

D.C. Bar Admission and Avoiding UPL

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Rule 46

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

Rule 46

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.

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

Filling out the application

When you fill out your D.C. Bar application, candor is critical.

D.C. Rule of Professional Conduct 8.1(a) states that “[a]n applicant for admission to the Bar . . . shall not . . . [k]nowingly 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 “[l]ack of materiality does not excuse a knowingly false statement of fact.”

Admission by Reciprocity: Rules 46(d)-(e)

Score Transfer

- 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.
- Passed the MPRE with a scaled score of at least 75.
- You must apply within five years of attaining the UBE score. The D.C. Court of Appeals no longer permits members of another bar to apply for admission to the D.C. Bar based on an MBE score.
- As of January 2025, the non-UBE states were California, Delaware, Florida, Georgia, Hawaii, Louisiana, Mississippi, Nevada, South Dakota, Virginia, and Wisconsin. Check the NCBE website (ncbex.org) for changes in the future.

3 Years of Practice

- Alternatively, 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 by motion.
- All applicants, even those admitted to another bar, are subject to full character and fitness review.
- *Id.* R. 46(d)(3).

SLCs

- 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.
- 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 they are 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*).
- *See id.* R. 46(f).

Character & Fitness

- 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 if it can certify you for admission without any hearing.
- If not, the Committee will notify you that you must appear for an informal hearing. 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.” At that point, you have 30 days to request a formal hearing. If you fail to do so, your application will be deemed withdrawn.

Swearing In

- 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 D.C. Court of Appeals Administrative Order No. 3–18, you have the option of performing your oath in absentia (<https://bit.ly/2rcrGFk>). If you are applying for admission without sitting for the D.C. Bar exam (e.g., through a UBE score transfer), you must wait three days from the date you receive the email from the Committee to complete the oath. You can have the oath administered by a notary or anyone authorized to administer oaths in any U.S. jurisdiction or territory. Alternatively, 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.

Rule 49: UPL

Rule 49 requires that, unless an enumerated exception applies, a lawyer must join the D.C. Bar in order to provide legal services *while physically present* in the District of Columbia.

The commentary to the rule makes clear that a lawyer whose principal place of business is 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.

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. 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.

- D.C. App. R. 49(c)(13) cmt.; *id.* R. 49(b)(3) cmt.

Rule 49 Exceptions

Rule 49(c) sets out a number of exceptions to the general rule

Rule 49(c)(1): U.S. Employee. This subsection allows a person to “provide legal services to the United States as an employee of the United States and may hold out as authorized to provide those services.”

Rule 49(c)(3): Practice Before Federal Courts. This subsection allows a person to provide, from a location in D.C., 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. The person must give prominent notice on all business documents that they are not a D.C. Bar member and that their practice is limited to the services authorized by this exception. An appropriate disclaimer is “Not admitted in the District of Columbia. Practice limited to matters before U.S. courts.” *See* Section III below for additional information about disclaimers.

Rule 49 Exceptions

Rule 49(c)(2): Practice Before Certain U.S. Government Agencies. This subsection permits lawyers to provide legal services “in or reasonably related to a pending or potential proceeding in any department, agency, or office of the United States or of the District of Columbia” without joining the D.C. Bar, as long as the services are authorized by statute or by an agency, department, office, or tribunal rule that “expressly permits *and regulates* practice before” the agency, department, office, or tribunal. Numerous federal agencies have statutes or rules that provide for practice before them, including the Commerce Department and the Federal Communications Commission.

The person must give prominent notice on all business documents that they are not a D.C. Bar member and that their practice is limited to the services authorized by this exception. An appropriate disclaimer is “Not admitted in the District of Columbia. Practice limited to matters before U.S. government agencies.” *See* Section III below for additional information about disclaimers.

Rule 49 Exceptions

- **Rule 49(c)(4): D.C. Employee.** This subsection allows a person to provide legal services to the D.C. government for the first 365 days of employment as an attorney for the District of Columbia when that person is admitted in another U.S. jurisdiction.
- **Rule 49(c)(5): Labor Negotiations and Arbitrations.** This subsection allows a person to provide legal services related to negotiation of, or a grievance arising under a collective bargaining agreement between a labor organization and an employer, including arbitration of a grievance, as long as the recipient of the services does not reasonably expect that the services are being provided by a D.C. Bar Member. This exception does not authorize a person to appear in any court, or in any department, agency, or office of the United States or the District of Columbia.

Rule 49 Exceptions

- **Rule 49(c)(6): In-House Counsel.** This subsection allows a person to serve as in-house counsel and provide legal services only to their employer or its organizational affiliates if the employer understands that the person is not a D.C. Bar Member. In-house counsel must abide by the D.C. Rules of Professional Conduct and is subject to the jurisdiction of D.C. courts. This exception does not authorize a person to appear in any court, or in any department, agency, or office of the United States or the District of Columbia.
- *Id.* R. 49(c)(6).

Rule 49 Exceptions

- **Rule (c)(7): *Pro Hac Vice* in D.C. Courts.** This subsection allows a person to provide legal services in or reasonably related to a proceeding in the D.C. Court of Appeals or D.C. Superior Court and hold out as authorized to provide those services, 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 good cause shown to the court. If a person has an office in D.C., they cannot be admitted *pro hac vice* to practice before a D.C. court unless they qualify under another exception in Rule 49(c). The rule contains additional *pro hac vice* requirements. It is also worth noting that the court has discretion to grant or deny applications for admission *pro hac vice*.

Rule 49 Exceptions

Rule (c)(8): While Bar Application is Pending. This subsection provides a limited exception for attorneys admitted in another U.S. jurisdiction to practice law in D.C., and hold out as authorized to do so, for 365 days from the start of the practice, provided that the following additional requirements are met:

1. The person's first application to the D.C. Bar is pending as of the date the person begins the practice of law in D.C.;
2. The person is supervised by a D.C. Bar member on each client matter, and the D.C. Bar member agrees to be jointly responsible for the quality of the work on each client matter; and
3. The person gives prominent notice in all business documents that the person is not a D.C. Bar member and the person's practice is supervised by one or more D.C. Bar members.

This rule previously allowed for a 90-day grace period between the start of the practice of law in D.C. and the date by which an application to the D.C. Bar had to be submitted. The current version of Rule 49(c)(8) makes clear that an attorney licensed in another jurisdiction cannot practice law in D.C. until *after* their application for admission has been submitted to the D.C. Bar.

Rule 49 Exceptions

- **49(c)(9): *Pro Bono* Legal Services.** This subsection allows a person to provide *pro bono* legal services, and hold out as authorized to do so, in certain circumstances. First, someone who is admitted in another U.S. jurisdiction or was previously admitted in D.C. or another U.S. jurisdiction can provide *pro bono* services. The person cannot be employed by the Public Defender Service or a non-profit organization that provides *pro bono* legal services. The person cannot have been disbarred or suspended for disciplinary reasons or have resigned with charges pending in any jurisdiction or court. *Id.* R. 49(c)(9)(A)(ii).

Rule 49 Exceptions

49(c)(13): Incidental and Temporary Practice. This subsection allows a person to provide legal services in D.C. on an incidental and temporary basis, if the person does not maintain an office or other systematic and continuous presence in D.C. or use a D.C. address for the practice of law, and if the services are reasonably related to a pending or potential proceeding in a jurisdiction in which the person is admitted or authorized to appear, or the services arise out of, or are reasonably related to, the person's practice in a jurisdiction in which he or she is admitted.

UPL Inquiries

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 apply to the D.C. Bar—you need to rectify your mistake.

To get back in good standing, you need to answer the UPL questions, 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.

Questions?