



P R O B O N O C E N T E R

March 18, 2016

Ms. Cynthia Wright
Committee on Unauthorized Practice of Law
430 E St., N.W. Rm. 123
Washington, D.C. 20001

Re: Certification Portion of Proposed Amendments to Rule 49(c)

Dear Ms. Wright:

The pro bono practice exception of Rule 49 has been instrumental in allowing for the provision of pro bono legal services by a range of attorneys. Part of the D.C. Bar Pro Bono Committee's ("PBC")¹ proposed amendments to Rule 49(c)(9) is to revise and clarify the requirements for the Certification of Practice Pro Bono Publico (currently Form 9) and the process for submitting the form in order to promote pro bono practice and lessen the burden on the Committees on Admissions and Unauthorized Practice of Law, D.C. Superior Court clerks, the Public Defender Service ("PDS") and nonprofit legal services providers, and attorneys engaged in pro bono services.

The current version of Rule 49(c)(9) does not address the certificate requirement for pro bono attorneys who are not members of the D.C. Bar. It states only that "[a]n attorney practicing under this section (c)(9) shall give notice of his or her bar status, and 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." Opinion 3-98,² issued by the Committee on Unauthorized Practice of Law, clarifies that appearances under Rule 49(c)(9) do not require a pro hac vice application or motion to be filed, but instead require the completion of a Certificate of Practice Pro Bono Publico. The current procedure is for all attorneys, including those employed by PDS and nonprofit legal services organizations, to first bring the completed Form 9 to the D.C. Court of Appeals' clerks for the Committee on Admissions/Unauthorized Practice of Law at the Historic Courthouse at 430 E St., NW, and get a receipt. Then if the attorney needs to appear in a D.C. court, the attorney must also file Form 9 with the D.C. Superior Court and attach a copy of the form, along with the receipt, to each praecipe of appearance filed with the D.C. Superior Court or Court of Appeals. In affirmative litigation cases, attorneys need to file a Form 9 leaving the docket number blank and then within 24 hours after filing a complaint and obtaining a docket number go back to the

¹ The views expressed here represent only those of the Pro Bono Committee of the D.C. Bar Pro Bono Center and not those of the D.C. Bar or its Board of Governors.

² Opinion 3-98 states that "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. The certificate, a copy of which is appended to the Rule and attached hereto, is adequate to authorize practice under the pro bono exception both inside and outside of litigation. Of course, any judge of the Superior Court or the Court of Appeals may require additional filings for participation in any particular case."

Committee on Admissions to provide them with the docket number, or face the need to re-file a Form 9.

First, it is cumbersome for attorneys to have to come in-person to the D.C. Court of Appeals to file Form 9 each time they take on a pro bono case. Attorneys have also reported certain challenges with the current procedure, including forms periodically being rejected by the clerks of the Committee on Admissions (for example, in affirmative litigation cases when a docket number has not yet been assigned to the case or when an attorney did not come back to the Committee on Admissions with a docket number within 24 hours) and instances when attorneys attempting to file Form 9 have been told incorrectly that they must file a pro hac vice application to enter an appearance in the case. The in-person filing practice encumbers both the filing lawyers and the Committee on Admissions staff, without providing any additional safeguard.

Further, while this procedure may not constitute a substantial obstacle for pro bono attorneys who are handling only one case at a time or a few cases per year, it presents a substantial burden for attorneys employed by PDS and nonprofit legal services providers, particularly the ones practicing in court-based legal services projects, such as Attorney of the Day projects. These attorneys may appear in many cases each day and are required to file in-person a separate Form 9 for each of these appearances, even if they are representing the client only for that single, same-day court appearance.

Finally, the current practice is also burdensome on the D.C. Superior Court and Court of Appeals clerks and the Committees on Admissions and Unauthorized Practice of Law. Not all court staff or judges are familiar with Rule 49(c)(9)(C) and its requirements; some staff and judges continue to think that a pro hac vice motion is required, when Opinion 3-98 states otherwise.

The PBC's proposed amendments would significantly reduce the encumbrance of the current practice on the court clerks, the Committees on Admissions and Unauthorized Practice of Law, and pro bono, PDS, and legal services attorneys, while fully achieving the notice objectives of Rule 49 and Opinion 3-98 and preserving existing safeguards to protect the public and the administration of justice.

The PBC proposes the following amendments in the certification procedure:

1. Substitute the in-person filing of Form 9 with emailing the form to the D.C. Court of Appeals' Committee on Admissions;
2. Eliminate the practice of requiring a receipt or confirmation from the Committee on Admissions once notice is given;
3. Eliminate the case number or matter caption on Form 9;
4. Require the completion and electronic submission of Form 9 only for pro bono attorneys practicing in court;
5. Permit employees of PDS and nonprofit legal services organizations to submit to the Committee on Admissions a single Form 9 once they start employment. If they appear in

court, they would attach a copy of the Form 9 they filed with the Committee on Admissions to any praecipe, appearance form, or other initial filing, thus giving notice to the court with jurisdiction over the matter;

6. Require attorneys affiliated with PDS or nonprofit legal services organizations, but not as employees, to file a Form 9 for each new matter in court they handle.³

Substituting the physical filing requirement for an electronic filing will simplify the process and reduce the obstacles to non-DC barred attorneys providing much needed pro bono services. With electronic filing, the Committee on Admissions will still be able to collect the necessary information about the attorneys' bar status and their DC-barred supervisor while reducing the administrative burden on its clerks and eliminating confusion and erroneous rejections of submitted forms. Additionally, because the form will not have a case number, copies of the form can be attached to a court praecipe or other filing to provide formal notice to the court, and thus remove the need to file a new Form 9 for every appearance. This change will also eliminate the need for lawyers to make initial in-person trips to the D.C. Court of Appeals' Committee on Admissions and D.C. Superior Court to physically file Form 9.

Permitting employees of PDS and nonprofit legal services providers to file a single Form 9 once they begin their employment will significantly alleviate the burden placed on those organizations' employees. These 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 active D.C. Bar member who is supervising their work. This simplified procedure will still ensure that the judge presiding over each case handled by the PDS or legal services attorney has the requisite information about who is supervising the work.

These proposed changes are aligned with the purpose of Rule 49(c) as stated in Opinion 3-98 "to provide the broadest access to pro bono legal services" and "to protect the public from unlicensed legal practitioners." The need for better access to justice in D.C. is clear and the

³ PBC proposes to change subsection (D) of Rule 49(c)(9) to state:

(D) Notice to Court. If the matter requires the attorney to appear in court, an attorney practicing under section (c)(9) shall provide formal notice to the court and give notice to the D.C. Court of Appeals Committee on Admissions on the appropriate form.

and add the following to the Commentary to Rule 49(c)(9):

Persons practicing in court under this exception should give notice electronically to the D.C. Court of Appeals Committee on Admissions on the appropriate form (which is currently Form 9 of the D.C. Court of Appeals Rules). The attorney does not need a receipt or confirmation from the Committee on Admissions once notice is given. They should also give notice to the client, the other parties, and the organizations they are employed by or affiliated with. If the matter is in court, they should file a formal notice with the court with jurisdiction over the matter, which may be done by attaching a copy of the form filed with the Committee on Admissions to any praecipe, appearance form, or other initial filing. Attorneys employed by the Public Defender Service or nonprofit organizations located in the District of Columbia need only electronically file the certificate once, while all others affiliated with those organizations practicing under this exception must electronically file their certificate once for each new case filed in court in this jurisdiction.

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proposed changes to Rule 49 will help address it by reducing the obstacles faced by lawyers providing pro bono services in the District.

Sincerely,

A handwritten signature in black ink, appearing to read "Lise B. Adams". The signature is fluid and cursive, with the first name "Lise" being the most prominent.

Lise B. Adams

Assistant Director

D.C. Bar Pro Bono Center

February 29, 2016

Cynthia G. Wright, Esquire
Chair, Committee on Unauthorized Practice of Law
District of Columbia Court of Appeals
430 E Street, NW, Room 123
Washington, D.C. 20001

Re: Comment on District of Columbia Court of Appeals Rule 49

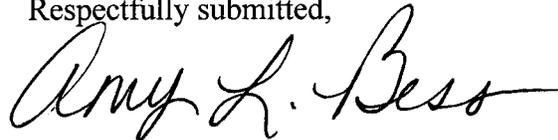
Dear Ms. Wright:

On behalf of the Pro Bono Committee of the D.C. Bar Pro Bono Center, I respectfully submit this comment in response to the request by the District of Columbia Court of Appeals Committee on Unauthorized Practice for public comment on Rule 49.

The Pro Bono Committee is an advisory committee of the D.C. Bar Pro Bono Center. **The views expressed herein represent only those of the Pro Bono Committee of the D.C. Bar Pro Bono Center and not those of the D.C. Bar or its Board of Governors.**

Thank you for this opportunity to comment on Rule 49. Please feel free to contact me should you have any questions about this submission.

Respectfully submitted,

A handwritten signature in black ink that reads "Amy L. Bess". The signature is written in a cursive style with a large, flowing "A" and "B".

Amy Bess
Chair, Pro Bono Committee
D.C. Bar Pro Bono Center

Report on Proposed Amendments to Rule 49(c)(9)

D.C. Bar Pro Bono Committee¹

(February 19, 2016)

The D.C. Bar Pro Bono Committee (PBC) respectfully recommends that the Committee on Unauthorized Practice of Law propose an amendment to the District of Columbia Court of Appeals to revise Rule 49(c)(9), the pro bono practice exception, to (1) permit active or inactive members of the bars of other States or territories—who are not members of the District of Columbia Bar—to do pro bono work in the District of Columbia under essentially the same conditions under which federal government lawyers and internal counsel who are not members of the District of Columbia Bar are permitted to do pro bono work, except for non-DC-barred attorneys employed by the Public Defender Service or non-profit organizations in the District of Columbia providing legal services to persons of limited means, who must, in addition, apply to the D.C. Bar within 90 days of commencing practice in the District (as they are currently required to do); (2) permit those required to apply to the D.C. Bar within 90 days of commencing practice in the District to continue practicing until their application is accepted or rejected, thus eliminating the current limitation of 360 days from the date of employment; and (3) clarify or modify other aspects of the existing requirements. This amendment is necessary to help meet the ever-growing demand for free legal services for those District residents who are unable to afford private counsel.²

Current Rule 49(c)(9)(A) authorizes inactive members of the District of Columbia Bar to provide pro bono legal services when the inactive member (1) “is employed by or affiliated with a legal services or referral program;” (2) “is not disbarred or suspended for disciplinary reasons

¹ The views expressed herein represent only those of the Pro Bono Committee of the D.C. Bar Pro Bono Center and not those of the D.C. Bar or its Board of Governors.

² The text of proposed Rule 49(c)(9) appears in Appendix C.

and has not resigned with charges pending in any jurisdiction or court;” and (3) files “with the court having jurisdiction over the matter, and with the Committee, a certificate that the attorney is providing representation in that particular case without compensation.”³ The PBC proposes to extend the authorization of Rule 49(c)(9)(A) to out-of-state inactive attorneys, so long as they are supervised by an active D.C. Bar member and have previously been active members of the bar in another state or territory for at least five years. It proposes to amend the requirement of physically filing the certificate of practice pro bono publico (Form 9) with the D.C. Court of Appeals Committee on Admissions to substitute emailing the amended certification to the Committee on Admissions⁴ and to substitute a separate notice requirement applicable to everyone practicing under Rule 49(c)(9), a change that reflects that many of the authorized pro bono services will be out of court.⁵

Current Rule 49(c)(9)(B) allows the provision of pro bono legal services where the person (1) “is employed by the Public Defender Service or is employed or affiliated with a non-profit organization located in the District of Columbia that provides legal services for indigent clients without fee or for a nominal processing fee”; (2) “is a member in good standing of the highest court of any state, is not disbarred or suspended for disciplinary reasons and has not

³ See Appendix A for the complete text of current Rule 49(c)(9) and Appendix B for the current text of the referenced certification form, Form 9.

⁴ This change will eliminate the need for lawyers to make initial in-person trips to the D.C. Court of Appeals Committee on Admissions to physically file the Form 9, in addition to any D.C. Superior Court filing. The current practice burdens both the filing lawyer and the Committee on Admissions staff, without providing any real benefit.

⁵ D.C. Superior Court Rule 101(d) already provides: “An inactive member of the District of Columbia Bar who is affiliated with a legal services or referral program may appear, file pleadings and practice in any particular case that is handled without fee, upon filing with this Court, and the District of Columbia Court of Appeals’ Committee on Unauthorized Practice a certificate that the attorney is providing representation in that particular case without compensation.” While that rule does not cover other attorneys authorized to practice under Rule 49(c)(9) and while the D.C. Court of Appeals does not have a rule addressing such practice, the form for the certification of practice pro bono publico (Form 9) is applicable to the D.C. Court of Appeals as well as the D.C. Superior Court, and we understand that both the Superior Court and the Court of Appeals currently require the filing of Form 9 before an out-of-state attorney may appear pro hac vice in a pro bono case in the Superior Court or in the Court of Appeals.

resigned with charges pending in any jurisdiction or court”; (3) has submitted an application for admission to the District of Columbia Bar within 90 days after commencing the practice of law in the District of Columbia, and (4) “is supervised by an enrolled, active member of the Bar who is employed by or affiliated with the Public Defender Service or the non-profit organization.”

Separately in the current rule, those attorneys subject to subsection (B) may practice under subsection (B) “for no longer than 360 days from the date of employment by or affiliation with the Public Defender Service or the non-profit organization, or until admitted to the Bar, whichever first shall occur.”

Current Rule 49(c)(9)(C) and (D) allow the provision of pro bono legal services where the person “is an officer or employee of the United States” or “is an internal counsel” and (1) “is assigned or referred by an organization that provides legal services to the public without fee”; (2) “is a member in good standing of the highest court of a state or territory,” on the same terms as specified in subsection (B); and (3) “is supervised by an enrolled, active member of the District of Columbia Bar.”

In the PBC’s view, the differences among the subsection (B), (C), and (D) requirements are immaterial or unnecessary and the three subsections should be combined into a single subsection (B) that, more broadly, authorizes a member of the bar of any state or territory to provide pro bono services, on essentially the same three conditions mentioned in subsections (C) and (D), with some modifications: (1) affiliation with a non-profit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and that provides legal services to persons of limited means (“affiliation” describes a more appropriate relationship than being “assigned or referred” and includes “employed by”); (2) membership in good standing of the bar of a state or territory; and (3) supervision by an enrolled, active member of the District of

Columbia Bar. Thus, government lawyers and in-house counsel would continue to have the authorizations currently provided in subsections (C) and (D), without the need of separate subsections. Adding “Section 501(c)(3)” to the identification of the affiliated organization adds clarity and makes unnecessary or inappropriate the added requirement that the services be “without fee,” when the organization must be one that provides legal services to persons of limited means.

The one proviso in subsection (B) would be for lawyers employed by the Public Defender Service or by a Section 501(c)(3) non-profit organization that provides legal services to persons of limited means. Those lawyers would continue to be required to apply to the District of Columbia Bar within 90 days of commencing practice in the District of Columbia and would be authorized to practice under the provision only until their application to the D.C. Bar was accepted or rejected. But the limitation in the current rule that these lawyers may practice under the subsection only for 360 days from their date of employment with the Public Defender Service or other organization would be eliminated.

We propose to continue, with some modifications, the additional conditions generally applicable to those practicing under Rule 49(c)(9): notice of the attorney’s bar status and applicability of the D.C. Rules of Professional Conduct and enforcement procedures.⁶ In

⁶ This current provision subjecting out-of-state lawyers practicing under Rule 49(c)(9) to the D.C. enforcement authority thus supplements current Rule XI, Section 1, of the Rules Governing the D.C. Bar, which does not mention lawyers practicing under Rule 49(c)(9). As amended in 2014, Rule XI Section 1, of the Rules Governing the D.C. Bar provides:

(a) *Persons Subject to Disciplinary Jurisdiction.* All members of the District of Columbia Bar, all persons appearing or participating pro hac vice in any proceeding in accordance with Rule 49(c)(1) of the General Rules of this Court, all persons licensed by this Court as Special Legal Consultants under Rule 46(c)(4), all new and visiting clinical professors providing services pursuant to Rule 48(c)(4), and all persons who have been suspended or disbarred by this Court are subject to the disciplinary jurisdiction of this Court and its Board on Professional Responsibility (hereinafter referred to as “the Board”).

particular, we eliminate the requirement that current Court of Appeals Form 9, the certificate of practice pro bono publico, be filed in every case handled by an employee of the Public Defender Service and the other non-profit organizations practicing under this exception (or under section (c)(8)). Instead, we propose a modified Form 9—modified to conform to the proposed changes to the section (c)(9) and to eliminate any case or matter caption. We propose to require that the form be electronically filed with the D.C. Court of Appeals Committee on Admissions only when practicing in court. Because the form itself will have no case or matter caption, copies of the form may then be attached to a court praecipe or other filing to provide the formal court notice required by the rule. This procedure will relieve employees of the Public Defender Service and other non-profit organizations who are practicing under section (c)(9)(B) from the need to fill out a new Form 9 for every case in which they appear.

Finally, we propose amending the Commentary to Rule 49(c)(9) by eliminating unnecessary language, clarifying that the requirement of “supervision” would not always require that the supervisor appear with the supervised attorney in court, agency trials, hearings, or at meetings.

I. The Need

The PBC’s Report on the Proposed Amendment to Rule 49 (May 2013), which proposed the adoption of current Rule 49(c)(9)(D) (authorizing internal counsel to provide pro bono services), contained a detailed description of the need for authorizing more lawyers to provide pro bono services in the District of Columbia.⁷ There is no reason to think that the need has

The proposed rule would continue to subject such lawyers to D.C. enforcement authority.

⁷ The Committee on Unauthorized Practice of Law thereafter proposed the adoption of current Rule 49(c)(9)(D), and the Court of Appeals adopted the new provision by order No. M-244-13 (July 16, 2014), effective September 1, 2014.

lessened. As we stated in that report (at 3), “it is likely that only 10 percent of the legal needs of the low-income community are being addressed.”

Private law firms are under increasing competitive pressure, and we are told that they are hiring fewer associates. That development has made it more difficult to recruit private practitioners to provide pro bono services.

The adoption of Rule 49(c)(9)(D), permitting in-house counsel to provide pro bono services in the District was an important step, but the pro bono needs in the District exceed the contributions that in-house counsel can make.

Rule 49(c)(13), the “incidental and temporary practice” authorization that the Court adopted in 2008, permits some limited pro bono activities by non-DC-barred lawyers who have offices outside the District, but still has material limitations.⁸ As a result, we believe that proposed Rule 49(c)(9) would provide significantly broader pro bono services by non-DC-barred lawyers with offices outside the District than section (c)(13) may provide. Proposed Rule 49(c)(9) would also permit non-DC-barred lawyers to provide pro bono services in D.C. legal matters without applying to become members of the D.C. Bar, while still avoiding general practice in the District or holding themselves out as DC-barred lawyers. The need for such additional pro bono services is clear.

The requirement that those “employed by” the Public Defender Service or the non-profit organizations under subsection (B) may practice under that section for only 360 days “from the

⁸ Rule 49(c)(13) authorizes “Providing legal services in the District of Columbia on an incidental and temporary basis, provided that the person is authorized to practice law by the highest court of a state or territory or by a foreign country, and is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court.” The Commentary states, in part, “[h]owever, a lawyer based outside the District who comes to the city to be primary counsel to a District-based client with respect to all aspects of [a District] real estate transaction may not qualify for this exception.” Thus, the provision may not authorize an out-of-state lawyer to handle a D.C. landlord-tenant dispute, for example, even under the supervision of a District of Columbia lawyer.

date of employment . . . or until admitted to the Bar, whichever first shall occur” is impractical because the admission process can easily take more than 360 days and having an attorney suddenly cease practice is disruptive to the organizations. Moreover, if the attorney has in fact applied to the D.C. Bar within 90 days of commencing practice, he or she is fully authorized to practice law under supervision by section (c)(8).

II. Recommendation

The D.C. Bar Pro Bono Committee respectfully recommends that the Committee on Unauthorized Practice of Law propose the replacement of current Rule 49(c)(9) and the accompanying Commentary with the language that appears in Appendix C and propose the modification of Court of Appeals Form 9 with the version that appears in Appendix D.

A. The Aims of Rule 49

The proposed amendment does not alter the aims of Rule 49.

According to the Commentary to Rule 49(a), the rule has four general purposes:

(1) To protect members of the public from persons who are not qualified by competence or fitness to provide professional legal advice or services;

(2) To ensure that any person who purports or holds out to perform the services of a lawyer is subject to the disciplinary system of the District of Columbia Bar;

(3) To maintain the efficacy and integrity of the administration of justice and the system of regulation of practicing lawyers; and

(4) To ensure that that system and other activities of the Bar are appropriately supported financially by those exercising the privilege of membership in the District of Columbia Bar.

The first purpose would be served by the amendment, as it already is by the exceptions in Rule 49(c)(9), because training as a lawyer and qualification for admission to the bar of another jurisdiction is evidence of “competence or fitness” to provide professional legal advice or

services. Moreover, virtually every jurisdiction subjects the members of its bar to the disciplinary authority of its bar or its highest court, adding further protection—even though we cannot predict how likely such discipline by non-D.C. disciplinary authorities would be. Finally, the requirement of affiliation with the legal services organization helps to ensure that lawyers providing pro bono services receive the training and advice they may need on any requirements of D.C. law or local practice.

The second and third purposes would be addressed by the proposal to continue the requirement of the current rule, requiring that any attorney practicing under Rule 49(c)(9) shall, in connection with that practice, “give notice of his or her bar status, and 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.” The Pro Bono Committee is not in a position to evaluate the effectiveness of disciplining a non-D.C. bar member practicing in the District.

Current practice is in line with the fourth purpose—payment of Bar dues to support the Bar’s disciplinary system need not be served by requiring dues payments from non-DC-barred or retired lawyers providing pro bono services.⁹ These non-DC-barred lawyers do not have all the benefits of D.C. Bar membership because they will not be generally authorized to practice law in the District of Columbia, thus it does not detract from the fourth purpose of Rule 49. Requiring the additional non-DC-barred lawyers who would be authorized by the proposed rule to provide

⁹ Rule II, Section 5, of the Court of Appeals Rules Governing the District of Columbia Bar does not impose an obligation to pay dues on anyone except D.C. Bar members: “Every member shall pay dues in an amount not to exceed a ceiling set by the District of Columbia Court of Appeals. The Board of Governors shall determine the amount of dues to be paid annually by members in the various classes of membership.” D.C. Court of Appeals Rule 49(c)(7), governing *pro hac vice* representations in the D.C. courts, imposes a charge of \$100 to participate *pro hac vice*, but by the terms of subparagraph (v), the fee is waived for those practicing under section (c)(9) (as well as for those “whose client’s application to proceed in forma pauperis has been granted”).

pro bono services to pay any dues would inappropriately distinguish them from government attorneys and in-house attorneys and would discourage them from providing pro bono services in the District. The need for such services is too great to allow that one purpose to defeat the proposed authorization, when the other three general purposes are served.

B. Other Jurisdictions Permit Not Locally Barred Lawyers To Provide Pro Bono Services.

In our Report on the Proposed Amendment to Rule 49 of May 2013, we stated that ten jurisdictions allow non-locally barred attorneys to provide pro bono services through an affiliation with a legal services provider.¹⁰ It also listed four other jurisdictions as authorizing not locally barred attorneys to provide pro bono services when under the supervision of a qualified legal services organization and when limited by a set period of time.¹¹ Finally, it listed four other jurisdictions as requiring both the supervision of a locally licensed attorney and an affiliation with a legal services provider.¹²

In addition, Maryland permits not locally barred attorneys “employed by or associated with an organized legal services program” to provide pro bono services when practicing “under the supervision of” a member of the Maryland Bar.¹³ Such attorneys are subject to the Maryland Lawyer’s Rules of Professional Conduct.¹⁴

Finally, we have not undertaken a new exhaustive review of the law of other jurisdictions, in part because we believe that the District of Columbia should be a leader, not a

¹⁰ Report at 6 n.23 (listing Arizona, Arkansas, Illinois, Minnesota, Missouri, Nebraska, Oregon, Tennessee, Washington, and Wisconsin).

¹¹ *Id.* (listing New Mexico, Ohio, Rhode Island, and West Virginia).

¹² *Id.* (listing Mississippi, North Carolina, New Jersey, and North Dakota).

¹³ Rules Governing Admission to the Bar of Maryland, Rule 15, as amended per Rules Order of September 17, 2015 (p. 319-324), *available at* <http://www.courts.state.md.us/rules/ruleschanges.html>.

¹⁴ *Id.* Rule 15(i).

follower, in expanding the scope of permissible pro bono services. We note, however, that most jurisdictions have adopted a version of ABA Model Rule 5.5, which authorizes not locally barred lawyers to practice within the jurisdiction temporarily in a variety of circumstances that may include pro bono services.¹⁵

C. Conclusion

The proposed amendment would add to the number of attorneys who can provide legal services to those in need while preserving existing safeguards to protect the public and the administration of justice.

¹⁵ ABA Model Rule 5.5(c), widely adopted with some variations, provides:

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

APPENDIX A

Current Rule 49(c)(9)

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

(A) Where the person is an enrolled, inactive member of the District of Columbia Bar who is employed by or affiliated with a legal services or referral program in any matter that is handled without fee and who is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court; provided that, if the matter requires the attorney to appear in court, the attorney shall file with the court having jurisdiction over the matter, and with the Committee, a certificate that the attorney is providing representation in that particular case without compensation.

(B) Where the person is a member in good standing of the highest court of any state, is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court, and is employed by the Public Defender Service, or is employed by or affiliated with a non-profit organization located in the District of Columbia that provides legal services for indigent clients without fee or for a nominal processing fee; provided that the person 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, and that such attorney is supervised by an enrolled, active member of the Bar who is employed by or affiliated with the Public Defender Service or the non-profit organization.

(C) Where the person is an officer or employee of the United States, is a member in good standing of the highest court of a state or territory, is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court, and is assigned or referred by an organization that provides legal services to the public without fee; provided that the person is supervised by an enrolled, active member of the District of Columbia Bar.

An attorney practicing under this section (c)(9) shall give notice of his or her bar status, and 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.

An attorney may practice under Part (B) of this section (c)(9) for no longer than 360 days from the date of employment by or affiliation with the Public Defender Service or the non-profit organization, or until admitted to the Bar, whichever first shall occur.

(D) Where the person is an internal counsel, is a member in good standing of the highest court of a state or territory, is not disbarred or suspended for disciplinary reasons, and has not resigned with charges pending in any jurisdiction or court, and is assigned or referred by an organization that provides legal services to the public without fee; provided that the individual is supervised by an active member of the District of Columbia Bar.

Commentary to § 49(c)(9):

Section (c)(9) consolidates the provisions of former sections (c)(5) and (c)(7) relating to practice by attorneys for legal services organizations and the Public Defender Service. It adds a provision, on request of the United States Department of Justice, allowing government lawyers to participate in providing legal services pro bono publico. Where persons practice under this exception, they should give formal notice to the court and the parties of doing so.

A form of certificate for such notice is appended to the Rule, addressing the three alternatives under (c)(9) and adding a certificate for pro bono representation under the limited duration supervision exception of (c)(8).

In all circumstances the conduct and practice privileges of counsel are subject to the full authority of the courts in which they practice.

Commentary to § 49(c)(9)(D):

Section (c)(9)(D) is new. Recognizing the increased need for attorneys to serve as pro bono counsel and given the importance of access to justice, the purpose of this rule is to permit individuals who are members in good standing of the highest court of a state or territory and who are appropriately supervised by a licensed D.C. Bar member to perform pro bono work in the District of Columbia, provided the work is assigned or referred by an organization that provides pro bono legal services to the public without fee.

APPENDIX B

Current Form 9. Certification of Practice Pro Bono Publico

DISTRICT OF COLUMBIA
COURT OF APPEALS

[or]

SUPERIOR COURT OF
THE DISTRICT OF COLUMBIA

_____ Plaintiff/Appellant	CERTIFICATION OF PRACTICE PRO BONO PUBLICO
v.	
_____ Defendant/Appellee	
Case No. _____	

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

1. That I am a member in good standing of the bar(s) of:

2. That 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.

3. That:

(a) Under Rule 49 (c)(9)(A), I am an enrolled, inactive member of the D.C. Bar; I am employed by or affiliated with a legal services or referral program; and I am providing representation in this case without compensation; or

(b) Under Rule 49 (c)(9)(B), I am employed by or affiliated with the Public Defender Service or a non-profit organization located in the District of Columbia providing services without fee or for a nominal processing fee; 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; and I am supervised by an enrolled, active member of the D.C. Bar who is employed by

or affiliated with the Public Defender Service or the non-profit organization and whose signature and Bar number appear below; or

(c) Under Rule 49 (c)(9)(C), I am an officer or employee of the United States government; I have been assigned or referred by an organization providing legal services to the public without fee; and 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)(8), 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; I am providing representation in this case without compensation; 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; I will not practice under this temporary authority for more than 360 days; and I give notice to the public of my bar status and supervision.

I understand, under Rule 49 (c)(9), 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

Business Address

Telephone No.

Signature of D.C. Bar Member
under Rule 49(c)(8) or (c)(9)

D.C. Bar Number

Date

APPENDIX C

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 exempt from taxation under Section 501(c)(3) of the Internal Revenue Code that is located in the District of Columbia and 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, has previously been an active member of such a bar for at least five years and 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 employed by the Public Defender Service or is employed by or affiliated with a non-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code that is located in the District of Columbia and that provides legal services to individuals of limited means, and (iv) is supervised by an enrolled, active member of the District of Columbia Bar; provided that, if the person is employed by the Public Defender Service or by a Section 501(c)(3) non-profit organization located in the District of Columbia that provides legal services to individuals of limited means, he or she 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, in which case practice under this subsection shall be permitted only until the attorney's application to the District of Columbia Bar is either granted or denied.

(C) Applicability of the D.C. 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.

(D) Notice to Court. If the matter requires the attorney to appear in court, an attorney practicing under section (c)(9) shall provide formal notice to the court and give notice to the D.C. Court of Appeals Committee on Admissions on the appropriate form.

Commentary to § 49(c)(9):

Recognizing the increased need for attorneys to serve as pro bono counsel and given the importance of access to justice, the purpose of this rule is to permit individuals who are active or inactive members in good standing of the highest court of a state or territory, who are employed

by the Public Defender Service or employed by or affiliated with a non-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code that is located in the District of Columbia and that provides legal services to individuals of limited means, and who are appropriately supervised by an active D.C. Bar member to perform pro bono work in the District of Columbia.

Government lawyers, in-house counsel, and other attorneys practicing under subsection (B) are not required to apply to the D.C. Bar within 90 days of commencing practice in the District of Columbia unless they are employed by the Public Defender Service or a Section 501(c)(3) non-profit organization located in the District of Columbia that provides legal services to persons of limited means.

Except for inactive members of the District of Columbia Bar practicing under subsection (c)(9)(A), all attorneys practicing under section (c)(9) must be supervised by an active member of the District of Columbia Bar.

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 to send supervising attorneys to court with all lawyers practicing under the (c)(9) exception.

Persons practicing in court under this exception should give notice electronically to the D.C. Court of Appeals Committee on Admissions on the appropriate form (which is currently Form 9 of the D.C. Court of Appeals Rules). The attorney does not need a receipt or confirmation from the Committee on Admissions once notice is given. They should also give notice to the client, the other parties, and the organizations they are employed by or affiliated with. If the matter is in court, they should file a formal notice with the court with jurisdiction over the matter, which may be done by attaching a copy of the form filed with the Committee on Admissions to any praecipe, appearance form, or other initial filing. Attorneys employed by the Public Defender Service or nonprofit organizations located in the District of Columbia need only electronically file the certificate once, while all others affiliated with those organizations practicing under this exception must electronically file their certificate once for each new case filed in court in this jurisdiction.

In all circumstances the conduct and practice privileges of counsel are subject to the full authority of the courts in which they practice.

APPENDIX D

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 in court with jurisdiction over this matter under Rule 49(c)(9). 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.

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 exempt from taxation under Section 501(c)(3) of the Internal Revenue Code that is located in the District of Columbia and that provides legal services to individuals of limited means; and (iv) I gave notice of my bar status under Rules 49(c)(9)(C) or (D); 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 employed by or affiliated with a non-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code that is located in the District of Columbia and that provides legal services 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 gave notice of my bar status under Rules 49(c)(9)(C) and/or (D);

[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 exempt from taxation under Section 501(c)(3) of the Internal Revenue Code that is located in the

District of Columbia and 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; and (v) I gave notice of my bar status under Rules 49(c)(9)(C) or (D); or

[] (d) 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 employed by the Public Defender Service or by a non-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code that is located in the District of Columbia and that provides legal services to individuals of limited means; (iv) I 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 and my first application to the District of Columbia Bar has not been denied; (v) I am supervised by an enrolled, active member of the D.C. Bar, whose signature and Bar number appear below; (vi) I am aware that I need only file this certificate once and (vii) I gave notice of my bar status under Rules 49(c)(9)(C) or (D); 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 notice to the public of my bar status and supervision.

I understand, under Rule 49 (c)(9), 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

Business Address

Telephone Number

Email Address

Signature of D.C. Bar Member
under Rule 49(c)(8) or (c)(9)

D.C. Bar Number

Date