Rule 5.1. Challenge to Validity or Constitutionality of a District of Columbia Statute, Order, Regulation, or Enactment—Constitutional Challenge to a Federal or State Statute—Notice, Certification, and Intervention

(a) NOTICE BY A PARTY. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute, or the constitutionality or validity under the District of Columbia Self-Government and Government Reorganization Act of 1973, of a District of Columbia statute, order, regulation, or enactment of any type, must promptly:

(1) file a notice of constitutional question or notice of question of validity stating the question and identifying the paper that raises it, if:

(A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity;

(B) a District of Columbia statute, order, regulation, or enactment of any type is questioned and the parties do not include the District of Columbia, one of its agencies, or one of its officers or employees in an official capacity; or

(C) a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and

(2) serve the notice and paper on the Attorney General of the United States if a federal statute is questioned—or on the Attorney General of the District of Columbia if a District of Columbia statute, order, regulation, or other enactment is questioned—or on the state attorney general if a state statute is questioned—either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

(b) CERTIFICATION BY THE COURT. Where a notice is required under Rule 5.1(a), the court must certify to the appropriate attorney general that a federal or state statute—or a District of Columbia statute, order, regulation, or other enactment—has been questioned.

(c) INTERVENTION; FINAL DECISION ON THE MERITS. Unless the court sets a later time, the appropriate attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the challenge, but may not enter a final judgment holding the statute, regulation, order, or other enactment unconstitutional or otherwise invalid.

(d) NO FORFEITURE. A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a claim or defense that is otherwise timely asserted.

COMMENT TO 2017 AMENDMENTS

This rule adopts, with certain modifications and additions, the corresponding federal rule, which was adopted in 2006. Consistent with the approach taken by the federal rules, the current rule moves requirements to Rule 5.1 from Rule 24(c), which addresses the criteria and procedures for intervention.

The rule adds a notification provision for acts, orders, regulations, or enactments exclusively applicable to the District of Columbia so that the court will follow as nearly as possible the notification procedure prescribed for courts of the United States in *28 U.S.C. § 2403.* In order to assist the court in fulfilling its notification responsibilities

under this section, the rule requires an alerting inscription on every pleading the filing of which makes such notification necessary.

The District of Columbia Self-Government and Governmental Reorganization Act of 1973, Public Law 93-198 (also known as the District of Columbia Home Rule Act), is reported primarily at D.C. Code §§ 1-201.01 to -207.71 (2016 Repl.). Individual sections of the Act are codified throughout the D.C. Code, and a listing of those sections and references to their counterparts in the D.C. Code can be found in the Disposition Table in Volume 23 (Tables) of the 2012 Replacement Edition of the D.C. Code, pp. 323-25.