

STATEMENT OF THE LEGISLATION COMMITTEE OF DIVISION IV OF
THE D.C. BAR REGARDING THE BILL TO ENACT THE "DISTRICT OF
COLUMBIA PROSECUTORIAL AND JUDICIAL EFFICIENCY ACT OF 1985"

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"The views expressed herein represent only those of Division IV: Courts, Lawyers, and the Administration of Justice of the D.C. Bar and not those of the D.C. Bar or of its Board of Governors."

The Legislation Committee of Division IV of the District of Columbia Bar, which is concerned with courts, lawyers and the administration of justice, has studied the District of Columbia Prosecutorial and Judicial Efficiency Act of 1985 which would (1) require criminal prosecutions in the Superior Court of the District of Columbia to be brought in the name of the District of Columbia (§ 2(d)); (2) provide for the assignment of assistant Corporation Counsels as special assistant United States attorneys (§ 2(e)); (3) make permanent the authority of hearing commissioners (§ 3); (4) amend provisions of the D.C. Code regarding the appointment, tenure and responsibilities of judicial personnel (§§ 4,6-9,11-16); (5) repeal the "super" disbarment provision of the D.C. Code (§ 5); and (6) provide for the certification of questions of local law from appellate courts to the District of Columbia Court of Appeals (§ 10).

The Legislation Committee strongly supports, for reasons more fully stated below, sections four and five and sections eight through sixteen of the proposed bill. It takes no position on the other provisions because (1) it has not had sufficient opportunity to consider them and (2) it may be more appropriate for other Divisions of the D.C. Bar to comment on them. Moreover, because the sections of the bill discussed below are non-controversial, the Legislation Committee recommends that they be considered separately from those provisions dealing with criminal prosecutions. Finally, the Legislation Committee notes

that section six, which raises the retirement age for judges, was already the subject of a bill which became law last year and, therefore, should be deleted from this bill.

1. Sections 4 and 8-16. Judicial Efficiency Provisions.

These provisions seek to implement recommendations of the District of Columbia Court System Study Committee, under the chairmanship of Charles A. Horsky, and an informal legislative group created at the invitation of the Council for Court Excellence and the D.C. Bar's Committee for the Implementation of the Horsky Committee Study. Section 10, which concerns certifications of questions of law to the District of Columbia Court of Appeals and was drafted by the Legislation Committee as an additional recommendation, was not one of the original recommendations of the Horsky Committee. We submit the following comments on some of these sections:

Section 4 would amend D.C. Code § 11-1703(b) and provide the District of Columbia Court System with the authority to select an Executive Officer for the Courts from any group of qualified individuals rather than being limited to a list of candidates chosen by the Director of the Administrative Office of the United States Courts. We support this amendment which gives the local courts more discretion and greater responsibility for managing what is a local function.

Section 10 incorporates legislation recommended by the Legislation Committee for improvement in the administration of justice in the District of Columbia by enabling questions of

local law to be certified to the District of Columbia Court of Appeals from other appellate courts. The section is patterned after the Uniform Certification of Questions of Law Act, 12 U.L.A. Civil Proc. and Rem. Laws at 52. As of January 1983, the provisions of the Uniform Act had been adopted by rule or statute in twenty-two states. From a study of all reported decisions by the United States Court of Appeals for the District of Columbia Circuit since 1980, it appears that, of the 78 decisions applying local law, fourteen of the Court's recent decisions would have been candidates for certification. These decisions required interpretation and application of local law in the absence of controlling precedent by the local courts. The Legislation Committee believes that consistent interpretation of local law is best served by providing the D.C. Court of Appeals with a mechanism whereby it can resolve the local law issues itself when they are determinative of litigation in other appellate courts. Section 10 provides such a mechanism.

Sections 11 and 12 are concerned with the selection process of the D.C. Judicial Nominations Commission. Section 11 provides that the records of the Judicial Nominations Commission are privileged and exempt from freedom of information act requests, and section 12 provides that meetings of the Commission may be closed to the public. These amendments to the current process, we believe, will ensure fair and effective decisionmaking. The Legislation Committee recommends adoption of these provisions.

2. Section 5. Repeal of Automatic Disbarment Provisions.

The Legislation Committee supports repeal of D.C. Code § 11-2503 (1981). That section has been construed by the District of Columbia Court of Appeals to require the automatic and permanent disbarment of any attorney convicted of a crime of moral turpitude. See In re Colson, 412 A.2d 1160 (D.C. 1979)(en banc); In re Kerr, 424 A.2d 94 (D.C. 1980)(en banc). The Committee believes that because § 11-2503 permits no exceptions it is not necessarily consistent with the administration of justice in the District. We know of no other jurisdiction which mandates permanent disbarment, and the sections' application to only attorneys "convicted" of crimes of moral turpitude creates inconsistencies in the discipline of attorneys admitted to practice in the District of Columbia. Instead, in accordance with the provisions of section 15 of Rule XI of the Rules Governing the Bar of the Court of Appeals for the District of Columbia and DR 1-102(A)(4) of the Code of Professional Responsibility, the imposition of sanctions should be made on a case-by-case basis. Moreover, it is the Committee's opinion that, even if ad hoc consideration is not considered appropriate, the question of whether or not an attorney should be automatically and permanently disbarred after being convicted of a crime of moral turpitude is a judgment that should be left open to the District of Columbia Court of Appeals. Repeal of § 11-2503 provides the Court with this responsibility.

The inconsistency in discipline referred to above concerns the fact that § 11-2503 only applies to members of the D.C. Bar convicted of a crime of moral turpitude. An attorney who has committed such an offense but has not been convicted need not be automatically or permanently disbarred. Similarly, someone who was convicted of a crime of moral turpitude before becoming a member of the D.C. Bar is not precluded from applying for admission to the Bar. See In re Manville, 494 A.2d 1289 (D.C. 1985). The drastic effects of § 11-2503 also seem to result in efforts by the Board of Professional Responsibility to find, wherever possible, that a particular conviction was not for a crime of moral turpitude.

In sum, the Legislation Committee strongly supports repeal of D.C. Code § 11-2503 because whatever measures are believed most appropriate for the discipline of members of the D.C. Bar should be left for the District of Columbia Court of Appeals to determine.

DISTRICT OF COLUMBIA

Revised Uniform Limited Partnership Act

SUMMARY

The Uniform Limited Partnership Act was first promulgated by the National Conference of Commissioners on Uniform State Laws in 1916 and was subsequently adopted by the District of Columbia on September 28, 1962. Since 1962, the District of Columbia has made no significant changes in the Act. The Revised Uniform Limited Partnership Act ("RULPA") was adopted by the National Conference of Commissioners on Uniform State Laws in August 1976, in an attempt to respond to the many ambiguities and omissions in the prior uniform law. Further amendments to RULPA were proposed in 1985. The revised act adds more detailed language and mechanics, including some important substantive changes and additions. The proposed District of Columbia Revised Uniform Limited Partnership Act is an adaptation of RULPA (including the 1985 amendments) that was prepared by the Partnership Committee of the Corporation, Finance & Securities Law Division of the District of Columbia Bar. It slightly modifies RULPA to respond to the demonstrated shortcomings of the previous law while retaining the basic character of RULPA in the interest of the greatest possible uniformity among the District of Columbia and other jurisdictions. Substantial guidance has been drawn from the experience of Maryland and Delaware in adopting and operating under the revised act.

Subtitles 1 and 2 of the proposed act define the terms used throughout the act and collect in one place all provisions dealing with the execution and filing of certificates of limited partnership and amendments thereto, the use of limited partnership names, and the formal requirements for an office and agent for service of process. Also included are provisions enabling the merger or consolidation of a limited partnership with another business entity, subject to certain provisions intended to protect the interests of limited partners. These provisions parallel similar provisions governing corporations.

Subtitles 3 and 4 define in much greater detail than the previous law the powers and potential liabilities of limited partners. The greatest change from the previous law is an enumeration of activities in which a limited partner may engage without being held to have so participated in the control of the

business that he assumes the liability of a general partner. Furthermore, if a limited partner's participation in the control of the partnership is not substantially the same as the exercise of the powers of a general partner, he is liable only to the person who transacts business with the limited partnership reasonably believing, based upon the limited partners' conduct, that the limited partner is a general partner. The rights and powers of a general partner are also set forth in greater detail than in the previous law.

Subtitle 5 provides that the contribution of a partner may be in the form of cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services. Those who fail to perform promised services are required, in the absence of an agreement to the contrary, to pay the value of the services stated in the partnership's records. The previous law only permitted the contribution to be in the form of cash or property.

Subtitle 6 deals with distributions and withdrawals from the limited partnership, and creates a statute of limitations on the rights of a limited partnership to recover all or part of a contribution that has been returned to a limited partner.

Subtitle 7 deals with the assignability of partnership interests. Subtitle 8 contains provisions relating to dissolution, including a more detailed standard for seeking judicial dissolution of a limited partnership.

Subtitle 9 would correct a large omission in the present law, describing the treatment to be afforded a limited partnership organized under the laws of jurisdictions other than the District of Columbia. Neither existing case law nor administrative practice makes it clear which jurisdiction's law should govern the partnership or whether the limited partners of such foreign limited partnership continue to possess their limited liability. Subtitle 9 provides for the registration of foreign limited partnerships and specifies choice-of-law rules.

Subtitle 10 of the proposed act authorizes derivative actions which may be brought by limited partners under certain circumstances. Subtitle 11 provides an effective date for the act and contains transitional provisions concerning the applicability of the revised act to existing limited partnerships.