manner that is handled without fee”).

Remove the Requirement that Active Out-of-State Attorneys Apply for D.C. Bar Membership

This proposed change only applies to out-of-state attorneys who are not employees of PDS or a D.C. non-profit organization providing legal services to individuals of limited means.

The proposed rule eliminates the language requiring active out-of-state attorneys (other than employees of PDS and non-profit legal services organizations) to apply for membership in the D.C. Bar within ninety days of commencing practice as a condition of performing pro bono work under Rule 49(c)(9). It is important to note that other provisions of Rule 49 already require attorneys practicing in D.C. to be members of the D.C. Bar, unless their work is covered by one of thirteen exceptions. Rule 49(a) states, “No person shall engage in the practice of law in the District of Columbia or in any manner hold out as authorized or competent to practice law in the District of Columbia unless enrolled as an active member of the District of Columbia Bar, except as otherwise permitted by these rules.” Rule 49(c) then enumerates thirteen categories of individuals and/or work excepted from this requirement, including the performance of pro bono work under 49(c)(9).

The effect of the current provision requiring out-of-state attorneys to apply for D.C. Bar membership is to condition the performance of pro bono service on application to the Bar. This provision is an unnecessary deterrent to those who wish to perform pro bono work but who are not otherwise required to become D.C. Bar members. While 49(c)(9)(C) and (D) exempt some attorneys who are not otherwise required to become D.C. Bar members from this requirement, several other categories of attorneys who are not required under Rule 49(c) to become D.C. Bar members are not included in those categories. For example, attorneys with a purely federal practice and D.C. government practitioners are not currently required to become D.C. Bar members in order to practice law in D.C., but under current Rule 49(c)(9) they are required to apply to the D.C. Bar in order to engage in pro bono work. Similarly, out-of-state attorneys not currently engaged in the practice of law in D.C. (for example, parents not employed as attorneys while they are raising their children) who are seeking only to do pro bono work are currently required to apply for admission to the D.C. Bar. In addition, attorneys whose principal place of practice is outside of the District but who wish to perform pro bono work in D.C. (for example, attorneys in the Maryland or Virginia suburb office of a D.C. firm) can only do so under Rule 49(c)(9) if they apply for D.C. Bar membership.

Given the burden and ongoing expense of becoming a D.C. Bar member, this requirement poses an unnecessary hardship on individuals seeking to perform pro bono service. It also creates an unjustified distinction between federal government and in-house attorneys and all other active out-of-state attorneys, particularly those who are also exempted under Rule 49(c) from the requirement of D.C. Bar membership.

We do not propose to change the existing requirement that attorneys employed by PDS or a D.C. non-profit organization that provides legal services to individuals of limited means apply for D.C. Bar membership within ninety days of commencing practice.

Expand Provision to Include Inactive Out-of-State Attorneys

Currently, Rule 49(c)(9)(A) permits inactive members of the D.C. Bar to perform pro bono work under specified conditions. The Commission proposes that this provision be expanded to include inactive out-of-state attorneys.

The District is fortunate to have many federal government attorneys regularly performing pro bono work, taking cases from legal services organizations, staffing the D.C. Bar Pro Bono Center's advice and referral clinics, and participating in a range of other pro bono activities. Many of those attorneys wish to continue their pro bono service when they retire from the federal government, but under the current language of Rule 49(c)(9) many are unable to do so. Since the majority of federal government attorneys are barred out of state, in order to do pro bono work once they retire they must fall under another provision of the rule. Currently there is no provision under which they can practice once they go on inactive status. We expect that as more in-house counsel perform pro bono work under Rule 49(c)(9)(D), we will see in-house counsel who also face this same dilemma once they retire.

To address this gap, we propose expanding Rule 49(c)(9)(A) to include inactive out-of-state attorneys. Our proposal mirrors the requirements (as modified above) currently in place for inactive D.C. Bar members and adds a requirement that inactive out-of-state attorneys be supervised by an enrolled, active member of the D.C. Bar. This aligns the supervision requirement for inactive out-of-state attorneys with the supervision requirement for active out-of-state attorneys.

The Commission also recommends that the affiliation requirement in Rule 49(c)(9)(A) be made consistent with the affiliation requirement that applies to active out-of-state attorneys.

Create a Separate Provision for Employees of the Public Defender Service and Non-Profit Organizations Providing Legal Services to Individuals of Limited Means

For clarity, we propose creating a separate provision setting forth the conditions applicable to employees of PDS and non-profit organizations providing legal services to individuals of limited means. Having separate provisions for such employees, for inactive attorneys, and for active out-of-state attorneys makes it simpler for individuals in each of these categories to locate the conditions that govern their service. Separating out this category is particularly useful since, as is discussed above, the proposed rule subjects only these attorneys to the additional condition of having to apply to the D.C. Bar within ninety days of commencing practice.

Eliminate the 360-Day Limitation on Practice by Those Required to Apply for D.C. Bar Membership

The proposed rule eliminates as unnecessary and disruptive to clients and pro bono attorneys the 360-day time limit for those who are required to apply for D.C. Bar membership, allowing those attorneys to practice under Rule 49(c)(9) until such time as their bar application has been accepted or rejected.

Under the current rule, individuals who are required to apply for D.C. Bar membership are permitted to practice under Rule 49(c)(9) for only 360 days. Because the admissions process often takes more than 360 days, the practical effect of this rule is to force attorneys to transfer their cases if the time limit lapses before their applications have been acted upon. Anecdotally, a number of legal services organizations report that they frequently face this situation with new attorneys. This creates significant hardship for legal services organizations and extreme disruption for the clients they represent. This outcome also unfairly penalizes attorneys who have taken all of the required steps to meet the conditions for pro bono service and who are subjects of administrative delays over which they have no control. This outcome seems particularly arbitrary in that the lapse of the 360-day time limit does not implicate the attorney's qualifications or call into question the attorney's competence to continue to provide services.²

Create a New Provision Permitting Practice by Law School Graduates Under Certain Conditions

The Commission recommends that the Committee consider a new provision that would, under certain circumstances, permit law school graduates affiliated with PDS or a non-profit organization providing legal services to individuals of limited means to practice while their bar applications are pending. This change would bring the District into alignment with the forty other jurisdictions that permit practice by law school graduates while they are awaiting their bar results and/or admission to a bar.

Legal services organizations report that they are challenged to make optimal use of recent law graduates who are awaiting bar admission. As law clerks, these graduates are extremely limited in the services they can provide. Because the bar admissions process can take months, depending on the jurisdiction, legal services organizations are regularly in the position of having hired recent law school graduates who cannot assume caseloads for a substantial period of time. This poses a significant hardship for legal services organizations and the low-income individuals who seek their services.

Many other jurisdictions do not face this dilemma because recent law graduates are permitted to practice under the supervision of legal services organizations as part of their rules governing student practice. All fifty states permit practice by law students under the supervision of an attorney in the state, often as part of a clinical program. Forty of those states permit practice by a law student through the time of graduation and the time that bar exam results are announced and/or until they are admitted or denied admittance to a bar. Because of the formulation of the District's student practice rule (Court of Appeals Rule 48), recent law graduates can do much less as new employees of PDS and legal services organizations than they could do as clinical students in law school. For example, second-year law students can represent clients as part of a clinical placement but cannot under the current scheme represent clients once they have graduated from law school and are employed by PDS or a legal services organization.

² Two other jurisdictions, North Carolina and Vermont, have provisions permitting attorneys with pending bar applications to practice until their applications are acted upon.

The D.C. Superior Court has issued several Administrative Orders permitting law clerks employed by PDS and the D.C. Volunteer Lawyers Project³ to practice in certain types of cases while they are awaiting admission to a bar.⁴ These Administrative Orders have had several beneficial effects. First, they have permitted these organizations to make optimal use of recent law graduates awaiting admission to a bar who would otherwise be extremely limited in the work they can do during the lengthy process of bar admission. Second, they have enabled organizations to serve many additional clients who would not otherwise have had access to counsel.

The Commission therefore recommends that the Committee adopt a new provision that would permit practice by recent law graduates under conditions mirroring those contained in the Administrative Orders referenced above. Practice would be permitted where the person: (i) has graduated from a law school approved by the American Bar Association and the D.C. Court of Appeals Committee on Admission; (ii) is affiliated with PDS or a non-profit organization located in the District of Columbia that provides legal services to individuals of limited means; (iii) has taken a bar examination and applied to join the bar of any state or territory but has not yet been admitted to any such bar; (iv) has been certified by the dean of the law school from which they graduated as being “of good character and competent legal ability” as described in Rule 48(b)(3); and (v) is trained and supervised by an enrolled, active member of the District of Columbia Bar in good standing who is affiliated with the organization. Law clerks practicing under this provision would be required to provide notice to the public and the court consonant with the analogous provisions for out-of-state attorneys.

The Commission believes that the requirements of affiliation with PDS or a legal services provider, training and supervision by a D.C. bar member affiliated with their organization, and the certification by the dean together provide the necessary safeguards to ensure quality provision of legal services to clients. Any law clerk who does not achieve a passing result on the bar examination would be precluded from further practice under this provision.

Adoption of this proposed provision would greatly enhance the capacity of PDS and legal services organizations to serve individuals who otherwise would not have access to counsel.

Proposed language is attached at Appendix B.

Revise the Process for Submitting a Certification to the Committee on Admissions

Attorneys practicing pursuant to Rule 49(c)(9) are required to provide formal notice to the Court. As the Commission understands it, the current procedure is for attorneys to file a Form 9 (Certification of Practice Pro Bono Publico) first with the Committee on Admissions and then to append a copy of that form, along with a receipt issued by the clerk of the Committee on Admissions, to each praecipe of appearance filed with the Superior Court or Court of Appeals.

³ D.C. Superior Court Administrative Orders 07-20, 07-21, 13-21.

⁴ These Administrative Orders were issued pursuant to Rule 49(c)(10).

Attorneys report a range of challenges with the current procedure, including forms periodically being rejected by the clerk of the Committee on Admissions (for example, in affirmative litigation where a docket number has not yet been assigned to the case) and instances when attorneys attempting to file this form in the Superior Court have been told incorrectly that they must file pro hac vice in order to enter an appearance in the case. In addition, legal services and PDS attorneys practicing pursuant to Rule 49(c)(9) have reported that the process is cumbersome and duplicative, given that it requires them to submit in-person certifications to the Committee in each matter in which they may appear. This can end up being dozens of cases during the duration of their practice under Rule 49. The Commission proposes the following changes in procedure, which we believe fully achieve the notice objectives of the rule, conform the practice to Opinion 3-98, and go far to eliminate the frustrations attorneys experience with the current procedures:

1. In accordance with Unauthorized Practice of Law Committee Opinion 3-98, permit attorneys to complete and submit electronically, rather than formally file in person, Form 9s with the Committee on Admissions. Eliminate the practice of issuing a receipt for the filing.
2. Permit attorneys to file a copy of the Form 9 whenever they file a praecipe of appearance in a case (rather than requiring a receipt from the Committee on Admissions). Continue to require attorneys to include in the praecipe contact information for the enrolled, active D.C. Bar member who is supervising their work.
3. Permit employees of PDS or legal services organizations to submit to the Committee on Admissions a single Form 9 covering their work from the start of their employment until they are admitted or denied admittance to the D.C. Bar. They would still be required to file with the Court a copy of their Form 9 with every praecipe of appearance.

It is the Commission's understanding that the Form 9 filing requirements are meant to provide information, for slightly different purposes, to two different entities: the Committee on Admissions and the presiding judge in each pro bono case in which counsel enters an appearance. We understand that, for consumer protection purposes, the Committee on Admissions maintains information about practice by inactive and/or out-of-state attorneys practicing under Rule 49(c)(9). The Committee is not interested in gathering information about individual cases; rather, to ensure that services are being provided to the public only by qualified attorneys, it maintains information about the eligibility of individual lawyers to practice law pursuant to the limited exceptions provided under Rule 49(c)(9). Alternatively, the presiding judges need to know: a) whether an attorney entering an appearance in a case is in fact eligible to practice; and b) if that attorney is not an active member of the D.C. Bar, the contact information for the enrolled, active D.C. Bar member who is supervising the work. The Commission believes that these objectives can be more effectively accomplished by making the changes set forth above.

As noted, the proposed changes comport with Opinion 3-98, which provides that, consonant with the purpose of Rule 49(c)(9) to provide the broadest possible access to

pro bono legal services, “entitlement to practice under the 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” (emphasis added). By explicitly requiring only the completion of a certificate, and specifically differentiating this requirement from an application or a motion, Opinion 3-98 is clear that the attorney’s completion and submission of the form is all that is required. Thus there is no need for the current practice in which the clerk of the Committee on Admissions reviews the form and determines whether to accept it.

Permitting attorneys simply to complete and electronically submit Form 9s, rather than formally file them in person, will enable the Committee to collect desired information while reducing the administrative burden on its clerks and eliminating erroneous rejection of submitted forms. As no change is proposed in the Committee’s existing procedures for reviewing and maintaining the forms, consumers will continue to be protected.

Allowing attorneys to file a copy of their Form 9 with their praecipe of appearance, rather than a receipt issued by the clerk of the Committee on Admissions, will simplify the process without sacrificing any of its substantive objectives. As is current practice, attorneys would continue to be required to include on the praecipe contact information for the enrolled, active D.C. Bar member who is supervising their work. This will fulfill the need of the presiding judge to know: a) the eligibility of the attorney to appear in the case, and b) the name and contact information for the D.C. Bar member who is responsible for the work being performed by the attorney.

Under current practice, all attorneys practicing under Rule 49(c)(9), including employees of PDS and legal services organizations, are required to file a Form 9 in each case for which they enter an appearance. While this is not a substantial burden for pro bono counsel who are typically handling very few cases at one time, this procedure presents a substantial burden for PDS and legal services attorneys, particularly attorneys practicing in any of the Court-Based Legal Services (Attorney of the Day) projects. These attorneys may appear in numerous cases each day and are required to file a separate Form 9 for each of these appearances, even if they are only representing the client for that single, same-day court appearance.

To alleviate this burden, the Commission proposes that employees of PDS and legal services organizations who are temporarily practicing under Rule 49(c)(9) pending admission to the D.C. Bar be permitted to file with the Committee on Admissions a single Form 9 at the commencement of their employment indicating that they will be practicing under Rule 49(c)(9) for the duration of the pendency of their bar application. Those attorneys would still file with their praecipe of appearance in each individual case a copy of their Form 9 that indicates the name of the enrolled, active D.C. Bar member who is supervising their work. This simplified procedure will both ensure that the judge presiding over each case handled by the PDS or legal services attorney has the requisite information about who is supervising and taking responsibility for the work, and satisfy the need of the Committee on Admissions to maintain a record of attorneys practicing under Rule 49(c)(9).

A modified Form 9, reflecting the changes the Commission has proposed and including instructions for compliance with the proposed procedure, is attached in Appendix C.

Other Provisions and Commentary

The proposed rule repositions the provisions addressing notice to the public and the court and the applicability of the D.C. Rules of Professional Conduct to make clear that those provisions apply to everyone practicing under Rule 49(c)(9). It also clarifies that notice to the court, and the attendant obligation to file a Form 9 with the Committee on Admissions, is only required where the pro bono matter requires a court appearance.

The Commission also recommends incorporating into the Commentary a section from Unauthorized Practice of Law Committee Opinion 3-98 which makes clear that supervision of an attorney practicing under Rule 49(c)(9) does not necessarily require the presence of the supervisor in court. As the Opinion recognizes, such a requirement would place a substantial burden on PDS, legal services providers, and others providing supervision to pro bono attorneys.

Thank you for your consideration of these comments. The Commission is happy to provide further information and explanation and to answer any questions the Committee may have.

For the Commission⁵,

A handwritten signature in black ink that reads "Peter Edelman". The signature is written in a cursive, slightly slanted style.

Peter B. Edelman
Chair, District of Columbia Access to Justice Commission
Professor of Law, Georgetown University

⁵ Judges Anna Blackburne-Rigsby, Vanessa Ruiz, Maribeth Raffinan and Laura Cordero did not participate in the Commission's vote on this proposal.

APPENDIX A

Proposed Rule 49(c)(9)

(9) **Pro Bono Legal Services:** Providing legal services *pro bono publico* in the following circumstances:

(A) Inactive Members of the D.C. Bar or the Bar of Another State or Territory:

Where the person: (i) is an enrolled, inactive member of the District of Columbia Bar or of the bar of any state or territory; (ii) is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court; (iii) is affiliated with a non-profit organization located in the District of Columbia that provides legal services to individuals of limited means; and, (iv) if the person is an inactive member of the bar of any state or territory other than the District of Columbia, is supervised by an enrolled, active member of the District of Columbia Bar.

(B) Active Members of the Bar of Another State or Territory:

Where the person: (i) is a member in good standing of the highest court of any state or territory; (ii) is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court; (iii) is affiliated with a non-profit organization located in the District of Columbia that provides legal services to individuals of limited means; and (iv) is supervised by an enrolled, active member of the District of Columbia Bar.

(C) Employees of the Public Defender Service or a Non-Profit Organization

Providing Legal Services to Individuals of Limited Means: Where the person: (i) is a member in good standing of the highest court of any state or territory; (ii) is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court; (iii) is employed by the Public Defender Service or a non-profit organization located in the District of Columbia that provides legal services to individuals of limited means; (iv) is supervised by an enrolled, active member of the District of Columbia Bar; and (v) will submit or has submitted an application for admission to the District of Columbia Bar within ninety (90) days after commencing the practice of law in the District of Columbia. Persons practicing under this subsection may do so until their application to the District of Columbia Bar is either granted or denied.

(D) Applicability of the Rules of Professional Conduct: An attorney practicing under this section (c)(9) shall be subject to the District of Columbia Rules of Professional Conduct and the enforcement procedures applicable thereto to the same extent as if he or she were an enrolled, active member of the District of Columbia Bar.

(E) Notice: An attorney practicing under this section (c)(9) shall give notice of his or her bar status. If the matter requires the attorney to appear in court, the attorney shall: (i) provide notice to the D.C. Court of Appeals Committee on Admissions by electronically filing the certificate appended to this rule; and (ii) provide notice to the court by filing a copy of the certificate filed with the Committee on Admission along with the attorney's praecipe of appearance. Attorneys practicing under (c)(9)(C) are only required to file one

certificate with the Committee on Admissions covering the period from the commencement of employment until their application for admission to the D.C. Bar is either granted or denied.

Commentary to § 49(c)(9)

Whether reasonable supervision requires the supervising attorney to attend personally with the supervised lawyer events such as a trial, hearing, or meeting depends on the circumstances. The supervising attorney should consider all factors relevant to the appropriate degree and manner of supervision, including the experience and skill of the supervised attorney and the nature of the matter. In some situations, the supervisor ought to be present in court with the supervised attorney, but in others the supervisor may reasonably decide that he or she does not need to be present. This approach is consistent with the purpose of the (c)(9) exception—“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.” Unauthorized Practice of Law Committee Opinion 3-98 at 2. The Committee on Admissions recognizes that it would place a substantial burden on the Public Defender Service and other non-profit organizations with limited budgets, as well as other attorneys providing supervision under the rule, to send supervising attorneys to court with all lawyers practicing under the (c)(9) exception.

APPENDIX B

Proposed Addition to Rule 49(c)(9)

Law School Graduates Awaiting Bar Admission: Where the person: (i) has graduated from a law school approved by the American Bar Association and the D.C. Court of Appeals Committee on Admissions; (ii) is affiliated with the Public Defender Service or a non-profit organization located in the District of Columbia and that provides legal services to individuals of limited means; (iii) has taken a bar examination and applied to join the bar of any state or territory but has not yet been admitted to any such bar; (iv) has been certified by the dean of the law school from which they graduated as being “of good character and competent legal ability” as described in Rule 48(b)(3); and (v) is trained and supervised by an enrolled, active member of the District of Columbia Bar in good standing who is affiliated with the Public Defender Service or the non-profit organization.

Duration of Practice: Persons practicing under this subsection may do so until their application to the District of Columbia Bar is either granted or denied or until they are informed that they have not achieved a passing result on the bar examination for which they sat.

Notice to the Public: Persons practicing under this subsection shall disclose to their clients that they are not a member of the District of Columbia Bar and have not been admitted to the bar of any state or territory. They shall add the following disclaimer as an asterisk after their name when it appears on pleadings: “Not admitted to practice in the District of Columbia. This law school graduate is practicing in this Court under the supervision of (the organization) under D.C. Court of Appeals Rule 49(c)(9).”

Notice to the Committee on Admissions and the Court: If the matter requires the law school graduate to appear in court, he or she shall: (i) provide notice to the Court of Appeals Committee on Admissions by electronically filing the certificate appended to this rule; and (ii) provide notice to the court by filing a copy of the certificate filed with the Committee on Admission along with his or her praecipe of appearance.

APPENDIX C

Proposed Form 9. Certification of Practice Pro Bono Publico

**DISTRICT OF COLUMBIA COURT OF APPEALS
COMMITTEE ON ADMISSIONS**

CERTIFICATION OF PRACTICE PRO BONO PUBLICO

NOTICE TO ALL: This certificate shall be filed electronically with the Committee on Admissions before or immediately upon the commencement of practice. The filing of this certification with a praecipe or other filing in a court with jurisdiction over the matter is sufficient to authorize appearance and practice in that case or matter without further action by the clerk of the court or agency, the Committee on Admissions, or the Committee on Unauthorized Practice of Law. Employees of the Public Defender Service or a non-profit organization located in the District of Columbia that provides legal services to individuals of limited means are only required to file one certificate covering the period from the commencement of their employment until their application for admission to the District of Columbia Bar is either granted or denied. All others must file a separate certificate for each case in which they practice under Rule 49(c)(8) or (c)(9).

I certify under District of Columbia Court of Appeals Rule 49(c)(8) or 49(c)(9) that:

For inactive members of the D.C. Bar or the bar of another state or territory

(a) Under Rule 49 (c)(9)(A), (i) I am an enrolled, inactive member of the D.C. Bar; (ii) I have not been disbarred or suspended for disciplinary reasons, and I have not resigned a bar membership with charges pending in any jurisdiction or court; (iii) I am affiliated with a non-profit organization located in the District of Columbia that provides legal services to individuals of limited means; or

(b) Under Rule 49 (c)(9)(A), (i) I am an enrolled, inactive member of the bar of another state or territory, namely _____; (ii) I have not been disbarred or suspended for disciplinary reasons, and I have not resigned a bar membership with charges pending in any jurisdiction or court; (iii) I am affiliated with a non-profit organization located in the District of Columbia that provides legal services to individuals of limited means; (iv) I am supervised by an enrolled, active member of the D.C. Bar, whose signature and Bar number appear below.

For active members in good standing of the bar of another state or territory

(c) Under Rule 49 (c)(9)(B), (i) I am an active member in good standing of the highest court of another state or territory, namely _____; (ii) I have not been disbarred or suspended for disciplinary reasons, and I have not resigned a bar membership with charges pending in any jurisdiction or court; (iii) I am affiliated with but not employed by a non-profit organization located in the District of Columbia that provides legal services to individuals of limited means;

(iv) I am supervised by an enrolled, active member of the D.C. Bar, whose signature and Bar number appear below; or

(d) Under Rule 49 (c)(9)(C), (i) I am an active member in good standing of the highest court of another state or territory, namely _____; (ii) I have not been disbarred or suspended for disciplinary reasons, and I have not resigned a bar membership with charges pending in any jurisdiction or court; (iii) I am employed by the Public Defender Service or by a non-profit organization located in the District of Columbia and that provides legal services to individuals of limited means; (iv) I will submit or have submitted an application to the District of Columbia Bar within ninety (90) days of commencing the practice of law in the District of Columbia; (v) I am supervised by an enrolled, active member of the D.C. Bar, whose signature and Bar number appear below; or

(e) Under Rule 49 (c)(8), (i) I am an active member in good standing of the highest court of another state or territory, namely _____; (ii) I have not been disbarred or suspended for disciplinary reasons, and I have not resigned a bar membership with charges pending in any jurisdiction or court; (iii) I am practicing under the direct supervision of an enrolled, active member of the District of Columbia Bar, whose signature and Bar number appear below; (iv) I have submitted or will submit an application for admission to the District of Columbia Bar within ninety (90) days of commencing the practice of law in the District of Columbia; (v) I will not practice under this temporary authority for more than 360 days; and (vi) I gave or will give notice to the public of my bar status and supervision.

I understand that I am subject to the District of Columbia Rules of Professional Conduct and the enforcement procedures applicable thereto to the same extent as if I were an enrolled, active member of the District of Columbia Bar. I further understand that my conduct is subject to all authority of the courts in which I practice.

Signature of Certifier	Print Name	Date
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Business Address

Telephone Number	Email Address
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Signature of D.C. Bar Member under Rule 49(c)(8) or (c)(9)	D.C. Bar Number	Date
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