

[D.C. Bar Sections Letterhead]

October 21, 2002

The Honorable Sharon Ambrose
Chair, Committee on Consumer and Regulatory Affairs
Wilson Building
1350 Pennsylvania Avenue, NW
Washington DC 20004

Re: District of Columbia Master Business License

The views expressed herein represent only those of the Law Practice Management Section, and not those of the District of Columbia Bar or its Board of Governors.

Dear Councilmember Ambrose:

The Law Practice Management Section of the District of Columbia Bar is composed of Washington area attorneys and some non-attorney professionals who are concerned with the administration and efficient management of law offices. Although the section includes many members of large firms, a large proportion of its members practice in small firms or in solo practice. Consequently, the proposed imposition of a master business license requirement for lawyers will impose a burden on most of the LPM Section members as well as on many other lawyers practicing in the District of Columbia.

The LPM Section believes the imposition of the master business license on lawyers would be ill-advised for the following reasons:

- (1) As discussed in a letter from George Jones, President of the D.C. Bar, to David Clark, Director of the DCRA, on July 19, 2002, lawyers, and other professionals who provide personal services, are presently exempt from the D.C. unincorporated business franchise tax. D.C. Code § 47-1801.01(3). The Home rule Act prohibition on taxing the personal income of non-District residents means that non-resident professionals are not “subject to the payment of taxes...to the District of Columbia,” Id. §. 47-2851.01(1)(A), and therefore, are not businesses required to obtain an MBL. To date, the DCRA has not responded to the D.C. Bar’s request for clarification on this point.

- (2) The application of the MBL requirements to lawyers and other professionals who do not have offices in the District is confusing. The requirement for a license applies to any person who “shall engage in or carry on any business in the District of Columbia.” D.C. Code § 47-2851.2. The D.C. Bar has 78,381 members as of August, 2002. But only 40,503 of these members work or reside in the D.C. Metropolitan area, and a smaller number, in turn, have offices in the District of Columbia. The statute gives no guidance as to how it will apply to attorneys who practice in D.C. but do not maintain an office in the District or affiliate with a licensed entity in the District.
- (3) The statute is unclear as to whether the MBL requirement attaches to individual lawyers or to firms. The licensing requirement applies to “any individual, sole proprietorship, partnership...or other organization.” Many law firms consist of professional corporations or partnerships whose members may be a mix of individuals, professional corporations, and limited liability companies. In this situation it is unclear whether each practicing lawyer must obtain an MBL or whether the firm alone must obtain an MBL.
- (4) The administrative pre-requisites for the MBL are similarly confusing as they apply to lawyers and other professionals who are not subject to the business franchise tax. The instructions for the MBL application note that first time applicants “will be required to show that the business was registered for D.C. Business Tax.” Presumably this means that the attorney must have a valid tax registration for franchise taxes or withholding taxes. But many lawyers are not required to have such a registration because they have not been subject to D.C. taxes. Until the statute is clarified, the application of this requirement will be bewildering to the DCRA as well as to attorneys.
- (5) Finally, there is no administrative or regulatory need to apply the MBL to attorneys. Any attorney practicing in the District of Columbia is required to be a member of the D.C. Bar and to comply with strict rules of professional responsibility which are enforced by the D.C. Bar and the D.C. Court of Appeals. To the extent that any further regulation may be appropriate, it can surely be applied in a more specific and less burdensome manner.

For these reasons, the D.C. Bar Law Practice Management Section submits that the statute authorizing a master business license in the District of Columbia should be amended to make clear that it does not apply to attorneys and other professionals similarly situated. Alternatively, it should be amended to address the problems outlined above so that attorneys will know what is required of them. At the very least, the Council should defer imposition of the MBL to allow additional time to study the application of the licensing requirements to attorneys and other professional businesses. The statute, as it stands now, is extremely confusing.

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October 21, 2002

Page 3

We request that these views be made part of the official record for the October 23 public hearing

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Respectfully submitted,

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D.C. Bar Law Practice Management Section