

**A Harris, Wiltshire & Grannis LLP Guide to Getting Admitted to the D.C. Bar and
Avoiding the Unauthorized Practice of Law**

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INTRODUCTION

This is a review and summary of the D.C. Bar admissions process and tips for avoiding the unauthorized practice of law authored by Harris, Wiltshire & Grannis LLP's Legal Ethics and Malpractice Group. Our ethics team—all experienced litigators—assist lawyers, law graduates, and law students with the process of applying for admission to the D.C. Bar, and represent lawyers who have found themselves the subject of an investigation regarding the unauthorized practice of law.

This document is an effort to distill a complicated procedure into a practical step-by-step process. On May 13, 2021, D.C. Court of Appeals Rule 46—the rule governing admission to the D.C. Bar—underwent a major overhaul, modifying a series of longstanding provisions.¹ This guide generally describes the admissions process from start to finish and provides suggestions for completing the application. We also provide suggestions for avoiding the unauthorized practice of law in D.C.—governed by D.C. Court of Appeals Rule 49—including highlighting some common pitfalls. Note that each section includes the date it was last updated, so be sure to check if there have been any changes to Rules 46 and 49 since this document was last revised.

This document does not create an attorney-client relationship between our firm and the reader. Many situations are different, and we recommend that anyone with questions or concerns seek representation and advice from counsel familiar with their particular circumstances.

PART 1 GETTING ADMITTED TO THE D.C. BAR (RULE 46)

I. About the Committee on Admissions (Updated July 2021)

D.C. Court of Appeals Rule 46(a) requires the court to appoint the Committee on Admissions, a standing committee of at least seven D.C. Bar members. One D.C. Bar member must serve as counsel to the Committee. Committee terms are for three years. If a vacancy arises before the end of a member's term, the successor will serve the unexpired term. A member shall not be appointed to serve longer than two consecutive three-year terms unless the court makes an exception. Members are immune from civil suit for conduct in the course of their official duties.

¹ Order, No. M-273-21, 2 (D.C. May 13, 2021). This guide incorporates those amendments, which took effect on July 12, 2021 (sixty days after the court's May 13, 2021 order).

Claudia A. Withers is the current Chair of the Committee.² Elizabeth A. Greenidge is the Vice Chair. Thomas R. Healy is a member and serves as Counsel. Other members include Stephen Douglas Juge, Alvin Thomas, Kenneth J. Nunnenkamp, Almo J. Carter, Janell Wolfe, James Patrick Connor, Erica Deray, Clarence Powell, Belinda Tilley, and Carrie Weletz.

Shela Shanks is currently the Director of the Committee on Admissions and the Unauthorized Practice of Law. She is the person to email to request an extension of the 360 days under Rule 49(c)(8) (i.e., out of state lawyer practicing under supervision of D.C. lawyer while D.C. Bar application is pending), which is discussed in more detail below.

II. Admission by Examination, D.C. Rule 46(b)(1)(B)(i) (Updated July 2021)

D.C. Court of Appeals Rule 46(b)(1)(B)(i) provides that admission to the D.C. Bar may be based on “examination in this jurisdiction,” with Rule 46(c) governing the rules for admission by exam.

A. Eligibility

If you seek to gain admission to the D.C. Bar by taking the D.C. Bar exam, you must meet one of two eligibility requirements.

1. If you have graduated with, or have completed all requirements for graduation with, a J.D. or LL.B. degree from an ABA-approved law school, you are eligible to take the D.C. Bar exam, provided that your law school was ABA-approved at the time your degree was conferred.³ You may take the D.C. Bar exam if your degree was conferred before the first day of the Bar exam, or is expected to occur within three months of the first day of the exam.⁴ You must submit a certification demonstrating your graduation from an ABA-approved school with the required degree in order to be admitted to the D.C. Bar.⁵
2. If you graduated from a law school that is not ABA-approved, you are eligible to take the D.C. Bar exam after completing at least twenty-six credit hours of study in an ABA-approved law school, with all twenty-six credits earned in topics

² *Committee Members*, D.C. COURT OF APPEALS, <https://admissions.dcappeals.gov/committee-members> (last visited July 19, 2021).

³ D.C. App. R. 46(c)(3).

⁴ *Id.*

⁵ *Id.*

“substantially concentrated” on subjects tested on the Uniform Bar Examination (“UBE”).⁶ Those credit hours may be earned through remote instruction courses that meet the ABA’s definition of “distance education course.”⁷

In addition, you must take the Multistate Professional Responsibility Examination (“MPRE”) and receive the minimum passing score required by the Committee on Admissions (the “Committee”).⁸ The minimum passing MPRE score is currently 75 for the D.C. Bar. You can take the D.C. Bar exam before receiving the required MPRE score, but you will not be admitted to the D.C. Bar without receiving that score.⁹

You are permitted to take the D.C. Bar exam up to four times.¹⁰ After that, you may not attempt to take the D.C. Bar exam again absent a showing of extraordinary circumstances.¹¹

B. Application and Payment

Applications for admission by the July 2021 exam were accepted between May 10, 2021, and May 28, 2021, with *no late filing period*.¹² Applications for admission by the February 2022 exam will be accepted from October 24, 2021, through November 18, 2021.¹³ Requests for accommodations are due at the time of the application (for the February 2022 exam, no later than November 18).¹⁴

⁶ *Id.* R. 46(c)(4).

⁷ “‘Distance education course’ means one in which students are separated from the faculty member or each other for more than one-third of the instruction and the instruction involves the use of technology to support regular and substantive interaction among students and between the students and the faculty member, either synchronously or asynchronously.” ABA Standards and Rules of Procedure for Approval of Law Schools 2020-2021 at ix (Am. Bar Ass’n 2020).

⁸ D.C. App. R. 46(c)(5).

⁹ *Frequently Asked Questions*, D.C. COURT OF APPEALS, <https://admissions.dcappeals.gov/faq> (last visited July 19, 2021) (hereinafter *FAQs*).

¹⁰ D.C. App. R. 46(c)(13).

¹¹ *Id.*

¹² *Bar Exam Fees*, D.C. COURT OF APPEALS, <https://admissions.dcappeals.gov/bar-exam-fees> (last visited July 19, 2021).

¹³ *Id.*

¹⁴ *Id.* See Part 1, Section III below for more detail on the D.C. Bar application.

The application must be accompanied by payment or proof of payment.¹⁵ As of July 19, 2021, the fee for the July 2021 and February 2022 administrations of the exam is \$232 for a first-time applicant, plus an additional NCBE investigation fee.¹⁶ Application fees are not refundable or transferable.¹⁷

C. Exam Structure

The D.C. Bar exam is held on successive days in February and July of each year.¹⁸

The D.C. Bar administers the UBE, developed by the National Conference of Bar Examiners (“NCBE”). The UBE includes a written component and a multiple-choice component.¹⁹

The written component of the exam has two parts: the Multistate Essay Examination and the Multistate Performance Test.²⁰ The multiple-choice component consists of the Multistate Bar Examination (“MBE”).²¹

In order to earn a transferrable UBE score, you are required to take both the written and multiple-choice components of the exam in a single administration of the exam.²²

You should carefully review the instructions on your D.C. Bar application and should also review the instructions posted on the Committee’s website. If you fail to comply with those instructions, you risk being dismissed from the exam room or having your score invalidated.²³ You will also receive and must comply with an exam “code of conduct” which prohibits, among other things: “discussing the exam with other applicants during testing period, copying exam material, posting exam material on the internet, consulting study aids during the exam, wearing or using watches, fitness bands or any other electronic device during the exam, manipulation of the exam software to facilitate cheating and interfering with the exam in any manner.”²⁴

¹⁵ D.C. App. R. 46(c)(2)(B).

¹⁶ *Bar Exam Fees*, *supra* note 12.

¹⁷ *FAQs*, *supra* note 9.

¹⁸ D.C. App. R. 46(c)(1).

¹⁹ *Id.* R. 46(c)(7)(A).

²⁰ *Id.*

²¹ *Id.*

²² *Id.* R. 46(c)(7)(B).

²³ *Id.* R. 46(c)(6).

²⁴ *FAQs*, *supra* note 9.

D. Determining Pass/Fail Status

After the exam is administered, the NCBE will convert applicants' raw scores on the written and multiple-choice components of the exam into scaled scores.²⁵ You must earn a combined UBE scaled score of at least 266 to pass the D.C. Bar exam.²⁶

The Director of the Committee on Admissions and the Unauthorized Practice of Law (currently, Shela Shanks) will notify each successful and unsuccessful applicant of her written component scaled score, MBE scaled score, and combined UBE scaled score in writing. After that notice, an alphabetical list of successful applicants is made publicly available.²⁷ Generally, applicants who take the February administration of the exam will receive their results in May, and applicants who take the July exam will receive their results in October.²⁸

Exam scores are not adjusted after the list of successful applicants is published, but unsuccessful applicants—those who received a scaled score below 266—may submit a request to review their graded written component answers.²⁹ You should not, however, communicate with Committee members or exam graders about *any* applicant's performance on the exam, including your own performance.³⁰

III. Tips for Filling out your D.C. Bar Application (Updated July 2021)

Compiling the information required for the D.C. Bar application takes considerable time and effort. You should begin your application as soon in advance as possible so that you can locate the necessary information. The D.C. Bar asks for driving records, prior residences, transcripts, current and former employers, and other information which you may not currently have in your possession. As early as your 3L year, it is best to start collecting your previous addresses, work history, driving records, and records of any court cases. Gathering that information will take longer than you think, and the last thing you want to be doing when you are starting your first full-time job after law school is scrambling to put together the necessary information.

²⁵ D.C. App. R. 46(c)(8).

²⁶ *Id.* R. 46(c)(9)(A).

²⁷ *Id.* R. 46(c)(10).

²⁸ *FAQs*, *supra* note 9.

²⁹ D.C. App. R. 46(c)(11).

³⁰ *Id.* R. 46(c)(14).

Even if you are not yet ready to officially begin your application, you can review the application questions by visiting admissions.dcappeals.gov, clicking on the “Information & Applications” tab, and reviewing the “Application for Admission by Examination.”³¹ If you reviewed the D.C. Bar application prior to April 16, 2021, please keep in mind that some questions have changed. Most significantly, the new application makes clear that in the context of mental health and dependency, “[t]he mere fact of treatment, monitoring or participating in a support group” is not only not a basis for denial of an application, but “does not need to be reported.” You are also no longer required to list your voluntary bar memberships, nor debts under \$500.³² Reviewing this application as early as possible can help you to understand the specific information you will be asked to find and report so that you can plan accordingly.

When you begin filling out your D.C. Bar application, candor is critical. D.C. Rule of Professional Conduct 8.1 states that “[a]n applicant for admission to the Bar . . . shall not . . . knowingly make a false statement of fact.” The D.C. Bar application requires detailed information about your previous employment, residence, discipline history, and more, some of which may seem unrelated to your ability to function effectively as a lawyer. Comment [1] to D.C. Rule 8.1 makes clear, however, that “lack of materiality does not excuse a knowingly false statement of fact.”³³ When answering each application question, begin by reading the question carefully to ensure that you understand precisely what information you are being asked to provide. Pay specific attention to date ranges and explanatory notes. Then provide all information which arguably falls within the purview of that question. Where the question is unclear, err on the side of disclosure—this is not the time to parse words to your advantage.

Before submitting your application, take care to ensure you have not unintentionally omitted information. Although D.C. Rule 8.1 only prohibits “knowingly” making false statements, you do not want to be put in the position of arguing with the Bar about whether a misstatement was intentional. Some of the requested information can be difficult to recall. For example, the application asks for “every permanent or temporary physical address where you have resided for a period of one month or longer” and all “employment and unemployment information” from either the last ten years or since age eighteen, whichever period is shortest.

³¹ Once you begin working on your application, be sure to fill out and submit all required forms. See Part I, Sections VII.B–D below for more information.

³² You must report any “debt of \$500 or more that has been more than 90 days past due within the past three years that was not resolved in bankruptcy.” *Character & Fitness*, D.C. COURT OF APPEALS, <https://admissions.dcappeals.gov/browseprintform.action?applicationId=240&formId=240> (last visited July 19, 2021).

³³ D.C. Rules of Pro. Conduct r. 8.1 cmt. [1].

Do not just rely on your own memory when answering these questions. Look through your records, including old resumes, applications, and tax documents. Seek out assistance from close friends or family members, or even use creative strategies like looking through pictures or social media posts from the relevant periods to help jog your memory. Again, even though it might seem irrelevant that you spent a summer in college working at an ice cream parlor, this type of information must be included if called for by the question.

Spending extra time ensuring the accuracy of your application is far preferable to dealing with a delay in processing as the result of an error. In D.C., it is your character and fitness application which poses the final barrier to admission, as the character and fitness review is conducted after you are notified that you passed the Bar examination.³⁴ Only once that review is successfully completed, will you be certified for admission. Until you are admitted, you must carefully comply with all ethical rules to avoid the unauthorized practice of law.³⁵

IV. Admission by Reciprocity, D.C. Rules 46(b)(2)–(4) (Updated July 2021)

Admission by reciprocity can take a number of forms. A lawyer admitted to practice and in good standing in another state or territory for at least three years prior to the filing of an application for membership in the D.C. Bar is eligible for admission without motion.³⁶

You are eligible for admission through score transfer if you have attained a scaled score of at least 266 on a single UBE exam administration and graduated from an ABA approved law school, or received at least twenty-six credit hours from an ABA approved law school in subjects tested on the UBE exam.³⁷ You must also have passed the MPRE with a scaled score of at least 75. You must apply within five years of attaining the UBE score.³⁸ Subject to the same ABA approved law attendance requirements, a member of another bar can apply for admission based on an MBE score of 133, provided that the score was attained on or before July 2021, and the application is submitted by March 31, 2022, with passing the MPRE also mandated.

The requirements may change from time to time. Those who took an abbreviated UBE exam in 2020 may not be eligible for admission by score transfer. The only exams that are

³⁴ See *FAQs*, *supra* note 9.

³⁵ See D.C. App. R. 49(a); Part 1, Section VII below.

³⁶ *Id.* R. 46(e)(3)(A). (Note that requirement was five years of admission to another bar until July 12, 2021. See Order, No. M-273-21 (D.C. May 13, 2021).)

³⁷ *Id.* R. 46(d)(3).

³⁸ *Id.* R. 46(d)(3)(B).

eligible for score transfer are the UBE, and until March 31, 2022, the MBE. In 2021, the non-UBE states are California, Delaware, Florida, Georgia, Hawaii, Louisiana, Michigan, Mississippi, Nevada, South Dakota, Virginia, and Wisconsin. Check the NCBE website (ncbex.org) for changes in the future.

All applicants, even those admitted to another bar, are subject to full character and fitness review.

V. Special Legal Consultants, D.C. Rule 46(f) (Updated July 2021)

The District of Columbia recognizes a special category for lawyers admitted in a foreign country who are not admitted in the United States: the Special Legal Consultant.³⁹ A person licensed to practice as a Special Legal Consultant may open an office in D.C. and may offer legal advice regarding the law of the country where he or she is admitted. But Special Legal Consultants may *not* hold themselves out as members of the D.C. Bar, may not independently provide legal advice or prepare legal instruments regarding U.S. law, and may not represent clients in court proceedings (unless admitted *pro hac vice*).

Foreign attorneys may be admitted as Special Legal Consultants by filing an application demonstrating that they (1) are admitted in a foreign country and are in good standing, (2) are of good moral character, (3) intend to practice as a Special Legal Consultant and maintain an office in the District of Columbia, and (4) are at least twenty-six years old. The application must include a certificate of good standing (with an authenticated English translation) and a summary of the law and customs of the foreign country “that relate to the opportunity afforded to members of the Bar of this court to establish offices for the giving of legal advice to clients in such foreign country.” The court may, in its discretion, consider these customs in deciding whether to admit an application.⁴⁰ The Court of Appeals can waive these requirements in special circumstances.

Special Legal Consultants must be careful not to hold themselves out as attorneys or as members of the D.C. Bar.

VI. Diploma Admission (Updated July 2021)

The District of Columbia does not generally have a “diploma privilege”—the ability to obtain a law license without taking the Bar exam and based solely on graduating from an accredited law school. But as a result of COVID-19, the D.C. Court of Appeals issued an

³⁹ *See id.* R. 46(f).

⁴⁰ *Id.* R. 46(f)(5).

emergency “exam waiver,” effectively creating a one-time diploma privilege for 2019 and 2020 graduates who met certain requirements. The requirements are codified in D.C. Court of Appeals Rule 46-A. As of the date of this publication, the deadline to apply for the diploma privilege has passed, and the privilege is not available to new applicants.

A person admitted under the diploma privilege is subject to several special requirements. First, for three years after admission, the new lawyer must practice under the “direct supervision” of a member of the D.C. Bar who meets certain requirements, including that the supervisor must have five years’ experience. In addition, during this three-year period, the new attorney must give “prominent notice in all business documents” that the person is practicing under supervision and was “admitted to the Bar under D.C. App. R. 46-A (Emergency Examination Waiver).”

The D.C. Bar has emphasized that clerking for a judge is not the practice of law and thus cannot count toward the three-year supervised-practice requirement. However, the three-year period need not be continuous, so a lawyer subject to the three-year requirement may accept a judicial clerkship. In addition, the Bar has clarified that gaps in employment are not a problem. What matters is that the new lawyer must practice in the District of Columbia under supervision for a total of three years before practicing independently.⁴¹

VII. Character and Fitness Questionnaire/Supplement (Updated July 2021)

A. Procedure

Pursuant to D.C. Rule 46(g), when you apply for admission to the D.C. Bar, you have the burden of showing by clear and convincing evidence that you possess the good moral character and general fitness to practice. What that means is that you must fill out your D.C. Bar application, which will include a character and fitness questionnaire. Once you have submitted a completed application, the Committee may determine it can certify you for admission without any hearing. If not, the Committee will notify you that you must appear for an informal hearing.⁴² If the Committee is unwilling to certify you after an informal hearing, it will notify you of “the adverse matters on which the Committee relied in denying certification” and “the choice of withdrawing the application or requesting a formal hearing.”⁴³ At that point, you have 30 days to request a formal hearing. If you fail to do so, your application will be deemed withdrawn.

⁴¹ See D.C. Bar, *Rule 49(c)(8A) and Rule 46-A FAQs*, https://www.dccourts.gov/sites/default/files/divisionspdfs/committee%20on%20admissions%20pdf/EEWAdmission_Temporary%20Supervised%20Practice%20FAQs.pdf

⁴² D.C. App. R. 46(i).

⁴³ *Id.*

B. Character and Fitness Issues

D.C. Rule 46(h)(1) lists factors, among others, the Committee must consider in determining whether you possess good moral character and general fitness:

- (A) misconduct in employment;
- (B) acts involving dishonesty, fraud, deceit, or misrepresentation;
- (C) abuse of legal process, including the filing of vexatious lawsuits;
- (D)-(E) neglect of financial responsibilities or professional obligations;
- (F) violation of a court order, including child support;
- (G)-(H) evidence of mental health disorder that impairs fitness to practice law or substance use disorder;
- (I) denial of admission to a bar in another jurisdiction on character and fitness grounds;
- (J) disciplinary action by attorney disciplinary agency or other professional agency;
- (K) material information omitted from or misrepresented on application; and
- (L) evidence that you have not demeaned yourself uprightly in any court or when interacting with a court, an opposing party, or during the application process.

D.C. Rule 46(h)(2) lists factors the Committee will consider in assigning weight and significance to the above-mentioned conduct:

- (A)-(B) your age at the time of the conduct as well as the recency of the conduct;
- (C) the reliability of information concerning the conduct;
- (D) the seriousness of the conduct;
- (E) the factors underlying the conduct;
- (F) the cumulative effect of the conduct or information;
- (G)-(H) evidence of rehabilitation and your positive contributions to the community since the conduct;
- (I) your candor and comportment in the admissions process; and
- (J) materiality of any omissions or misrepresentations.

C. Questions

In D.C., the character and fitness questions are a portion of your bar application. The Character and Fitness questionnaire is available on the Committee's website here:

<https://admissions.dcappeals.gov/browseform.action?applicationId=240&formId=240>. The entire Character and Fitness application is enclosed here as Exhibit A. Specific Character and Fitness questions include the following:

1. Professional Discipline. Have you ever been suspended, censured, or otherwise reprimanded or disqualified as a member of another profession, or as a holder of public office?
2. Professional Complaint. Have you ever been the subject of any charges, complaints, or grievances (formal or informal) concerning your conduct as a member of any other profession, or as a holder of public office, including any now pending?
3. Bond. Has any surety on any bond on which you were the principal been required to pay any money on your behalf?
4. Conduct or Behavior. Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?
5. Condition or Impairment. Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner? Note: In this context, "currently" means recently enough that the condition or impairment could reasonably affect your ability to function as a lawyer.
 - a. The mere fact of treatment, monitoring or participating in a support group does not need to be reported, nor is it a basis upon which admission is denied.
6. Defense or Explanation. Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?

- a. The purpose of this inquiry is to allow jurisdictions to determine the current fitness of an applicant to practice law. The mere fact of treatment, monitoring, or participation in a support group is not, in itself, a basis on which admission is denied; jurisdictions' bar admission agencies routinely certify for admission individuals who demonstrate personal responsibility and maturity in dealing with fitness issues. The National Conference of Bar Examiners encourages applicants who may benefit from assistance to seek it.
7. Application, Authorizations, and Conduct. For example, have you ever been disbarred, suspended, censured, or otherwise reprimanded or disqualified as an attorney?
8. Education. For example, have you ever been dropped, suspended, warned, placed on scholastic or disciplinary probation, expelled, requested to resign, allowed to resign in lieu of discipline, otherwise subjected to discipline, or requested to discontinue your studies by any college or university?
9. Employment. For example, have you ever been denied a license or had a license revoked for a business, trade, or profession?
10. Legal Proceedings. For example, have you ever been a named party to any civil action? If yes, include a copy of the associated pleadings, judgments, final orders and/or docket report.
 - a. Note: Family law matters (including divorce actions and continuing order for child support) should be included here.
11. Financial Responsibility. For example, have you ever had a credit card or charge account revoked that was not resolved in bankruptcy?
12. Character References.
13. Additional Information.

Again, please see the entire Character and Fitness application for all questions. As noted above, it is important to approach each part of the application with care and candor. You do not want to inadvertently omit something that could raise a question about your honesty.

D. Additional Application Requirements

After completing the Character and Fitness portion of your application, you will need to finalize your application by submitting an authorization and release, as well as a declaration that you have met all education requirements. If you graduated or plan to graduate from an ABA-

accredited school, only a signed declaration is necessary to satisfy the educational requirement. If you do not have a J.D. from an ABA-approved law school, you must upload the following:

1. Declaration of Graduation from a non-ABA-Approved Law School;
2. Declaration of Completion/Anticipated Completion of twenty-six Credit Hours at an ABA-Approved Law School;
3. Copy of Diploma from a non-ABA-approved Law School;
4. Copy of Official Transcripts from a non-ABA-approved Law School;
5. Copy of Official Transcripts from an ABA-approved Law School;
6. Copy of course descriptions from an ABA-approved Law School.⁴⁴

You must also pay the filing fee. It is important to remember that even if the Character and Fitness portion of your application is complete, the D.C. Bar will not consider your application to be finalized until you have paid the fee and submitted all required documentation. You *must* do so by the stated deadline as the D.C. Bar is extremely unlikely to accept a late filing. If you have any doubt as to whether your application is complete, you may call the D.C. Committee on admissions to confirm at 202-879-2710 or contact the appropriate individual by email: <https://admissions.dcappeals.gov/contact>.

E. Supplement

If there are any major inconsistencies between your D.C. Bar application and a prior application (e.g., law school application, other graduate school application, or another bar application), or if you omitted something from your D.C. Bar application accidentally, you may wish to supplement your application. If the supplement is something that may impact the Committee’s view concerning whether you are fit to practice law (e.g., you omitted past criminal conduct that was ultimately sealed but have decided to reveal it, or you are adding a recent DUI), you should consult counsel for further guidance.

The mechanics of supplementing your application are fairly straightforward. You are able to amend your application online by clicking the “amend application” button.

Additionally, you may receive an inquiry from the Committee. In those circumstances, you respond to the inquiry. We suggest you seek the advice of counsel if you receive such inquiry.

⁴⁴ *Bar Exam Instructions*, D.C. COURT OF APPEALS, <https://admissions.dcappeals.gov/browseform.action?applicationId=240&formId=243> (last visited July 19, 2021).

F. Hearing

As noted above, the Committee may request an informal hearing. We suggest that you seek the advice of counsel if the Committee requests any hearing. If the Committee refuses to certify you after the informal hearing, you will be given thirty days to request a formal hearing.⁴⁵ Once you do that, the Director of the Committee will give you no less than ten days' notice of the following:

- A. The date, time, and place of the formal hearing;
- B. The adverse matters upon which the Committee relied in denying admission;
- C. Your right to review in the office of the Director those matters in the Committee file pertaining to your character and fitness upon which the Committee may rely at the hearing; and
- D. Your right to be represented by counsel at the hearing, to examine and cross-examine witnesses, to adduce evidence bearing on moral character and general fitness to practice law and, for such purpose, to make reasonable use of the court's subpoena power.⁴⁶

Additionally, the formal hearing will be private unless you request that it be public. While the hearing will be formal, the Committee is not bound by the rules of evidence and may consider evidence other than testimony. The Committee may also take depositions. The formal hearing will be recorded, and you may request a transcript at your expense.⁴⁷

After the formal hearing, the Committee shall serve you a copy of its findings and conclusions. You will have fifteen days to withdraw your application unless the Committee extends this time. If you do not withdraw your application, the Committee will deliver its findings and conclusions to the court for its approval. The Committee will also serve you with a copy.

G. Review by the Court

Review by the court is governed by D.C. Rule 46(j). After receipt of a Committee report, if the court decides to deny admission, the court shall issue an order to you to show cause why the application should not be denied. Proceedings under this Rule shall be heard by the court on

⁴⁵ D.C. App. R. 46(i)(1).

⁴⁶ *Id.* R. 46(i)(2).

⁴⁷ *Id.* R. 46(i)(3).

the record made by the Committee. The court will not review any other actions by the Committee absent a “showing (A) of extraordinary circumstances for instituting such review and (B) that an application for relief has previously been made in the first instance to the Committee and been denied by the Committee, or that an application to the Committee for the relief is not practicable.”⁴⁸

VIII. Getting Admitted: The Swearing in Process (Updated July 2021)

Once your application is complete and the Committee has deemed you fit for admission (i.e., the members have evaluated your character and fitness), the Committee will certify you for admission. You will receive an email from the Committee, informing you of the Committee’s decision and detailing next steps. There are two main things you must do. First, you must complete the Supplemental Questionnaire (<https://bit.ly/2HGjRD1>) in which you will report any changes to your status since you applied for admission. A “yes” response to any item requires additional review by the Committee before you complete the swearing in process. If you answer “no” to all of the questions, you may continue with the swearing in process. The Declaration on the Supplemental Questionnaire must be signed and dated on the day you submit your oath.

Second, you must complete the swearing in process (i.e., perform your oath). Pursuant to Administrative Order No.3-18, you have the option of performing your oath in absentia. You must wait three days from the date you receive the email and then have the oath administered by a notary or anyone authorized to administer oaths in any U.S. jurisdiction or territory (<https://bit.ly/2rcrGfK>). Per emergency temporary amendments to Rule 46(k), if you are not able to access a notary, you may use a Declaration (below) in lieu of notarization. You must complete the oath within 150 days of the date of the email you receive from Ms. Smith.

Per Rule 46(k)(1), the oath is as follows:

“I, _____ do solemnly swear (or affirm) that as a member of the Bar of this court, I will demean myself uprightly and according to law; and that I will support the Constitution of the United States of America.”

Per Rule 46(k)(2), the following declaration may be used in lieu of notarization:

“I declare, under penalty of perjury under the laws of the District of Columbia, that I have taken the oath quoted in this declaration.

⁴⁸ *Id.* R. 46(j)(3).

Signed on the ___ day of _____, 20__ at _____ (city)____, (state), (country)_____.

Printed name _____

Signature _____”

You must scan both the Supplemental Questionnaire and the executed Attorney Oath of Admission as a PDF titled: “Oath_Last Name_First Name” and email it to: jmsmith@dcappeals.gov (or as otherwise stated in the correspondence with the Committee) with the subject: “Oath.” You will receive a confirmation email when the documents have been accepted. For questions related to the swearing in process, you should contact the Office of Admissions: coa@dcappeals.gov.

The email you receive from the Committee will also describe steps for registration with the D.C. Bar. There are three steps that email will outline: 1) complete registration statement; 2) manage your license; and 3) complete the mandatory course.

1. Complete Registration Statement. You will receive an email from the D.C. Bar inviting you to submit your Registration Statement, which will result in the creation of your official Bar ID (attorney license number) and membership record.
2. Manage Your License. After receiving your Registration Statement, the D.C. Bar will provide you with an attorney license number and instructions on how to manage your license via email. Via mail, you will receive a new member kit, including your Bar Identification Card.
3. Complete the Mandatory Course.⁴⁹ Once you are sworn in and registered, you have twelve months to complete a mandatory course on the D.C. Rules of Professional Conduct and Practice. The D.C. Bar offers an on-demand video presentation of the course as well as two in-person presentations that coincide with the twice-yearly in-person swearing-in ceremonies. More information about the mandatory course can be found here: <https://www.dcbar.org/for-lawyers/mandatory-course> or 202-626-3488 (D.C. Bar CLE Program). You will be administratively suspended if you do not complete the course in a timely manner.

For additional information about attorney registration, license, or the mandatory course, contact Member Services at memberservices@dcbar.org or 202-626-3475.

⁴⁹ See Part 1, Section IX.B below for more information.

Once you submit your oath, you will receive an “Oath Confirmation” letter from Ms. Smith, which will inform you that you have completed the process with the Committee and note that you may now hold out that you are entitled to practice law in D.C. It will remind you to register with the D.C. Bar, manage your license, and complete the mandatory course.

IX. Maintaining Admission: Staying a Member in Good Standing of the D.C. Bar (Updated July 2021)

A. Keep Your Information Up to Date

Once you’ve been admitted to the D.C. Bar, it’s important to be cognizant of the requirements to remain in good standing.⁵⁰ Every lawyer who practices law in D.C. must file an annual registration statement with the Secretary of the Bar with her current residence and office addresses, email address, telephone number, and a list of other state jurisdictions in which she is admitted to practice, including date of admission.⁵¹ If any of that information changes, a lawyer practicing in D.C. must file a supplemental statement with the Secretary within thirty days of the change.⁵²

B. Take the D.C. Bar’s Mandatory Course

Within twelve months after admission to the D.C. Bar, all members must take a mandatory course on the D.C. Rules of Professional Conduct and D.C. practice.⁵³ The course is administered by the D.C. Bar’s Continuing Legal Education Program and is now offered as an on-demand, online video presentation.⁵⁴ Two in-person presentations of the course are also held; they coincide with the in-person swearing-in ceremonies at the D.C. Court of Appeals. Admittees who do not timely complete the course will receive a Notice of Noncompliance, after

⁵⁰ A D.C. Bar member is considered in “good standing,” where she is licensed to practice law in D.C., has paid all license fees, and is not currently suspended for disciplinary or administrative violations.

⁵¹ Rules Governing the Bar, D.C. Court of Appeals, R. II § 2(1).

⁵² *Id.*

⁵³ *Id.* § 3. For example, if a member’s swearing-in date was September 15, 2018, she will be in compliance if the course is completed by September 30, 2019. D.C. Bar, *Mandatory Course*, <https://www.dcbar.org/for-lawyers/mandatory-course> (last visited July 19, 2021).

⁵⁴ For more information on the Mandatory Course, visit <https://www.dcbar.org/for-lawyers/mandatory-course>. The 2021 cost of the program is \$229. D.C. Bar, *Mandatory Course Pricing*, <https://www.dcbar.org/for-lawyers/mandatory-course/mandatory-course-pricing> (last visited July 19, 2021).

which they will have a sixty-day grace period to complete the course or face administrative suspension. The course covers the following topics:⁵⁵

- D.C. Rules of Professional Conduct
- District of Columbia System for Regulation of Attorney Conduct
- How to Fulfill Pro Bono Obligations
- District of Columbia Court Practice
- D.C. Bar Non-Disciplinary Regulatory Programs
- District of Columbia Administrative Practice

C. Pay Your Annual Dues

Finally, every member of the D.C. Bar must pay annual dues to the Treasurer of the Bar.⁵⁶ The current annual dues are \$320 for active members, \$199 for inactive members, and \$150 for judicial members.⁵⁷ If you have not paid your annual dues within ninety days of the due date, the Board of Governors is authorized to suspend your membership.⁵⁸ Note that if you are suspended for non-payment of dues, you are not entitled to practice law in D.C. during the duration of your suspension.⁵⁹

⁵⁵ D.C. Bar, *Mandatory Course*, <https://www.dcbbar.org/for-lawyers/mandatory-course> (last visited July 19, 2021).

⁵⁶ Rules Governing the Bar, D.C. Court of Appeals, R. II § 5.

⁵⁷ D.C. Bar Bylaws, Art. III § 1(a)(1) (amended April 21, 2021).

⁵⁸ Rules Governing the Bar, D.C. Court of Appeals R. II § 6.

⁵⁹ *Id.*

PART 2
AVOIDING THE UNAUTHORIZED PRACTICE OF LAW (RULE 49)

I. D.C. Rule 49 and D.C. Rule 5.5 (Updated July 2021)

D.C. does not codify who must be admitted to the D.C. Bar in its Rules of Professional Conduct, but instead does so in the D.C. Court of Appeals' Rules. Those rules cover all manner of topics—e.g., when a party may take an appeal, how to file and serve briefs, the posting of bonds on appeal—and codify, in Rule 49, D.C.'s primary unauthorized practice of law rule.

Rule 49 requires that—unless an exception enumerated in the rule applies—a lawyer must join the D.C. Bar to provide legal services *while physically present* in the District of Columbia.⁶⁰ The commentary to the rule makes clear that a lawyer physically located in D.C. must therefore still join the D.C. Bar even if that lawyer never advises on D.C. law or any matter in the District and disclaims any knowledge of D.C. law. And conversely, a lawyer who is *not* a member of the D.C. Bar may advise on D.C.-based transactions and D.C. law, just so long as the lawyer *never* enters into D.C. in connection with the representation.⁶¹

D.C. has an additional unauthorized practice of law rule codified in D.C. Rules of Professional Conduct Rule 5.5. Most jurisdictions use Rule 5.5 to codify something akin to D.C.'s Rule 49, but D.C. uses Rule 5.5 for much more limited purposes. D.C.'s Rule 5.5 thus provides only that (1) D.C. lawyers may not violate other jurisdictions' unauthorized practice of law rules, and (2) D.C. lawyers may not assist non-D.C. Bar members in violating D.C.'s Rule 49.⁶²

II. Exceptions (Updated July 2021)

Rule 49 contains several subparts, including: Rule 49(a), a general prohibition on practicing law “in the District of Columbia” without membership in the D.C. Bar; Rule 49(b), a set of definitions; and Rule 49(c), a set of exceptions to the general rule. These exceptions allow an individual to practice in D.C. so long as that “person is not otherwise engaged in the practice of law or holding out as authorized or competent to practice law” in D.C.⁶³ Below, we describe these exceptions and focus on those that we think merit particular discussion:

⁶⁰ One of these exceptions (Rule 49(c)(13)) applies when practice in D.C. is on an incidental and temporary basis. The focus of this guide is not on temporary practice in D.C.

⁶¹ D.C. App. R. 49(b)(3) cmt.

⁶² D.C. Rules of Pro. Conduct R. 5.5.

⁶³ D.C. App. R. 49(c).

- **Rule 49(c)(1): U.S. Government Employees.** Subsection (c)(1) allows a person to “provide legal services of the United States as an employee thereof.”⁶⁴

- **Rule 49(c)(2): Representation Before U.S. Government Special Court, Department, or Agency.** Subsection (c)(2) permits lawyers to provide legal services “solely before a special court, department, or agency of the United States” without joining the D.C. Bar, as long as (A) everything the lawyer does is at least “ancillary” to that practice; (B) a law permits it or an agency rule permits *and regulates* it; and (C) the lawyer makes clear that her practice is thus limited.⁶⁵

Numerous federal agencies have statutes or rules that provide for practice before them, including the Commerce Department and the Federal Communications Commission. A lawyer physically located in D.C. who practices only before those agencies—or does work ancillary to that practice—need not join the D.C. Bar. That lawyer must, however, advertise the limitation of her practice on letterhead, email signature blocks, and the like. An appropriate disclaimer is “Not admitted in the District of Columbia. Practice limited to matters before U.S. government agencies.”

In addition, Rule 49(c)(2)’s commentary provides that, in cases of doubt about whether a rule provides for regulation of practice before an agency, the D.C. Bar will forward relevant complaints about lawyers physically located in D.C. to that agency, and wait ninety days for a response.⁶⁶ If the agency does not affirmatively assert within that period that it regulates lawyers before it, the D.C. Bar will conclude that the agency does not do so. In that case, the D.C. Bar will treat the lawyer’s practice before the agency as unauthorized practice of law under Rule 49(a).⁶⁷

- **Rule 49(c)(3): Practice Before U.S. Court.** Subsection (c)(3) allows a person to provide legal services in or relating to a proceeding in any federal court if that person has been or reasonably expects to be admitted to practice in that court. If that person has an office in D.C., she must give prominent business notice of her bar status and that her practice is limited consistent with this Rule.⁶⁸ Note that by local rule, this exception is not available to those who wish to practice before the United States District Court for the District of Columbia. An

⁶⁴ *Id.* R. 49(c)(1).

⁶⁵ *Id.* R. 49(c)(2).

⁶⁶ *Id.* R. 49(c)(2) cmt.

⁶⁷ *Id.*

⁶⁸ *Id.* R. 49(c)(3).

appropriate disclaimer is “Not admitted in the District of Columbia. Practice limited to matters before U.S. courts.” Note that exceptions (c)(2) and this exception can be combined.

- **Rule 49(c)(4): D.C. Employee.** Subsection (c)(4) allows a person to provide legal services to the D.C. government for the first 360 days of employment when that person is authorized to practice in another state, is not disbarred or suspended for disciplinary reasons, has not resigned with charges pending in any jurisdiction or court, and has been authorized by the government agency to provide such services.⁶⁹

- **Rule 49(c)(5): Representation Before D.C. Department or Agency.** Subsection (c)(5) allows a person to provide legal services solely before a department or agency of the D.C. government when the representation is confined to appearances in proceedings before tribunals of that department or agency as well as reasonably ancillary conduct, and the representation is authorized by statute or the department or agency has authorized it by rule and undertaken to regulate it. If the person has an office in D.C., she must expressly give prominent notice on all business documents of her bar status and that her practice is limited consistent with this Rule. If the person does not have an office in D.C., she must expressly give written notice to clients and other parties involved in those proceedings of her bar status and that her practice is limited consistent with this Rule.⁷⁰ An appropriate disclaimer is “Not admitted in the District of Columbia. Practice limited to matters before D.C. Government Agencies.”

- **Rule 49(c)(6): Internal Counsel.** Subsection (c)(6) allows a person to serve as in-house counsel and provide legal advice only to her regular employer when the employer does not reasonably expect that it is receiving advice from a person authorized to practice law in D.C.⁷¹

- **Rule (c)(7):⁷² Pro Hac Vice in D.C. Courts.** Subsection (c)(7) allows a person to provide legal services in or reasonably related to a proceeding in D.C. if the person has been or reasonably expects to be admitted *pro hac vice*. No person may apply for admission in more than five cases pending in D.C. per calendar year absent exceptional cause shown to the court.⁷³

⁶⁹ *Id.* R. 49(c)(4).

⁷⁰ *Id.* R. 49(c)(5).

⁷¹ *Id.* R. 49(c)(6).

⁷² *See* Rule 49(c)(7) for additional requirements, such as application declaration, filing process, supervision, and application fee. It is also worth noting that the court has discretion to grant or deny applications for admission *pro hac vice*. *Id.* R. 49(c)(7)(G).

⁷³ *Id.* R. 49(c)(7)(A).

If a person has an office in D.C., she may not be admitted *pro hac vice* to practice before a D.C. court unless she qualifies under another exception in Rule 49(c).⁷⁴

- **Rule (c)(8): Limited Duration Supervision by D.C. Bar Member.**

Subsection (c)(8) provides a limited exception for attorneys barred in another state to practice law in D.C. while their D.C. Bar application is pending. The rule provides that an individual may practice law from “a principal office” located in D.C., provided that all eight of the following requirements are met:

1. The individual is authorized to practice law and is in good standing in another state (or territory);
2. The individual is not disbarred or suspended for disciplinary reasons;
3. The individual has not resigned with charges pending in any jurisdiction or court;
4. The individual is under the direct supervision of enrolled member(s) of the D.C. Bar who are in active status;
5. The individual has submitted her application for admission to the D.C. Bar **within ninety days** of the date on which they commence practice in D.C.;
6. The supervising D.C. Bar member takes responsibility for the quality of the supervised individual’s work and complaints regarding the work;
7. The individual or the D.C. Bar member gives notice to the public of the member’s supervision and the individual’s bar status; and
8. The individual is admitted *pro hac vice* to the extent he or she provides legal services in D.C. courts.⁷⁵

This period of supervised practice is limited to 360 days from the date on which the individual begins the practice of law in D.C., with that period subject to extension for good cause shown.⁷⁶ The exception also only applies while an individual’s *first* application for admission to the D.C. Bar is pending.⁷⁷

⁷⁴ *Id.* R. 49(c)(7)(C).

⁷⁵ *Id.* R. 49(c)(8)(A).

⁷⁶ *Id.* R. 49(c)(8)(A)–(B).

⁷⁷ *Id.* R. 49(c)(8)(A).

With regard to the requirement to “give[] notice to the public of the [D.C. Bar] member’s supervision and the person’s bar status,” the following disclaimer provides such notice:

[Name]

[Title]*

*Admitted in [State(s)] only. Practicing under the supervision of D.C. Bar members.⁷⁸

• **49(c)(8A): Emergency Temporary Practice by Recent Law-School Graduates Under Supervision by D.C. Bar Member.**

On September 24, 2020, the D.C. Court of Appeals adopted new D.C. App. R. 49(c)(8A) on an emergency basis.⁷⁹ The rule “permit[s] certain recent law[]school graduates to practice law” on a temporary basis under the supervision of D.C.-barred lawyers, even if those law graduates “have not yet taken or passed a bar examination” in any state.⁸⁰ New Rule 49(c)(8A) permits an individual to practice law in D.C. and hold herself out as authorized to practice law in D.C. if the individual:

1. Received a J.D. degree in 2019 or 2020 from an ABA-approved law school;
2. Has, or had, timely completed an application (including payment of the application fee) to take a D.C. Bar exam scheduled in 2020 or 2021;
3. Has not
 - a. been admitted to a bar in any other jurisdiction,
 - b. failed a bar exam, or
 - c. had a bar application denied;
4. Has passed the MPRE;
5. Has been certified by her law school’s dean as being “of good character and competent legal ability;”
6. Has read the D.C. Bar Rules and the Rules of Professional Conduct and, within sixty days of starting her practice of law under Rule 49(c)(8A), completes D.C.’s mandatory course on the D.C. Rules;

⁷⁸ See *id.* R. 49(c)(8)(A)(vii); Section III below for additional information regarding use of disclaimers.

⁷⁹ See Order, No. M-269-20 (D.C. Sept. 24, 2020).

⁸⁰ *Id.* at 2.

7. Is supervised on each client matter by a member of the D.C. Bar who
 - a. is in active status and has practiced law in D.C. for at least five years,
 - b. is in good standing, has never been disbarred or resigned from any bar with disciplinary charges pending, and has no pending disciplinary charges before any jurisdiction or court,
 - c. employs the supervised individual or works for that individual's employer or law firm (or works for a non-profit in D.C. that provides legal services at no or limited charge), and
 - d. takes responsibility for the quality of the supervised individual's work and complaints regarding the work; and
8. Gives prominent notice in all business documents that the individual's practice is supervised by D.C. Bar members and that the individual is not a member of the D.C. Bar.⁸¹

Law school graduates who seek to practice under this rule agree to be bound by the D.C. Rules of Professional Conduct and accept the jurisdiction of D.C. courts over their practice of law.⁸² They are not permitted to negotiate a fee agreement or be a party to a fee agreement, nor may they ask for or receive any compensation of any kind directly from a client.⁸³

An individual's authorization to practice law under Rule 49(c)(8A) expires:

1. If the individual no longer meets any of the eight eligibility requirements listed above;
2. If the individual gets admitted to the D.C. Bar; or
3. Following the application deadline for the next *in-person* D.C. Bar exam, unless the individual submitted a timely application to take that bar exam (in which case the individual's authorization expires if the individual is granted or denied admission to the D.C. Bar, or the individual's application is withdrawn or abandoned).⁸⁴

⁸¹ D.C. App. R. 49(c)(8A)(A).

⁸² *Id.* R. 49(c)(8A)(B)(i).

⁸³ *Id.* R. 49(c)(8A)(B)(ii).

⁸⁴ *Id.* R. 49(c)(8A)(C).

- **49(c)(9): Pro Bono Legal Services.** Subsection (c)(9) allows a person to provide pro bono legal services if:

- That person is affiliated with but is not an employee of a non-profit organization located in D.C. The person must be an inactive or retired member of the D.C. Bar or the bar of another state or be authorized to practice law and in good standing in another state. The person must not be disbarred or suspended for disciplinary reasons and not have resigned with charges pending in any jurisdiction or court. The person must also be supervised by an enrolled, active member in good standing of the D.C. Bar.⁸⁵
- That person is employed by the Public Defender Service (“PDS”) or a non-profit organization located in D.C. The person must be authorized to practice law and in good standing in another state and must not be disbarred or suspended for disciplinary reasons and not have resigned with charges pending in any jurisdiction or court. The person must also be supervised by an enrolled, active member in good standing of the D.C. Bar and must have submitted an application for admission to the D.C. Bar no later than ninety days after commencing practice in D.C.⁸⁶
- A person who has applied to a bar and taken the bar exam, but whose application has not yet been admitted or denied, may provide legal services as an employee of or in affiliation with PDS or a non-profit organization located in D.C. until the person’s application is granted or denied, if the person:
 - graduated from an ABA-approved law school and has been certified by the dean of the law school as being of good character and competent legal ability;
 - is trained and supervised by an enrolled, active member of the D.C. Bar in good standing who is affiliated with PDS or the non-profit organization; and

⁸⁵ *Id.* R. 49(c)(9)(A).

⁸⁶ *Id.* R. 49(c)(9)(B).

- gives notice to the public and on all pleadings that she is not authorized to practice law in any jurisdiction but is practicing under the supervision of a member of the D.C. Bar pursuant to Rule 49(c)(9)(C).⁸⁷
 - Anyone practicing under this exception is subject to the D.C. Rules of Professional Conduct and must give prominent notice of her bar status on all business documents.⁸⁸ If that person appears in court, she must file a completed Form 9 with her praecipe of appearance and submit an electronic copy of the completed Form 9 to the Committee on Admissions.⁸⁹
 - **49(c)(10): Specifically Authorized Court Programs.** Subsection (c)(10) allows a person to provide legal services pursuant to any program that has been specially authorized by the D.C. Court of Appeals or the Superior Court of D.C. if the person gives notice of her bar status, is not disbarred or suspended for disciplinary reasons, and has not resigned with charges pending in any jurisdiction or court.⁹⁰
 - **49(c)(11): Limited Practice for Corporations or Partnerships.** Subsection (c)(11) allows an officer, director, or employee of a corporation or partnership to appear in defense of the organization in a small claims action, or in settlement of a landlord-tenant matter, if the organization does not file a crossclaim or counterclaim, or the matter is not certified to the Civil Actions Branch; and the person files, at the time of her appearance, an affidavit vesting in her the authority to bind the organization.⁹¹
 - **49(c)(12): Practice in ADR Proceedings.** Subsection (c)(12) allows a person to provide legal services in or reasonably related to a pending or potential alternative dispute resolution (“ADR”) proceeding if the person is authorized to practice law and in good standing in another state or foreign country; is not disbarred or suspended for disciplinary reasons; has not resigned with charges pending in any jurisdiction or court; provides these services in no more

⁸⁷ *Id.* R. 49(c)(9)(C).

⁸⁸ *Id.* R. 49(c)(9)(D)–(E).

⁸⁹ *Id.* R. 49(c)(9)(E)(ii).

⁹⁰ *Id.* R. 49(c)(10).

⁹¹ *Id.* R. 49(c)(11).

than five ADR proceedings in D.C. per calendar year; and does not have an office in D.C. or otherwise practice or hold out as qualified to practice in D.C. (unless another exception applies).⁹²

- **49(c)(13): Incidental and Temporary Practice.** Subsection (c)(13) allows a person to provide legal services in D.C. on an incidental and temporary basis if the person is authorized to practice law and in good standing in another state or a foreign country, is not disbarred or suspended for disciplinary reasons, and has not resigned with charges pending in any jurisdiction or court.⁹³

III. Disclaimers (Updated July 2021)

As noted above, several exceptions to Rule 49(a) require that you give notice of your bar status.⁹⁴ You can provide the required notice by using an appropriate disclaimer. If you fall into one of the exceptions to Rule 49(a) requiring such notice, you should ensure that your disclaimers are both prominent and consistent.

In order to be prominent, the disclaimer should be sufficiently prominent. So, for example, the disclaimer should be an appropriate font size—excessively small font that is difficult to notice or read is likely not sufficiently prominent. The disclaimer should also appear in proximity to your name or title so as to draw the reader’s attention to the disclaimer.

Consistency is also important. So, for example, if you are required to give notice of your bar status, you should include your disclaimer in your email signature block, as well as wherever else you list your employment—for example, on LinkedIn or other social media; on your law firm biography (if your firm has a practice of adding new hires to its website before they are D.C.-barred); on firm letterhead and business cards (again, if your firm has a practice of permitting new hires to use its letterhead and business cards before they are D.C.-barred). The disclaimer should be provided anywhere where such notice is required to disclose your bar status and avoid giving the incorrect impression that you are a member of the D.C. Bar.

IV. How to Avoid a UPL Investigation (Updated July 2021)

This section provides practical steps for how to properly use the (c)(8) Limited Duration Supervision By D.C. Bar Member exception to Rule 49 and avoid an investigation into whether you have engaged in the unauthorized practice of law. Beginning on the day you commence

⁹² *Id.* R. 49(c)(12).

⁹³ *Id.* R. 49(c)(13).

⁹⁴ *See* Part 2, Section II above for discussion of the exceptions to Rule 49(a).

practicing law in D.C., you have ninety days to apply to become a member of the D.C. Bar.⁹⁵ Only if you meet the ninety-day deadline can you work for 360 days under the (c)(8) exception. If you miss the deadline, you must remain a “Law Clerk” until admitted to the D.C. Bar.

The most common sequence for law graduates we see is as follows: You graduate from law school in May, take the bar exam in a jurisdiction other than D.C. in July, and begin working at a firm in September/October before you have learned whether you have passed the bar exam and/or been formally admitted in a jurisdiction. If you fall into this camp, you are not a lawyer at the time you start working at a firm because you have not been admitted in any jurisdiction. Accordingly, you must refer to yourself as “Law Clerk.” Similarly, you should add to your signature block: “Law Clerk.” Once you are admitted to the bar in another jurisdiction, you commence practicing law in D.C. That same day, you become an “Associate” and have ninety days to submit your D.C. Bar application. If you use the title “Associate,” you must include the appropriate disclaimer, as described in Part 2, Section II above.⁹⁶

Be mindful of how you refer to yourself on websites, email signatures, filings, and the like once you begin working. Also, when listing your current employment on your D.C. Bar application, be sure to accurately list your title for the correct time period. This will result in more than one entry for your current position (i.e., “Law Clerk” and “Associate”), but that is fine—and is easier than responding to a UPL inquiry.

Here is an example to illustrate this point. After taking the California Bar exam in July, Dave starts working at a D.C. law firm on September 1. Dave learns he passed the California Bar exam and is formally admitted to the California Bar on December 1. On December 15—within ninety days of practicing law in D.C.—Dave submits his D.C. Bar application. But when Dave is asked to describe his employment from September 1 – present he lists, “Associate.” Yet Dave was not an “Associate” until December 1, the day he became a member of the California Bar. That mischaracterization launches a UPL investigation. Dave could have avoided this problem by correctly referring to himself in two separate entries on the application as a “Law Clerk” from September 1 – November 30; and as an “Associate” from December 1 – present.

Because Dave mistakenly referred to himself as an “Associate” before he was ever a lawyer, he now needs to defend himself in a UPL investigation. That is no small undertaking and involves, among other things, answering the following questions.

⁹⁵ D.C. App. R. 49(c)(8)(A)(v).

⁹⁶ [Name]
[Title]*

*Admitted in [State(s)] only. Practicing under the supervision of D.C. Bar members.

1. *State whether, since January 1, 2011, you have, for or on behalf of another person:*
 - a) *offered legal advice;*
 - b) *prepared a legal document;*
 - c) *prepared or expressed a legal opinion;*

 - d) *appeared as counsel in any tribunal;*
 - e) *prepared any legal claim or demand;*
 - f) *prepared any legal document containing legal argument or interpretation;*
 - g) *provided advice or counsel as to how any of the foregoing activities might be done;*
 - h) *furnished or referred any attorney or attorneys to do the foregoing activities.*

2. *If you have done any of the activities in Paragraph 1 since January 1, 2011, state whether such activities were performed in, or from a location within, the District of Columbia, or in connection with a legal proceeding in the District of Columbia.*

3. *If you have done any of the activities in Paragraph 1 since January 1, 2011 in, or from a location within, the District of Columbia, please describe the nature of your practice.*

4. *If you have done any of the activities in Paragraph 1 since January 1, 2011 in, or from a location within, the District of Columbia, or in connection with a legal proceeding in the District of Columbia, state the date which you began performing such activities.*

5. *State the date you applied for admission to the District of Columbia Bar.*

6. *Identify all jurisdictions in which you are a member in good standing of the bar, and the dates you were admitted to such bars.*

7. *Identify all the job titles you have held since January 1, 2011, and the location of your office in each job.*

8. *Provide copies of any letterhead, business cards, or website listings you have used since January 1, 2011 that identify you using the terms “associate,” “counsel,” attorney,” “lawyer,” “law firm,” “J.D.” or similar terms, and that use a Washington, D.C. address.*
9. *Identify any exception to the general prohibition of D.C. Court of Appeals Rule 49(a) that you contend applied to you, along with a detailed explanation of why such an exception applies and whether any portion of your practice since January 1, 2011 has not fit within any such exception.*
10. *Provide any other information or documents that you feel bear on whether you have engaged in the unauthorized practice of law or held yourself out as authorized to practice law in the District of Columbia in violation of Rule 49.*
11. *Identify any steps you intend to take to comply fully with Rule 49 in the future.*

Note that if you are not currently in compliance with Rule 49—for example you have yourself listed as an Associate on your firm’s website, but you have yet to be admitted to the D.C. Bar—you need to rectify your mistake. To get back in good standing, you need to answer the UPL questions listed above, satisfy the Committee on the Unauthorized Practice of Law that you are now in compliance with the rules, and convince the Committee that your error was not egregious. It can take several months for the UPL Committee to confirm your compliance. It is only then that you go back into the queue for the Committee on Admissions. The UPL Committee has also credited applicants who were not in compliance with Rule 49, fixed the noncompliance, and then wrote a self-report letter to the UPL Committee that answers the questions highlighted above. We recommend you seek the advice of counsel if you fear you are out of compliance with Rule 49.

Pursuant to Rule 49(c)(8), you have 360 days from the day you start practicing law in D.C. to get admitted to the D.C. Bar.⁹⁷ If your 360-days are about to expire, you, the applicant, will need to get an extension from the Committee on Admissions. The Committee is inundated with applications, and so you will need to seek an extension well in advance of expiration. To request an extension, you should email Ms. Shanks at SShanks@dcapeals.gov.

⁹⁷ D.C. App. R. 49(c)(8)(A) (“A person may practice law from a principal office located in the District of Columbia for a period not to exceed 360 days from the commencement of such practice, during pendency of the person’s first application for admission to the D.C. Bar, if . . .”).