What to Know About the D.C. Court of Appeals' Revisions to Rule 49

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On June 22, 2022, the District of Columbia Court of Appeals issued an order revising D.C. App. R. 49, which governs the unauthorized practice of law in D.C. The revised Rule 49 took effect 60 days later, on August 21, 2022. The revised Rule 49 contains sweeping changes to almost every provision of the rule, including, importantly, the temporary supervised practice exception that many law firms and law organizations use for laterals and recent law school graduates.

Rule 49(c)(8), formerly titled "Limited Duration Supervision by D.C. Bar Member," is now titled "While Bar Application Is Pending." The change in title reflects what is possibly the most significant change to Rule 49(c)(8). Under the prior version of the rule, someone who was admitted to practice in another jurisdiction could move to D.C. and begin practicing under attorney supervision—with the appropriate disclaimer—so long as they submitted their D.C. Bar application within 90 days of the date on which they started practicing under the exception. The new provision eliminates the 90-day grace period and only allows attorneys to practice under the exception created by Rule 49(c)(8) *after* they have submitted their D.C. Bar application—i.e., while their application is pending. The elimination of the 90-day grace period means that laterals and recent law school graduates admitted elsewhere cannot practice in D.C. until after they have submitted their applications.

What are the practical implications of this change? We briefly outline the repercussions for the different categories of new hires below:

- New hires who are recent law school graduates: Recent law school graduates are law clerks until they are admitted to a state bar. Those who took a bar examination other than the D.C. Bar examination, and who are waiting to receive their bar examination results, should get their D.C. Bar application together in the meantime so that they can submit it as soon as they are admitted to the bar of another jurisdiction. For example, a recent law graduate who took the New York Bar examination cannot practice law and can only use the title "law clerk" (rather than "associate") until they receive their passing results. Under the new Rule 49, once they are admitted in New York, they will not be able to change their title from "law clerk" to "associate" and practice under the (c)(8) exception *until after they submit* their D.C. Bar application—so it is best to get it ready to submit ahead of time. Note that D.C. is a Uniform Bar Exam ("UBE") jurisdiction and applicants must have taken the UBE in order to seek admission to the D.C. Bar via bar examination score transfer.

- Laterals: Laterals with three years of membership in a state bar should get their application together ahead of time and submit the application before their start date at the firm. They

will not be able to practice in D.C. until they do. Laterals with less than three years of such membership can apply via UBE score transfer only.

- Anyone who is already practicing under the (c)(8) exception: Anyone currently practicing under the (c)(8) exception, who has not yet submitted their application because they are within the former rule's 90-day window, should submit it immediately. The 90-day window is eliminated and continuing to "practice" under the old (c)(8) exception is unauthorized practice of law.

Once an applicant has submitted their D.C. Bar application and has commenced practice under the (c)(8) exception, the new Rule 49 permits practice under the exception for 365 days—a slightly longer period than the prior rule's 360-day permitted practice period. D.C. App. R. 49(c)(8)(B). If an applicant's D.C. Bar application is not processed within that 365-day period, the new Rule also provides specific instructions for requesting an extension of the 365-day period: "A request for an extension must be submitted in writing to the Director [of the Committee on Admissions] at least 14 days before the 365-day period expires." *Id*. Applicants who have submitted a timely request for extension can continue to practice while their request is pending, and if granted, the Director will inform the applicant of the length of the extension granted. *Id*.

While the removal of the 90-day grace period is the most significant change, luckily, the text of the required disclaimer remains largely unchanged. The commentary to the rule suggests that attorneys practicing under the (c)(8) exception use the following disclaimer: "not admitted to the D.C. Bar; practice supervised by D.C. Bar Members" or "Admitted only in [insert jurisdiction(s)]; practice supervised by D.C. Bar Members." *See also* D.C. U.P.L. Comm., Formal Op. 5-98 (1998). In addition, the commentary confirms that the term "admission pending" should not be used because it is "likely to be misleading because it implies that the grant of a pending application for admission to the D.C. Bar is a formality." *See also* D.C. U.P.L. Comm., Formal Op. 20-08 (2008). The term "application pending" may present similar issues, depending on the context. *See id* at 2. We do not recommend using either term in the disclaimer; stick to the language recommended in the commentary to the rule.

Moreover, the disclaimer should appear on all business documents. D.C. App. R. 49(c)(8)(iv). While the former version of the rule did not define that term, "business documents" is now a defined term, and it broadly includes "any document submitted or made available to any client, third party, the public, or any official entity in connection with a person's provision of legal or law-related services, and may include letters, e-mails, business cards, website biographies, pleadings, filings, discovery requests and responses, formal papers of all kinds, advertisements, and social media." D.C. App. R. 49(b)(8). Whether lawyers admitted elsewhere are already practicing under the (c)(8) exception or whether they intend to in the future, they should check to make sure their disclaimers appropriately appear on all business documents as it is now defined.

Finally, the new rule relaxes *pro hac vice* requirements for lawyers practicing under the new (c)(8) exception. A person who is practicing under the new Rule 49(c)(8) now "need not apply for admission *pro hac vice*" to appear in the D.C. Superior Court or the D.C. Court of Appeals. The commentary to the rule notes that this "represents a departure" from the prior version of the rule. The commentary also notes that because of this change, D.C. Opinion 18-06, which governs *pro bono* services provided under the prior version of Rule 49(c)(8), is no longer applicable.

Please don't hesitate to contact us if you have additional questions about the new Rule 49.

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