

August 24, 2016

Julio A. Castillo
Clerk, D.C. Court of Appeals
430 E Street, NW
Washington, DC 20001

Re: Proposed Technical Revisions to Rule 49

Dear Mr. Castillo:

The Association of Corporate Counsel (“ACC”) and its National Capital Region Chapter¹ appreciate the opportunity to comment on the proposed amendments to D.C. App. Rule 49. In September 2015, ACC and 43 DC-based in-house counsel responded to the Committee on Unauthorized Practice of Law’s request for comments on potential amendments to Rule 49, inviting the Committee to consider expanding the ability of in-house counsel in the District of Columbia to provide pro bono services. We are dismayed to see that the Committee did not propose substantive changes to Rule 49(c)(9)(D), and write to request reconsideration of this issue.

D.C. Court of Appeals Rule 49(c)(9)(D) includes two key restrictions that limit Internal Counsels² engagement in pro bono: (i) cases must be assigned by a legal services provider, and (ii) Internal Counsel must be supervised by an active member of the D.C. Bar. We recommend removing these unnecessary restrictions. Expanding the ability of Internal Counsel to engage in pro bono without undue restrictions can increase access to justice by increasing the pool of pro bono volunteers. Internal Counsel influence the legal profession as a whole, and their greater participation in pro bono can strengthen the overall community of lawyers involved in pro bono services.

Rule 49’s Unnecessary Restrictions on Internal Counsel Pro Bono

Rule 49(c)(9)(D)’s limitation of eligible pro bono matters to those assigned by legal services organizations has an outside impact on corporate legal departments, whose

¹ The Association of Corporate Counsel is a global bar association that promotes the common professional and business interests of in-house counsel who work for corporations, associations and other private-sector organizations through information, education, networking opportunities and advocacy initiatives. ACC has more than 40,000 members, employed by 10,000 organizations in 85 countries. Our National Capital Region Chapter, which serves the Washington, DC metro area has 2,400 members.

² Under Rule 49(c)(6), an “Internal Counsel” is a person “providing legal advice only to one’s legal employer, where the employer does not reasonably expect that it is receiving advice from a person authorized to practice law in the District of Columbia.”

lawyers mostly specialize in corporate, transactional matters. D.C. is fortunate that there are many legal services organizations offering pro bono opportunities to D.C. attorneys. However, there are a limited number of legal services providers offering the type of transactional pro bono opportunities that are often well-suited for Internal Counsel. Constraints on time, resources, focus, and capacity of the legal services providers further restrict opportunities. Removing this restriction would permit legal departments to work with other worthy public interest organizations to develop new pro bono opportunities and engage their entire legal department in pro bono legal services.

Rule 49(c)(9)(D)'s supervision requirement is also unnecessary and detrimental to increasing available legal pro bono assistance as it requires two competent lawyers to work on one matter, limiting the number of hours and clients volunteer lawyers can help. Like any competent attorney, Internal Counsel will seek support when needed and as required by other rules. Requiring unnecessary supervision wastes time and diminishes opportunities for additional pro bono assistance.

The current restrictions do not lead to greater client protection

We understand the concerns inherent in expanding practice rules: protecting the public, ensuring those who hold themselves out as lawyers are subject to the D.C. disciplinary system, and maintaining the efficacy and integrity of the administration of justice and the regulation of lawyers. Fortunately, Rule 49's other provisions address these concerns.

Rule 49(c)(9)(D) requires Internal Counsel to be members in good standing of the highest court of a state or territory, not disbarred or suspended for disciplinary reasons, and not resigned with charges pending in any jurisdiction or court. In addition, Rule 49(c)(9) states that attorneys practicing under that section shall be subject to the D.C. Rules of Professional Conduct and its enforcement procedures to the same extent as enrolled, active members of the D.C. Bar. The current restrictions on Internal Counsel pro bono in no way serve the interests of protecting clients because Internal Counsel providing pro bono services are held to the same ethical standards as active members of the D.C. Bar.

The need for pro bono legal services in the District is great. We see no reason to let needless practice restrictions further limit the ability of Internal Counsel to provide pro bono legal services. We are attaching our suggested revisions to Rule 49, which also accompanied our September 2015 letter to the Committee on Unauthorized Practice of Law. We encourage the Court of Appeals to consider further amendment of Rule 49 to expand pro bono engagement by Internal Counsel.

Sincerely,



Amar Sarwal
Vice President and Chief Legal Strategist
Association of Corporate Counsel

Enclosure A Suggested Amendments

Rule 49(c)(9)(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.~~ Lawyers practicing under this provision are not required to obtain pro hac vice admission in pro bono legal service matters that require appearance in courts or administrative agencies, either in person or by signing pleadings.

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 and a provision allowing Internal Counsel 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 four 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):

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.~~ Consistent with its purpose to encourage the provision of pro bono services, the exception in Rule 49(c)(9)(D) does not impose additional obligations on internal counsel to provide pro bono services in the District of Columbia. Clients who obtain services on a pro bono basis from lawyers practicing under the (c)(9)(D) exception are protected to the same extent as clients who employ active members of the D.C. Bar, namely the District of Columbia Rules of Professional Conduct and the enforcement procedures applicable thereto. A lawyer who provides pro bono service under the (c)(9)(D) exception must give notice of his or her bar status to the client and to the courts in those matters that require court appearance.