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The District of Columbia Bar

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MEMORANDUM

TO: Board of Governors
Section Chairpersons

FROM: Lynne M. Lester
Manager, Sections Office

DATE: July 25, 1986

SUBJECT: Statement in support of H.R. 4898, a bill "to extend the permissible pro bono representation by employees of the federal government and the District of Columbia government."

Pursuant to Section Guideline No. 13, Section a, the enclosed proposed public statements is being sent to you by District of Columbia Affairs Section

(a)(iii): "No later than 12:00 noon on the seventh (7th) day before the statement is to be submitted to the legislative or governmental body, the Section will forward (by mail or otherwise) a one-page summary of the comments (summary forms may be obtained through the Sections Office), the full text of the comments, and the full text of the legislative or governmental proposal to the Manager for Sections. The one-page summary will be sent to the Chairperson(s) of each Section steering committee and any other D.C. Bar Committee that appear to have an interest in the subject matter of the comments. A copy of the full text and the one-page summary will be forwarded to the Executive Director of the Bar, the President and President-Elect of the Bar, the Section's Board of Governors liaison, and the Chair and Vice-Chair of the Council on Sections. Copies of the full text will be provided upon request through the Sections Office. Reproduction and postage expenses will be incurred by whomever requested the full text (i.e., Section, Bar

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Committee or Board of Governors account). The Manager for Sections shall help with the distribution, if requested, and shall forward a copy of the one-page summary to each member of the Board of Governors. In addition, the Manager for Sections shall draw up a list of all persons receiving the comment or statement, and he\she shall ascertain that appropriate distribution has been made and will assist in collecting the views of the distributees. If no request is made to the Manager for Sections within the seven-day period by at least three (3) members of the Board of Governors, or by majority vote of any steering committee or Committee of the Bar, that the proposed amendment be placed on the agenda of the Board of Governors, the Section may submit its comments to the appropriate federal or state legislative or governmental body at the end of the seven-day period."

(a)vi: The Board of Governors may request that the proposed comments be placed on the agenda of the Board of Governors for the following two reasons only:

(a) The matter is so closely and directly related to the administration of justice that a special meeting of the Bar's membership pursuant to Rule VI, Section 2, or a special referendum pursuant to Rule VII, Section 1, should be called, or (b) the matter does not relate closely and directly to the administration of justice, involves matters which are primarily political, or as to which evaluation by lawyers would not have particular relevance.

a(v): Another Section or Committee of the Bar may request that the proposed set of comments by a Section be placed on the Board's agenda only if such Section or Committee believes that it has greater or coextensive expertise in or jurisdiction over the subject matter, and only if (a) a short explanation of the basis for this belief and (b) an outline of proposed alternate comments of the Section or Committee are filed with both the Manager for Sections and the commenting Section's Chairperson(s). The short explanation and outline of proposed alternative comments will be forwarded by the Manager for Sections to the Board of Governors.

a(vi): Notice of the request that the statement be placed on the Board's agenda lodged with the Manager for Sections by any Board member may initially be telephoned to the Manager for Sections (who will then inform the commenting Section), but must be supplemented by a written objection lodged within seven days of the oral objection.

Please call me by 5:00 p.m., Thursday, July 31, 1986 if you wish to have this matter placed on the Board of Governors' agenda for Tuesday, September 9, 1986

I may be reached at 331-3883.

Enclosures

STATEMENT OF
JAMES C. MCKAY, JR., CO-CHAIR
SECTION VI (DISTRICT OF COLUMBIA AFFAIRS) OF THE
DISTRICT OF COLUMBIA BAR
BEFORE THE
SUBCOMMITTEE ON COURTS, CIVIL RIGHTS, AND
THE ADMINISTRATION OF JUSTICE
JUDICIARY COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
ON
H.R. 4898
AN ACT "TO EXTEND THE PERMISSIBLE PRO BONO
REPRESENTATION BY EMPLOYEES OF THE FEDERAL GOVERNMENT
AND THE DISTRICT OF COLUMBIA GOVERNMENT"

July , 1986

Mr. Chairman and members of the Committee:

Thank you for the opportunity to submit this statement on H.R. 4898, a bill "To extend the permissible pro bono representation by employees of the Federal Government and the District of Columbia Government" on behalf of Section VI of the District of Columbia Bar, the Section responsible for monitoring legislative and judicial developments that affect the District of Columbia.*

We support the repeal of the prohibition against District employees from giving pro bono assistance to persons with claims against the Federal Government.** It is

*STANDARD DISCLAIMER

The views expressed herein represent only those of Section VI (District of Columbia Affairs) of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

**The need for pro bono representation in the District is great. Over 125,000 people who live on incomes below the federal poverty index live in the District, many of whom have legal problems with the District and federal governments in such areas as housing and public benefits. The 800 attorneys in the D.C. Bar Pro Bono program are not adequate to meet these needs, especially in light of the reduction in funding of the Neighborhood Legal Services Program and the anticipated closing of Antioch Law School. The bill would hopefully increase pro bono representation by removing unnecessary statutory restrictions on some 6,500 federal and District government attorneys in the Washington area.

consistent with the purposes of the District of Columbia Self-Government and Governmental Reorganization Act and the spirit of home rule. However, we believe that the bill is inconsistent with the concept of home rule to the extent that it retains the prohibition against District employees from giving assistance to persons with claims against the District Government. We believe that this is a matter that should be addressed by the District Government.

The general purpose of the Self-Government Act was "to grant the inhabitants of the District powers of local self-government . . . and . . . relieve Congress of the burden of legislating upon essentially local District matters." Id. § 102(a), D.C. Code § 1-201. Thus, the Act provided that "the legislative power of the District shall extend to all rightful subjects of legislation within the District," subject to specific restrictions not applicable here. Id. § 302, D.C. Code § 1-204.

In addition to this general legislative power, the Act authorized the District Government to establish a merit personnel system separate from that of the Federal Government. Id. § 422(3), D.C. Code § 1-242(3). Pursuant to this authority, the District enacted the District of Columbia Government Comprehensive Merit Personnel Act of 1978. D.C. Code §§ 1-601.1 to 1-637.2. That act placed all employees of the District Government in one of four newly created District services, except those of the D.C. Courts, who are in neither the Federal or District Service, but a separate service under authority of the Court Reorganization Act. D.C. Code § 11-1701(b)(1). The legislative separation of District employees from the Federal Civil Service removed the basis for retaining the applicability of 18 U.S.C. § 205 to District employees.

We believe that the elected representatives of the citizens of the District should be permitted to enact legislation on this subject. Under home rule, there is no more justification for a federal law governing representation by District employees in claims against the District Government than there is for one governing representation by Maryland employees of persons with claims against the State of Maryland.

There is no reason to doubt that the District would promulgate laws addressing the question of representation by District employees in claims against the District. The District has already enacted strict conflict of interest laws, see D.C. Code §§ 1-1461, 1-1462, and has regulations governing the outside activities of employees. D.C. Personnel Regs., Ch. 18, § 1805. The D.C. Courts have flatly prohibited their employees from practicing law. D.C.C.A. Rule 50; S.C.R.-Civ. Rule 103.

Therefore, we ask the Committee to amend the proposed legislation to remove the prohibition against representation by District employees of persons with claims against the District. This could be accomplished by deleting the two parenthetical phrases--namely, "(other than an officer or employee of the District of Columbia)" on page 1, lines 5 to 6, and "(other than the District of Columbia)" on page 2, lines 8 to 9. With these modifications, we would enthusiastically endorse the legislation before the Committee.

Thank you for the opportunity to submit this statement.